

UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant

v.

Respondent.

Complaint Number: 2015-00002
Docket Number: 15-IRS-0002

HON. PARLEN L. McKENNA
Presiding

(b)(3)/26 USC 6103

ORDER GRANTING COMPLAINANT'S DEFAULT DECISION AND ORDER

On July 9, 2015, the Director, Office of Professional Responsibility (OPR or Complainant), Internal Revenue Service (IRS), Department of the Treasury, issued a Complaint pursuant to 31 C.F.R. Part 10¹ and 31 U.S.C. § 330 against Respondent [redacted] an (b)(3)/26 USC 6103 Enrolled Agent who practiced before the Internal Revenue Service.

The Complaint seeks Respondent's disbarment from practice before the Internal Revenue Service based on 10 separate counts: [redacted] (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

¹ The regulations governing practice before the IRS, found at 31 C.F.R. Part 10, were revised on June 12, 2014. The savings clause contained at 31 C.F.R. § 10.91 of the revised regulations provides that any proceeding under this part based on conduct engaged in prior to June 12, 2014, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subparts D and E. Conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred. 31 C.F.R. § 10.91 (Rev. 6-2014).

[Redacted]

(b)(3)/26 USC 6103

[Redacted]

and (10) alleged willful failure to respond to OPR's

(b)(3)/26 USC 6103

lawful request for information.

The disbarment would prevent Respondent from practicing before the IRS without the explicit approval of OPR. In order to obtain reinstatement, the practitioner needs to demonstrate (at a minimum) that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest. Any such reinstatement would be at the sole discretion of OPR.

On July 9, 2015, Complainant filed and served a copy of Complaint No 2015-00002 by United States Postal Service ("USPS") Certified Mail, Return Receipt Requested, to

Respondent's last known address on record with the Internal Revenue Service, at [Redacted]

(b)(3)/26 USC 6103
(b)(6)

[Redacted]

The Complaint notified Respondent that he

(b)(3)/26 USC 6103
(b)(6)

was required to file and serve an answer by August 10, 2015, and that a failure to file an answer may result in a decision by default being rendered against the Respondent. To date, Respondent has not filed an answer to the Amended Complaint.

On October 13, 2015, Complainant filed and served an additional copy of Complaint No 2015-00002 by United States Postal Service ("USPS") regular mail, to Respondent's last known address on record with the Internal Revenue Service, at [Redacted]

(b)(3)/26 USC 6103
(b)(6)

[Redacted]

The additional copy of the Complaint was delivered to

(b)(3)/26 USC 6103
(b)(6)

Respondent on October 15, 2015. The Complaint notified Respondent that he was required to

² The Complaint does not charge that Respondent

[Redacted]

(b)(3)/26 USC 6103

file and serve an answer by November 16, 2015, and that failure to file an answer may result in a decision by default being rendered against Respondent. To date, Respondent has not filed an answer to the Complaint served on October 13, 2015.

On November 23, 2015, counsel for the Complainant filed a Motion for a Decision by Default. The motion was served upon Respondent by regular mail addressed to Respondent at his last known mailing address on file with the Internal Revenue Service at [REDACTED]

(b)(3)/26 USC 6103
(b)(6)

[REDACTED] To date, Respondent has not filed a response to the Motion for Decision.

(b)(3)/26 USC 6103
(b)(6)

Respondent has thus failed to respond to both the Motion and the Complaint and has not otherwise participated in these proceedings following my assignment to hear and decide his case. Respondent simply cannot sit on his rights and avoid the consequences that naturally flow from such lack of participation. For the reasons provided below, Complainant's Motion for Default is therefore **GRANTED** and Respondent is **DISBARRED** from practice before the IRS.

PRINCIPLES OF LAW

OPR's Ability to Discipline IRS Practitioners

Under 31 U.S.C. § 330(a), the Secretary of the Treasury holds authority to "regulate the practice of representatives of persons before the Department of the Treasury," including the power to suspend or disbar an individual from practice for a number of reasons as long as the individual is first provided with "notice and opportunity" for hearing before an administrative law judge. *Id.* at § 330(b).

