

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2018-01

William L. McCoy,
Respondent-Appellant

Decision on Appeal

Pursuant to the Secretary of the Treasury's designation, General Counsel Order No. 9 (January 19, 2001) and Office of Chief Counsel Notice CC-2018-007 (July 3, 2018), I decide disciplinary appeals to the Secretary of the Treasury filed under 31 C.F.R. Part 10, *Practice Before the Internal Revenue Service* (IRS), commonly referred to as Circular 230 (all references are to Circular 230 as in effect for the periods at issue).¹ This is such an appeal from an Order (hereinafter Decision) entered in this proceeding by Administrative Law Judge J. Jeremiah Mahoney (the ALJ) on May 29, 2018.

Background

Complainant-Appellee Director of the Office of Professional Responsibility (Complainant) originally initiated disciplinary action against Respondent-Appellant William L. McCoy (Respondent) on March 2, 2017. On September 7, 2017, Complainant issued an Order suspending Respondent from practice before the IRS indefinitely, pursuant to the regulation governing expedited suspensions at § 10.82 of Circular 230. On September 15, 2017, within the two-year period authorized by the expedited suspension regulations, Respondent requested that Complainant initiate a formal disciplinary proceeding under § 10.60 of Circular 230.

On November 14, 2017, Complainant filed a Complaint against Respondent, instituting this proceeding. The Complaint alleged that Respondent engaged in disreputable

¹ Portions of Circular 230 were amended on June 12, 2014. See 79 Fed. Reg. 33685 (June 12, 2014); Circular 230 (Rev. 6-2014). These proceedings were instituted after that date and are governed by subpart D and E of Circular 230 as revised. See 31 C.F.R. § 10.91 (2014). Respondent's past conduct is governed by the regulatory provisions in effect at the time the conduct occurred. See id. Although it is unclear from the record whether Respondent-Appellant engaged in the conduct at issue in these proceedings before or after June 12, 2014, the Circular 230 provisions governing Respondent's past conduct were unaffected by the June 12, 2014 amendments. Accordingly, citations to subpart A, B, or C of Circular 230 refer to Circular 230 as in effect both before and after the June 12, 2014 amendments.

conduct under § 10.51(a)(2) and (3) of Circular 230 based on Respondent's conviction of grand larceny in the third degree under New York State Penal Law § 155.35 in the County Court of the State of New York, Suffolk County. Under New York state law, grand larceny in the third degree is a felony. The Complaint requested that Respondent be disbarred from practice before the IRS and sought the imposition of a \$50,000 penalty.

On December 13, 2017, Respondent filed an Answer, admitting that he had been convicted of grand larceny in the third degree, but denying that he had engaged in disreputable conduct. On February 23, 2018, Complainant filed a Motion for Summary Adjudication, arguing that the documentary evidence and Respondent's admissions established by clear and convincing evidence that Respondent had engaged in disreputable conduct. On May 15, 2018, Respondent filed his response in opposition to Complainant's Motion for Summary Adjudication, maintaining that he did not engage in disreputable conduct. In his Decision dated May 29, 2018, the ALJ granted Complainant's Motion for Summary Adjudication, concluding that the undisputed facts and evidence established that Respondent had engaged in disreputable conduct within the meaning of § 10.51(a)(2) and (3) of Circular 230. The ALJ imposed sanctions of disbarment and a \$10,000 penalty.

Findings of Fact and Analysis

In a proceeding for sanctions against an IRS practitioner, the ALJ may render a decision on a motion for summary adjudication if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. Section 10.76(a)(2) of Circular 230. The Appellate Authority reviews the ALJ's findings of fact under a clearly erroneous standard of review and reviews matters of law de novo. Section 10.78 of Circular 230.

It is undisputed that Respondent misappropriated his client's funds. Respondent does not dispute that he agreed to assist a client in settling her deceased mother's estate, during the course of which he deposited a \$50,000 check payable to the decedent into his business account. Respondent does not dispute that he spent some of the funds on his own business expenses. Respondent does not dispute that his client pressed criminal charges after unsuccessfully attempting to recover her money. On December 14, 2016, Respondent was convicted of grand larceny in the third degree, a felony. On December 31, 2016, Respondent repaid the misappropriated funds. The issue on appeal is whether the undisputed facts and evidence establish that Respondent engaged in disreputable conduct.

