

THE DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY,

Complainant,

v.

Respondent.

17-JM-0047-OD-002
(Complaint No. 2017-00002)

May 8, 2017

(b)(3)/26 USC 6103

INITIAL DECISION ON DEFAULT JUDGMENT

On April 5, 2017, the Director of the Office of Professional Responsibility (“OPR” or “Complainant”) for the Internal Revenue Service (“IRS”) filed a *Complainant’s Motion for a Decision by Default* (“Default Motion”) in the above-captioned matter.¹

PROCEDURAL HISTORY

On January 23, 2017, the OPR Director filed a *Complaint* against [REDACTED] (“Respondent”). The *Complaint* seeks an order suspending Respondent for a term of no less than forty-eight (48) months from practice before the IRS for committing violations of the Federal regulations governing authority to practice before the IRS that are set forth in 31 C.F.R. Part 10.²

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A copy of the *Complaint* was served on Respondent by United States Postal Service (“USPS”) via certified mail, return receipt requested, to Respondent’s last reported address of record with the IRS. An additional copy of the *Complaint* was sent to the same address by first class USPS mail. Respondent received the *Complaint* on January 24, 2017.

¹ Pursuant to an Interagency Agreement in effect beginning June 10, 2015, Administrative Law Judges of the United States Department of Housing and Urban Development are authorized to hear cases brought by the Department of the Treasury, Internal Revenue Service.

² The regulations governing practice before the IRS, found at 31 C.F.R. Part 10, were most recently 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 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, but the 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).

By *Notice of Hearing and Order*, issued January 23, 2017, Respondent was required to file an answer within 30 days from the date the *Complaint* is served on Respondent or February 23, 2017. The *Complaint* included a similar instruction but Respondent did not file a timely answer to the *Complaint*. Upon receipt of Complainant's *Default Motion*, the Court ordered Respondent to show cause, if there be any, as to why the *Default Motion* should not be granted. Respondent's response to the *Order to Show Cause* was due by May 5, 2017. As of the date of this *Initial Decision*, Respondent has not filed an answer, requested an extension of time to do so, responded to the *Order to Show Cause*, or otherwise entered an appearance in this matter.³

CONSEQUENCES OF FAILURE TO ANSWER

Section 10.64 of title 31 of the Code of Federal Regulations sets forth the requirement for answering a complaint and the consequences for not do so.

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 a decision by default without a hearing or further procedure.

31 C.F.R. § 10.64(d). As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact.

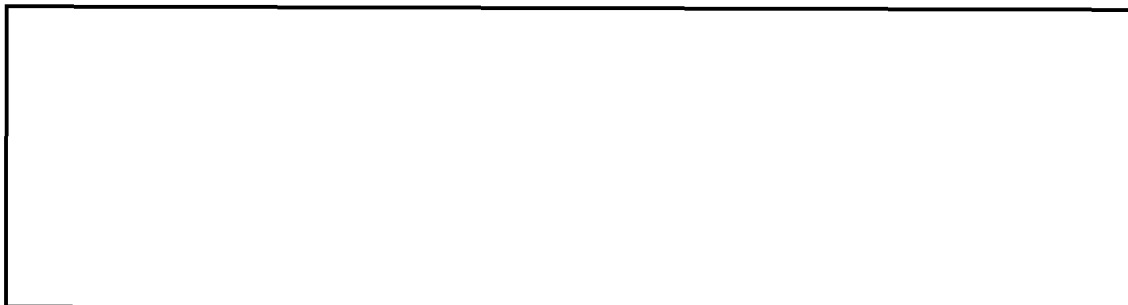
FINDINGS OF FACT

Respondent has engaged in practice before the IRS as a Certified Public Accountant subject to the disciplinary authority of the Secretary of the Treasury and OPR. Respondent's last reported address of record is on file with the IRS. Respondent is the owner and operator of the CPA firm [REDACTED] (hereinafter, "the CPA Firm"), which has a Federal Employer Identification Number [REDACTED]