Circular 230 and Delegation Order No. 25-16 (2012) delegates to the Director of OPR, the authority to bring proceedings to suspend or disbar practitioners before the IRS. See 31

C.F.R. § 10.50(a). Under 31 C.F.R. § 10.50(e), any sanctions imposed “shall take into account all relevant facts and circumstances.”

Consequences for Respondent’s Failure to Respond

The Complaint and the Motion for Default were both properly served in accordance with the service rules found at 31 C.F.R. § 10.63. Respondent has not filed an opposition or a proper answer to the Complaint; nor has he replied to the Motion for Default. IRS regulations at 31 C.F.R. § 10.64(d) provide that:

Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

Respondent has not requested any extensions of time to file an Answer, and none have been granted. Thus, the provisions of Section 10.64(d) apply. Respondent’s failure to respond will therefore be deemed an admission of all the allegations in the Complaint by Default and a waiver of his right to a hearing.

Evidentiary Standard and Standard of Proof

The applicable evidentiary standard provides that the rules of evidence prevailing in a court of law and equity are not controlling, but the judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. See 31 C.F.R. § 10.73(a).

The standard of proof differs depending on the nature of the sanction. If the sanction is censure or a suspension of less than six months’ duration, the judge applies the preponderance of the evidence standard. See 31 C.F.R. § 10.76(b). In contrast, for a monetary penalty, disbarment or suspension of six months’ or longer, the judge applies the clear and convincing standard. Id. The clear and convincing standard has been defined “as evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the

allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable.” Jimenez v. Daimler Chrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also Addington v. Texas, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

Given that Complainant seeks to disbar Respondent, the clear and convincing standard applies. If Respondent is disbarred, he will not be permitted to practice before the IRS until authorized to do so pursuant to 31 C.F.R. § 10.81.

FINDINGS OF FACT³

1. At all material times, Respondent has been an Enrolled Agent who engaged in practice before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility and to the rules and regulations contained in 31 C.F.R., Part 10. (b)(3)/26 USC 6103

2. (3)/26 USC 6103

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³ The Findings of Fact that follow come from the allegations in the Complaint –deemed admitted by Respondent due to his failure to file an Answer properly and respond to the Motion for Decision by Default.

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34. On or about September 3, 2014, OPR mailed a letter to Respondent at his last known address of record with the IRS requesting information concerning his alleged violations of Circular 230.

35. Respondent failed to respond to OPR's request for information, as set forth in the September 3, 2014 letter.

ANALYSIS

Respondent had the opportunity to contest the allegations in the Complaint but failed to do so properly. First, he did not file an Answer to the properly served Complaint. Respondent also did not respond to Complainant's Motion for Decision. Each of these filings was properly served at Respondent's last known address and Respondent was under an obligation to make some response to such pleadings. A respondent cannot simply sit on his or her rights and expect to avoid consequences that naturally flow from such inaction. Indeed, the record clearly establishes that Respondent was provided with an adequate opportunity to contest the charges against him.

The applicable regulations provide the consequences for such failure. Title 31 C.F.R. § 10.68(b) prescribes "if a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer . . . the nonmoving party is deemed not to oppose the motion." Respondent has not filed a response. Therefore, in accordance with 31 C.F.R. § 10.64(d) and § 10.76, the allegations in the Complaint were deemed admitted by default. See also 31 C.F.R. § 10.64(c) ("Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing").

Respondent's admitted actions as set forth in the Complaint unquestionably constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on Respondent's fitness to practice before the IRS and represent others before that agency.

