

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2009-26

(b)(3)/26 USC 6103

Respondent-Appellant

Decision on Appeal

Authority

Under the Authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in her as Acting Assistant General Counsel of the Treasury who was the Acting Chief Counsel of the Internal Revenue Service, through a delegation order dated June 26, 2009, Clarissa C. Potter delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Subpart D of Part 10 of Title 31, Code of Federal Regulations 31 C.F.R. Part 10, *Practice Before the Internal Revenue Service* (reprinted in and hereinafter referred to as Treasury Department Circular No. 230). This is such an Appeal from a Default Decision and Order entered in this proceeding against (b)(3)/26 USC 6103 by Administrative Law Judge William B. Moran (the ALJ) on September 9, 2009.¹

Background

This proceeding was commenced on June 19, 2009, when Melissa Martinez, an attorney acting as the authorized representative of the Director of the Office of Professional Responsibility (OPR), filed a Complaint against Respondent-Appellant. The Complaint alleges that Respondent-Appellant: (i) has engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. § 10.2(a)(4) as a Certified Public Accountant, (ii) (b)(3)/26 USC 6103

(iv)

(b)(3)/26 USC 6103

¹ A copy of the ALJ's Decision appears as Attachment 1.

(b)(3)/26 USC 6103

(v)

(b)(3)/26 USC 6103

, (vi) that for the tax years (b)(3)/26 USC 6103 he was required to exercise due diligence in the preparation of the tax returns of corporate client S and individual clients N² in accordance with the requirements of 31 U.S.C. § 330 and 31 C.F.R. § 10.22(a)(1) and Respondent also failed to exercise due diligence when he failed to determine the correctness of the representations he made to the IRS concerning the tax matters of taxpayers S and N³, and (vi) that for the tax years (b)(3)/26 USC 6103 he was required by 31 U.S.C. § 330 and 31 C.F.R. §10.34(b) “to disclose and avoid penalties likely to apply with respect to the tax position he submitted to the IRS on behalf of corporate and individual taxpayers” S and N “for the Tax Years (b)(3)/26 USC 6103” and he failed to disclose and avoid such penalties. Complainant-Appellee requested that Respondent-Appellant “be disbarred from practice before the Internal Revenue Service pursuant to the provisions of 31 C.F.R. § 10.50 and § 10.70, issued under the authority of 31 U.S.C § 330, reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring (b)(3)/26 USC 6103

The Complaint notified Respondent-Appellant that an Answer must be filed within 30 days after service of the Complaint and that failure to answer the Complaint may result in a decision by default. Respondent-Appellant failed to file an Answer to the Complaint. On August 6, 2009, Complainant-Appellee filed Complainant’s Motion for a Decision by Default. Respondent-Appellant failed to file a response to the Motion.

On September 9, 2009, the ALJ issued a Default Decision and Order holding that the failure to file an answer within the time prescribed constitutes an admission of the allegations of the complaint and a waiver of hearing pursuant to 31 C.F.R. § 10.64(d). The ALJ found that (b)(3)/26 USC 6103 and reflected adversely on his current fitness of practice. The ALJ found that Respondent-Appellant failed to exercise due diligence as required by 31 C.F.R. § 10.22(a) in preparing,

² I have chosen to use a single letter to represent the third party taxpayers whose returns are in issue in this matter. (b)(3)/26 USC 6103 Respondent has been made aware of the taxpayers involved through correspondence from OPR and though the Complaint.

³ 31 C.F.R. § 10.22(a)(2)

⁴ The Complaint also asserts that (b)(3)/26 USC 6103

approving, and filing tax returns for S and N and in failing to determine the correctness of oral or written representations made to the Department of Treasury, that Respondent-Appellant failed to inform clients S and N of any penalties reasonably likely to apply to S and N, as well as the opportunities to avoid such penalties, with respect to the tax position the Respondent-Appellant submitted to the IRS on S's and N's behalf in violation of the regulations under 31 C.F.R. § 10.34(b). The ALJ found that these violations constitute disreputable conduct under 31 C.F.R. § 10.51.

The ALJ granted Complainant-Appellee's Motion for a Decision by Default and determined that (b)(3)/26 USC 6103 is disbarred from practice before the Internal Revenue Service, "reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring (b)(3)/26 USC 6103

Decision on Motion for Default Judgment

I concur with the decision of the ALJ that a decision on the Motion for a Decision by Default is appropriate. Respondent-Appellant never filed an Answer to the complaint. Respondent-Appellant never requested an extension of time to file an Answer to the Complaint. In his Appeal, Respondent-Appellant did not provide any reasons for his failure to file an Answer. Since Respondent-Appellant failed to file an Answer, all of the allegations in the Complaint are deemed admitted as detailed in the opinion of the ALJ. Respondent-Appellant engaged in disreputable conduct (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 by failing to exercise due diligence as required by 31 C.F.R. § 10.22(a) in preparing, approving, and filing tax returns for S and N and in failing to determine the correctness of oral or written representations made to the Department of Treasury, by failing to inform clients S and N in violation of the regulations under 31 C.F.R. § 10.34(b) of any penalties reasonably likely to apply to S and N, as well as the opportunities to avoid such penalties with respect to the tax position the Respondent-Appellant submitted to the IRS on S and N's behalf

Defenses to the Allegations Raised in the Appeal

In his Appeal, Respondent-Appellant states that (b)(3)/26 USC 6103 he prepared many returns for other taxpayers.

Respondent-Appellant claims that his clients misrepresented their income to him, and he implies that the misrepresentation was the reason the returns of S and N were incorrect. The (b)(3)/26 USC 6103 developed a great deal of evidence reflecting the lack of due diligence by Respondent-Appellant in the preparation of these returns. A portion of that evidence includes: (b)(3)/26 USC 6103

[REDACTED]

The defenses raised by Respondent-Appellant in his Appeal lack merit.

Conclusion

For the reasons stated, I hereby determine that the Respondent-Appellant, (b)(3)/26 USC 6103, is disbarred from practice before the Internal Revenue Service, reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring (b)(3)/26 USC 6103

[REDACTED]. This constitutes FINAL AGENCY ACTION in this proceeding.

Ronald D. Pinsky
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As authorized delegate of
Timothy F. Geithner,
Secretary of the Treasury)

May 28, 2010
Lanham, MD