Respondent argues that he did not engage in disreputable conduct because larceny is a "crime of stealth" that does not involve dishonesty or breach of trust. Respondent argues that the ALJ erred in rejecting his request to stay the proceedings pending the resolution of his appeal of his felony conviction. Respondent also argues that the ALJ erred in considering the facts and evidence underlying Respondent's conviction and in

concluding that regardless of the outcome of the criminal appeal, the facts and evidence demonstrate that Respondent engaged in disreputable conduct.

Disreputable conduct for which a practitioner may be sanctioned includes, *but is not limited to*, the conduct listed in § 10.51(a)(1) through (a)(18) of Circular 230. Although disreputable conduct within the meaning of § 10.51(a)(2) and (3) of Circular 230 consists of conviction of a criminal offense involving dishonesty or breach of trust and conviction of a felony for which the conduct involved renders the practitioner unfit to practice before the IRS, the ALJ properly determined that the issue in a disbarment proceeding such as this is the Respondent's fitness to practice, not the criminality of his acts.

Respondent's misappropriating of his client's funds and repaying those funds only after his felony conviction several years later is an act of dishonesty and breach of trust that renders Respondent unfit to practice before the IRS and therefore amounts to disreputable conduct within the meaning of § 10.51(a) of Circular 230, regardless of whether his conviction is ultimately overturned. The undisputed facts and evidence establish that Respondent engaged in disreputable conduct.

Appropriate Sanction

The ALJ determined that the appropriate sanction was disbarment from practice before the IRS effective September 7, 2017 (the date of Respondent's expedited suspension) and payment of a \$10,000 penalty. In doing so, the ALJ found that disbarment was appropriate in light of the serious nature of Respondent's misconduct in misappropriating client funds and abusing his position of trust for his own benefit, causing actual injury to his client and resulting in his felony conviction. The ALJ declined to impose the \$50,000 penalty sought by Complainant in light of the facts that Respondent repaid the \$50,000 he misappropriated from his client and has already incurred criminal punishment for his actions. But the ALJ found that a \$10,000 penalty was appropriate in recognition of the harm Respondent caused to his client and to defray the expenses incurred by the IRS in pursuing this disciplinary proceeding. I agree that the appropriate sanction for Respondent's misconduct is disbarment and a \$10,000 penalty.

I have considered all of the arguments made by the parties, and to the extent not mentioned herein, I find them to be irrelevant or without merit.

Conclusion

For the reasons stated, I hereby determine that Respondent William L. McCoy is disbarred from practice before the IRS, and may seek reinstatement as provided by § 10.81 of Circular 230. I further determine that Respondent must pay a penalty of \$10,000 to the Secretary of the Treasury. This constitutes FINAL AGENCY ACTION in this proceeding.



Kirk M. Paxson
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)
October 25, 2019
Seattle, WA

CERTIFICATE OF SERVICE

I hereby certify that the DECISION ON APPEAL dated October 25, 2019 in Complaint No. 2018-01 was sent this day by Certified Mail and by First Class U.S. Mail to the addresses listed below:

Certified Mail:

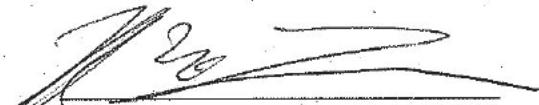
William L. McCoy
(b)(6)

First Class U.S. Mail:

Alison Stump
Senior Attorney
Office of Chief Counsel (IRS)
33 Maiden Lane
14th Floor
New York, New York 10038

Elizabeth Kastenberg
Acting Director, Office of Professional Responsibility
Internal Revenue Service
1111 Constitution Avenue, NW
SE:OPR, Room 7238/IR
Washington, DC 20224

Honorable J. Jeremiah Mahoney
Administrative Law Judge
U.S. Department of Housing & Urban Development
Office of Hearings and Appeals
451 7th Street, SW
Room B-133
Washington, DC 20410



Kirk M. Paxson
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
Seattle, WA