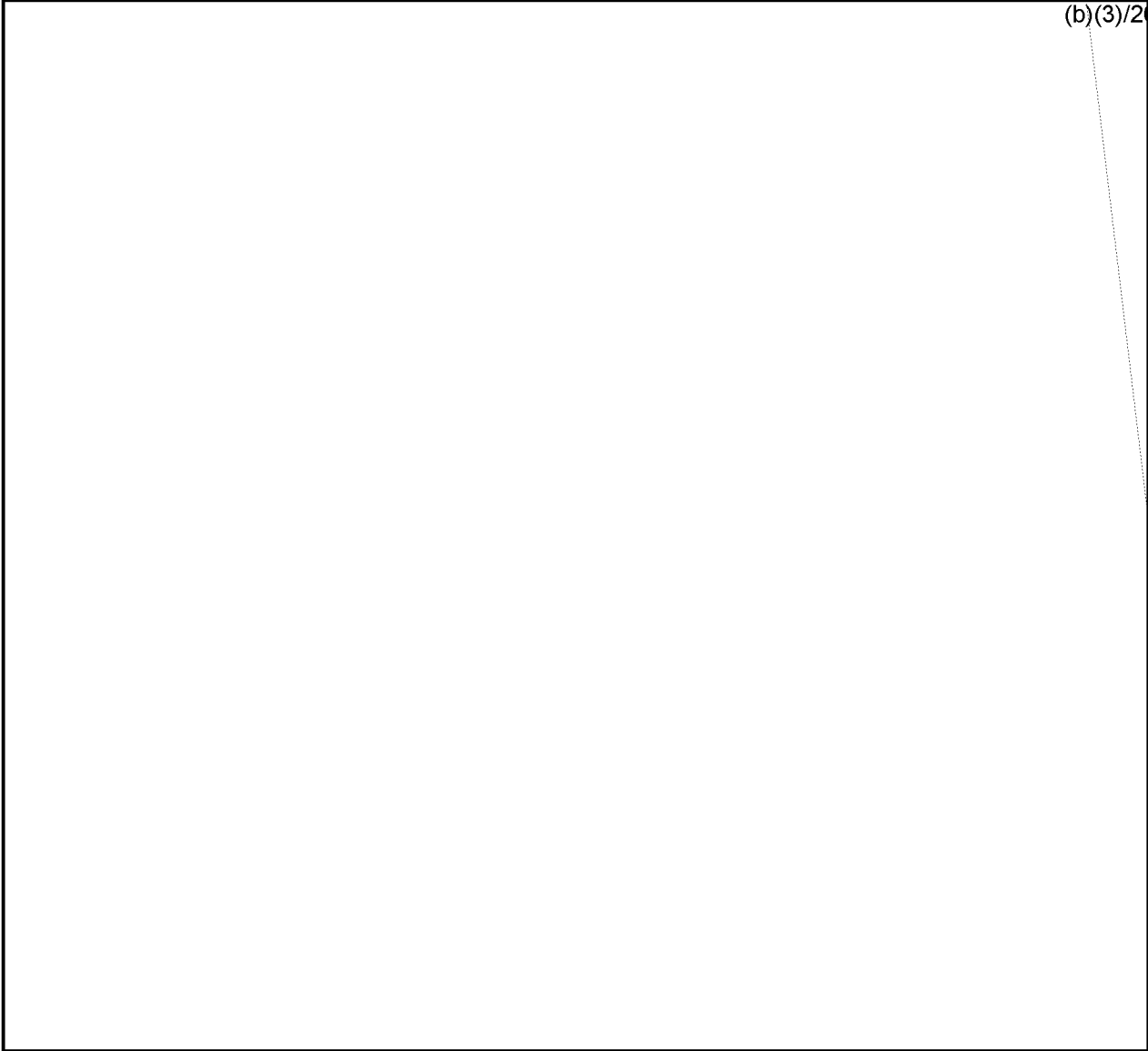
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³ Counsel for Complainant acknowledges receiving a letter dated March 27, 2017, from Respondent in response to Complainant informing Respondent that a motion for default was being considered. Although a copy of the letter was not submitted to the Court, Counsel claims the letter indicates Respondent's awareness of the proceeding, but here was no indication that Respondent intended to file an answer.



CONCLUSIONS OF LAW

The *Complaint* alleges Respondent willfully engaged in 6 counts of misconduct in violation of the Federal regulations governing practice before the IRS.

A practitioner may be sanctioned for willfully violating the regulations set forth at 31 C.F.R. Part 10. Incompetence and disreputable conduct may be sanctioned pursuant to IRS regulations. 31 C.F.R. § 10.51. A practitioner who willfully fails to make a Federal tax return and/or evades the payment of any Federal tax may be sanctioned for disreputable conduct. 31 C.F.R. § 10.51(a)(6).



[Redacted]

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SANCTION

Respondent's actions constitute disreputable conduct and a failure to comply with the regulations governing practice before the IRS as set forth in 31 C.F.R. Part 10. The OPR Director alleges Respondent's misconduct adversely reflects on Respondent's current fitness to practice before the IRS and, as such, warrants a suspension from practice for a term of no less than forty-eight (48) months. In support of this claim, the OPR Director notes, as an aggravating factor, that Respondent has engaged in the same pattern of

[Redacted]

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The willful failure to file a personal Federal income tax return is viewed as a serious offense. OPR v. Llorente, Complaint Number 2008-03, Decision on Appeal (IRS, Apr. 10, 2009). Willfully evading the payment of a federal tax also warrants a sanction. OPR v. Craft, Complaint Number 2010-12, Decision on Appeal (IRS, Oct. 12, 2011). Based upon the uncontested aggravating factor proffered by the OPR Director, Respondent has engaged in a continuing pattern of

[Redacted]

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[Redacted] Although the *Complaint* only seeks

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sanctions for [Redacted]

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[Redacted] Accordingly, a severe sanction is warranted.

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CONCLUSION

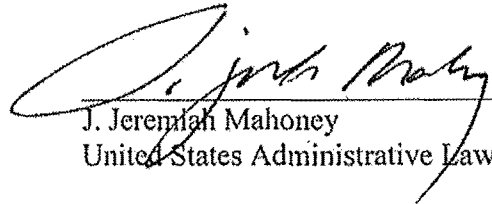
Respondent failed to file an answer to the *Complaint* and is in **DEFAULT**. As such, his lack of response constitutes an admission of the allegations in the *Complaint* and a waiver of hearing. See 31 C.F.R. § 10.64(d). Based upon the allegations deemed admitted by Respondent, the Court finds, by clear and convincing evidence, that Respondent willfully failed to make individual Federal income tax returns and evaded payment of federal taxes. Respondent's conduct, as set forth in Counts 1-6 of the *Complaint*, constitute disreputable conduct pursuant to 31 C.F.R. § 10.51.

[Redacted]

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The Court finds that the seriousness of Respondent's offenses, coupled with the aggravating factor, demonstrate that Respondent is currently unfit to practice before the IRS and the suspension of forty-eight (48) months sought by the OPR Director is warranted. Accordingly, Respondent is **SUSPENDED** from practice before the IRS for a period of forty-eight (48) months.⁶

So **ORDERED**,



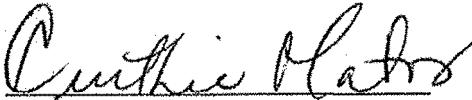
J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Appeal Rights: Within thirty (30) days of this *Initial Decision*, either party may file an appeal with the Secretary of the Treasury, or delegate deciding appeals. 31 C.F.R. § 10.77(a). In the absence of an appeal to the Secretary of the Treasury or delegate, this *Initial Decision* will, without further proceedings, become the decision of the agency 30 days after the issuance date. 31 C.F.R. § 10.76(d).



⁶ Respondent's reinstatement to practice thereafter shall be dependent upon Respondent demonstrating, to the satisfaction of the OPR Director, that Respondent is qualified and fit to practice before the IRS, including being compliant with all of Respondent's tax filings and payment obligations during the period of suspension and remaining compliant with the provisions contained in 31 C.F.R. Part 10.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGEMENT**, issued by J. Jeremiah Mahoney, Chief Administrative Law Judge, in HUDOHA 17-JM-0047-OD-002 were sent to the following parties on this 8th day May, 2017, in the manner indicated:


Cinthia Matos, Docket Clerk

VIA FIRST-CLASS MAIL

Respondent

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(b)(6)

VIA EMAIL

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Official