Furthermore, upon review of the facts presented in the record as a whole, I find Complainant's proposed penalty of disbarment is appropriate given the egregiousness of Respondent's overall conduct associated with the ten proven Counts against him and the

aggravating factors Complainant articulated in the Complaint. Respondent: 1) has [redacted] (b)(3)/26 USC 6103

[redacted] (b)(3)/26 USC 6103

[redacted] and 3) did not respond to OPR's lawful request for information. Such (b)(3)/26 USC 6103

actions render Respondent unfit for practice before the IRS, and disbarment is the only

appropriate sanction under these circumstances. See OPR v. Hurwitz, Complaint No. 2007-12

(Decision on Appeal, April 21, 2009) (repeated [redacted] inconsistent (b)(3)/26 USC 6103

with right to practice before IRS); OPR v. Blum, Complaint No. 2006-24 (Decision on Appeal,

February 21, 2008) (affirming disbarment of practitioner who failed to file tax returns for five tax years).⁴

ULTIMATE FINDINGS OF FACT & CONCLUSIONS OF LAW

1. At all relevant times, Respondent engaged in practice before the IRS and is subject to the disciplinary authority of the OPR Director under the rules and regulations contained in 31 C.F.R. Part 10.
2. [redacted] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
3. [redacted] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
4. [redacted] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
5. [redacted] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103

⁴ Final IRS Decisions are publically available at www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Final-Agency-Decisions.

Revenue Service.

6. [REDACTED] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
7. [REDACTED] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
8. [REDACTED] tax return constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
9. [REDACTED] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
10. [REDACTED] constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 (Rev. 4-2008) generally and a willful violation of §10.51(a)(6) (Rev. 4-2008) more particularly, for which the Respondent may be censured, suspended, or disbarred from practice before the Internal Revenue Service. (b)(3)/26 USC 6103
11. Respondent's failure to respond to OPR's September 3, 2014 request for information was willful and constitutes disreputable conduct pursuant to 31 C.F.R. 10.51 (Rev. 6-2014) generally and is a willful violation of 31 C.F.R. § 10.20(a)(3) (Rev. 6-2014) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
12. Each of the ten Counts alleged in the Complaint are therefore found **PROVED**.
13. Complainant has proven by clear and convincing evidence Respondent's above-described conduct warrants Respondent's disbarment from practice before the IRS in light of all the relevant facts and circumstances.

WHEREFORE:

ORDER

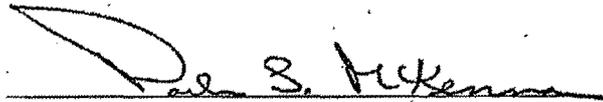
IT IS HEREBY ORDERED that Complainant's Motion for a Decision by Default is

GRANTED and that Respondent [REDACTED] is **DISBARRED** from practice before the (b)(3)/26 USC 6103

Internal Revenue Service from the date of this Decision and Order. Any Reinstatement of Respondent is subject to the provisions contained in 31 C.F.R. Part 10, section 10.81 and at minimum requires Respondent to demonstrate that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest.

PLEASE TAKE NOTICE THAT this Decision and Order may be appealed pursuant to 31 C.F.R. § 10.77, summarized provided below.

IT IS SO ORDERED.



Hon. Parlen L. McKenna
Administrative Law Judge

Dated: January 8, 2016 at Alameda, CA.

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

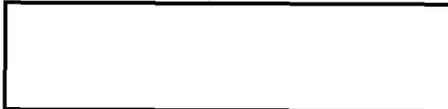
CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing *Order Granting Complaint's Motion for Default Decision (15-IRS-0002)* upon the following parties and entities in this proceeding as indicated in the manner described below:

ALJ Docketing Center
United States Coast Guard
40 South Gay Street, Suite 412
Baltimore, Maryland 21202-4022
Telephone: (410) 962-5100
Facsimile: (410) 962-1746
(Via Facsimile)

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Ms. Diana M. Gertscher
Internal Revenue Service, Room 7238/IR
1111 Constitution Avenue, NW
Washington, D.C., 20224
(Via First Class Mail & Electronic Mail)



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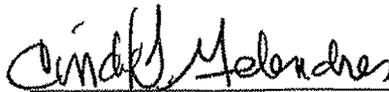
(Via Certified Mail – Return Receipt Requested – 7010-2780-0000-4828-9909)



(b)(3)/26 USC 6103
(b)(6)

(Via USPS regular mail service – postage prepaid)

Done and dated: January 8, 2016
Alameda, California.

A handwritten signature in cursive script that reads "Cindy June Melendres".

Cindy June Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna