

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2019-04

Stephen C. Wallick,
Respondent-Appellant

Decision on Appeal

Pursuant to 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 230.¹ This is such an appeal from an Initial Decision and Order (hereinafter Decision) entered in this proceeding by the Honorable Walter J. Brudzinski, Administrative Law Judge (the ALJ) on July 8, 2020.

Background

Complainant-Appellee Director of the Office of Professional Responsibility (Complainant) initiated disciplinary action against Respondent-Appellant Stephen C. Wallick (Respondent) on March 28, 2019 by mailing to Respondent an Order to Show Cause why Respondent should not be suspended from practice before the IRS on an expedited basis. On July 24, 2019, having received no written response from Respondent, Complainant suspended Respondent from practice before the IRS indefinitely, pursuant to the regulation governing expedited suspensions at § 10.82 of Circular 230. On August 21, 2019, 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 October 17, 2019, Complainant filed a Complaint against Respondent, instituting this proceeding. The Complaint alleged that Respondent engaged in disreputable conduct under §§ 10.51(a)(2) and 10.51(a), generally, of Circular 230 based on Respondent's January 25, 2019 conviction of "theft (\$60,000 less \$250,000.00)" under Tennessee Code Title 39 Chapter 14 Section 103, a Class B Felony. The Complaint alleged that between August 6, 2014 and March 1, 2016, Respondent obtained or

¹ All references to Circular 230 in this Decision on Appeal are to Circular 230 (Rev. 6-2014).

exercised control over \$60,765.45 belonging to Respondent's former employer, Blankenship C.P.A. Group and [REDACTED], without their consent. Complainant requested that Respondent be disbarred from practice before the IRS. On October 28, 2019, Respondent filed an Answer, admitting that Respondent had been convicted but alleging error in the conviction and representing that Respondent intended to move for a new trial and to appeal the conviction.

On November 26, 2019, Respondent filed a Discovery Motion, seeking the ALJ's permission to request the identity of the person who informed Complainant of Respondent's criminal conviction; to take the deposition of that person; to request all communications between Complainant and his former employer; and additional discovery. Respondent's Discovery Motion did not seek permission to serve requests for admission. On December 9, 2019, Complainant filed a Response to Respondent's Motion, objecting to the requested discovery on the grounds that it was not reasonably calculated to lead to the discovery of admissible evidence. On December 20, 2019, the ALJ issued an Order denying Respondent's Discovery Motion. The ALJ concluded that deposing the person who informed Complainant of Respondent's criminal conviction and other individuals potentially named by that person would be unreasonable and that any information garnered therefrom would be irrelevant and immaterial to the Circular 230 disciplinary proceeding as Complainant had already provided Respondent with the information and documentation relied upon to form the basis of the expedited suspension, namely the criminal judgment and grand jury indictment, and because the circumstances surrounding how and when Complainant became aware of the conviction was not relevant to the Circular 230 disciplinary proceeding. The ALJ noted that under section 10.71(a) and (f) and Circular 230, he could not authorize any discovery other than depositions and answers to requests for admission and concluded that the other discovery sought by Respondent was not permitted under § 10.71 of Circular 230. On December 27, 2019, Respondent filed a Motion to Reconsider Respondent's Discovery Motion. On January 2 or 3, 2020, Respondent served requests for admission on Complainant. Complainant never answered the requests for admission. On February 5, 2020, the ALJ denied Respondent's Motion to Reconsider because, among other things, there was no change in the controlling law and Respondent's Motion did not assert any new evidence.

On January 21, 2020, Complainant filed a Motion for Summary Judgment, arguing that Respondent's felony theft conviction established by clear and convincing evidence that Respondent had engaged in incompetent and disreputable conduct under §§ 10.51(a)(2) and 10.51(a) generally, of Circular 230. On January 28, 2020, Respondent filed a Response, arguing that the nature of the conduct forming the basis for his conviction does not affect his fitness to practice and does not warrant disbarment. Respondent argued that the underlying claim was a property dispute with his former employer concerning his former employer's purchase of his accounting business, that the conviction was for taking accounts receivable from his former employer, but that his former employer did not own the accounts receivable generated for the clients for whom he performed services. On February 7, 2020, the ALJ issued an Order Denying Summary Adjudication, finding that although theft may imply

dishonesty or breach of trust, there was nevertheless a genuine issue as to the facts surrounding Respondent's conduct and whether and how they affected his fitness to practice.

On February 19, 2020, the ALJ held an evidentiary hearing. At the hearing, Respondent moved that the matters in his requests for admission be deemed admitted, and the ALJ denied Respondent's motion because Respondent had never filed a written discovery motion seeking permission to serve requests for admission or demonstrating their relevance, materiality, and reasonableness. During the hearing, Complainant introduced the testimony of two witnesses and one rebuttal witness, Respondent introduced the testimony of himself and one other witness, and the parties introduced eight exhibits. The parties filed Briefs. On July 8, 2020, the ALJ issued the Decision in this case, finding that Respondent's felony theft conviction involves dishonesty and breach of trust and that Complainant proved the allegations in the Complaint by clear and convincing evidence. The ALJ imposed a sanction of disbarment, effective July 24, 2019.

Findings of Fact and Analysis

Before disbaring a practitioner, the ALJ must find that allegations of fact are proven by clear and convincing evidence in the record. Section 10.76(b) 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.

A practitioner may be sanctioned for incompetence and disreputable conduct, including "conviction of any criminal offense involving dishonesty or breach of trust." Section 10.51(a) and 10.51(a)(2) of Circular 230. After holding an evidentiary hearing on the matter, the ALJ reasonably found that Respondent's felony theft conviction involves dishonesty and breach of trust. The ALJ reasonably found that clients of Respondent's former employer paid Respondent directly for work that he performed while he was an employee of his former employer. The ALJ also reasonably found that Respondent personally cashed checks received as payment for services billed by his former employer and performed during his employment with his former employer. The ALJ reasonably found that Respondent deposited the monies into his personal checking account, and that the amounts Respondent personally collected total approximately \$60,000. The ALJ reasonably concluded that regardless of the details of Respondent's business dispute with his former employer, Respondent's conduct in attempting to self-remedy the situation was disreputable and dishonest. The ALJ further reasonably concluded that Respondent's conduct "raises significant 'concerns about his honesty, integrity, and ability to comport himself in an appropriate manner with someone else's money.'" Decision at p. 7 (quoting OPR v. Christensen at *17, Complaint No. 2012-00005 (Decision and Order July 23, 2013)).

Respondent raises three arguments in this appeal. First, Respondent argues that the ALJ erred both in denying his motion to deem the matters in his requests for admission admitted and in denying the discovery sought in his written Discovery Motion. The ALJ

properly denied Respondent's motion to deem the matters in his requests for admission admitted. In a Circular 230 disciplinary proceeding, the parties are entitled to serve requests for admission only when they demonstrate, in a written motion, their relevance, materiality, and reasonableness. Section 10.71(a) of Circular 230. Respondent never filed such a written motion with respect to his requests in for admission. Pointing to the provision concerning requests for admission contained section 10.71(c) of Circular 230, Respondent asserts that he is entitled to serve up to 30 requests for admission without the approval of the ALJ. Respondent misconstrues the provision concerning requests for admission, which is subject to the general rule that "[d]iscovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of §10.72(d)(2) and (3)." Section 10.71(a) of Circular 230.

The ALJ also reasonably denied Respondent's Discovery Motion and Respondent's Motion to Reconsider. In a Circular 230 disciplinary proceeding, discovery is permitted only at the discretion of the ALJ. Section 10.71(a) of Circular 230. The ALJ reasonably concluded that Respondent failed to demonstrate the relevance, materiality, and reasonableness of the requested deposition, as required by section 10.71(a) of Circular 230, for the reasons set out in his Order denying Respondent's Discovery Motion. The ALJ also properly concluded that the requested discovery other than the deposition was not permitted in a Circular 230 disciplinary proceeding. Section 10.71(a) and (f) and Circular 230.

Second, Respondent argues that the clear and convincing standard was not met. Respondent points to various findings of fact that the ALJ made from the testimony of Complainant's rebuttal witness. As Complainant noted, however, what Respondent characterizes as a failure to meet the clear and convincing standard of proof is just a disagreement with the rebuttal witness's testimony. The ALJ, as the finder of fact, heard that testimony, as well as Respondent's testimony to the contrary, and found the rebuttal witness's testimony credible. I find no clear error in the ALJ's findings of fact.

Third, Respondent argues that there were significant problems with his felony theft conviction, that the conviction was not final because it was subject to post-trial motions and appeal in state court, and that the ALJ violated his due process rights by accepting his conviction as true. Respondent's felony theft conviction was entered approximately two years ago and currently stands as a matter of public record. His appeal is currently pending in the Court of Criminal Appeals of Tennessee.

The Secretary of the Treasury has the authority to "regulate the practice of representatives of persons before the Department of the Treasury," 31 U.S.C. § 330(a), including the power to suspend or disbar a representative from practice for a number of reasons as long as the individual is first provided with "notice and opportunity" for a proceeding before an administrative law judge. *Id.* at § 330(c). The Circular 230 regulations governing practice before the IRS are meant to protect "the integrity of a tax system that depends upon voluntary compliance." *Sicignano v. United States*, 127 F. Supp. 2d 325, 332 (D. Conn. 2001). To ensure that integrity, and in light of the position

of trust that practitioners before the IRS hold with respect to both their clients and the IRS, the Circular 230 regulations clarify that Complainant may suspend a practitioner who has been convicted of “any crime involving dishonesty or breach of trust” on an expedited basis “*irrespective of whether an appeal has been taken.*” Section 10.82(b)(2) of Circular 230 (emphasis added). Respondent was suspended under this expedited suspension provision, which led to this formal disciplinary proceeding concerning whether Respondent should be disbarred for engaging in disreputable conduct under §§ 10.51(a)(2) and 10.51(a), generally, of Circular 230.

The issue in a Circular 230 disciplinary proceeding is essentially Respondent’s fitness to practice, not the criminality of his acts. Harary v. Blumenthal, 555 F.2d 1113, 1116 (2d Cir. 1977). Consistent with the purpose of Circular 230 disciplinary proceedings, the ALJ held an evidentiary hearing and examined Respondent’s conduct underlying the conviction in an effort to “thoroughly understand the circumstances surrounding the conviction, but not re-litigate the criminal case” Decision at p. 5. After doing so, the ALJ found that Respondent’s conduct was clearly dishonest. I find no clear error in the ALJ’s factual findings. Moreover, I find that these proceedings have accorded Respondent the due notice, fundamental fairness and opportunity to be heard to which he was entitled.

Appropriate Sanction

The ALJ determined that the appropriate sanction was disbarment from practice before the IRS effective July 24, 2019 (the date of Respondent’s expedited suspension). In doing so, the ALJ found that disbarment was appropriate in light of the serious nature of Respondent’s misconduct involving his job as an enrolled agent, resulting in his conviction of a crime involving dishonesty or breach of trust. I agree that the appropriate sanction for Respondent’s misconduct is disbarment.

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 Stephen C. Wallick is disbarred from practice before the IRS and may seek reinstatement as provided by § 10.81 of Circular 230, after the 5-year period provided in that regulation or at an earlier time if the criminal conviction is overturned. This constitutes FINAL AGENCY ACTION in this proceeding.

**Kirk M.
Paxson**

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Paxson
Date: 2021.01.21 13:47:39
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Kirk M. Paxson
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)
January 22, 2021
Seattle, WA

CERTIFICATE OF SERVICE

I hereby certify that the DECISION ON APPEAL dated January 22, 2021 in Complaint No. 2019-04 was sent this day by UPS Next Day Air and by First Class U.S. Mail to the addresses listed below:

UPS Next Day Air:

Stephen C. Wallick

(b)(6)

Stephen C. Wallick
102 Highway 70 East
Suite 1
Dickson, TN 37055

John A. Beam, III
Equitus Law Alliance, PLLC
709 Taylor Street
Nashville, TN 37228

Certified Mail:

John A. Beam, III
Equitus Law Alliance, PLLC
P.O. Box 280240
Nashville, TN 37228

First Class U.S. Mail:

Amee Patel
Senior Attorney
Office of Chief Counsel (IRS)
401 W. Peachtree St. N.W.
Suite 640
Atlanta, GA 30308

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

ALJ Docketing Center

United States Coast Guard
United States Custom House, Room 412
40 South Gay Street
Baltimore, MD 21202

Honorable Walter J. Brudzinski

Chief Administrative Law Judge
United States Coast Guard
1 South Street, Battery Park Building, Room 216
New York, NY 10004-1466

**Kirk M.
Paxson**

 Digitally signed by Kirk M.
Paxson
Date: 2021.01.21 14:33:13
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Kirk M. Paxson
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
Seattle, WA