

UNITED STATES
DEPARTMENT OF THE TREASURY

**Director, Office of Professional Responsibility,
Complainant-Appellee,**

v.

COMPLAINT NO. 2005-13

**Robert A. Jones,
Respondent-Appellant.**

Decision on Appeal

Under the authority of General Counsel Order No. 9 (January 9, 2001) and the authority vested in him as Assistant General Counsel of the Treasury who is the Chief Counsel of the Internal Revenue Service, through a series of Delegation Orders (most recently, an Order dated January 15, 2008) Donald L. Korb delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Part 10 of Title 31, Code of Federal Regulations (“Practice Before the Internal Revenue Service,” sometimes known and hereafter referred to as “Treasury Circular 230”).

The initial Decision in these proceedings was entered by Administrative Law Judge Joseph Gontram (the “Initial ALJ”) on January 16, 2007.¹ In his well-reasoned opinion, the Initial ALJ found that Complainant-Appellee had proved by clear and convincing evidence that Respondent had violated various provisions of Treasury Circular 230 and that those violations justified the TWO YEAR SUSPENSION from practice before the Internal Revenue Service that Complainant-Appellee sought to impose. Respondent-Appellant filed a timely Appeal challenging the Initial ALJ’s findings, conclusions and sanction determination. In my Initial Decision on Appeal, entered on October 12, 2007, I VACATED AND REMANDED the Initial ALJ’s Decision, having found that, while the Initial ALJ had found each of Respondent-Appellant’s violations to have been “knowing,” the initial ALJ had made no specific finding that Respondent-Appellant’s conduct had been “willful” within the meaning of §10.52(a) of Treasury Circular 230.² The Initial ALJ died before he could consider the case on Remand. Robert J. Giannasi, the Chief Administrative Law Judge who assumed the ALJ

¹ The Initial ALJ’s Decision Appears as Attachment A to this Decision on Appeal.

² A copy of my Initial Decision on Appeal in these proceedings appears as Attachment B to this Decision on Appeal.

functions on this case (the “Successor ALJ”), assigned this case to himself, addressed the points made in my Initial Decision on Appeal, and found the a TWO YEAR SUSPENSION from practice before the Internal Revenue Service was fully justified by the violations affirmed in my Initial Decision on Appeal. The Successor ALJ also found that each of Respondent-Appellant’s violations were “willful” within the meaning of §10.52(a) of Treasury Circular 230.³

Among the issues raised by Respondent-Appellant on Remand was a statement I made in my Initial Decision on Appeal that he believed to have been “prejudicial.” The offending statement was my statement that the Initial ALJ would have had no difficulty finding each of Respondent-Appellant’s violations to be “willful” given that the Initial ALJ had already found Respondent’s conduct to be “knowing.” I had already sustained, under my standards of review,⁴ the Initial ALJ’s findings of fact and conclusions of law to the effect that Complainant-Appellee had proved by clear and convincing evidence that Respondent’s conduct was “knowing.” My only intent in making the statement was to advise the Initial ALJ that, as a matter of law, given the nature of these violations, the terms “knowing” and “willful” were synonymous. My statement was not intended as a comment on the evidence in the record beyond the conclusion I had already reached in upholding the Initial ALJ’s determination that Respondent-Appellant’s conduct was “knowing.”

Accordingly, I AFFIRM the Successor ALJ’s Supplemental Decision on Remand and SUSPEND Respondent-Appellant from practice before the Internal Revenue Service for a period of two years, commencing with the date of entry of this Decision on Appeal. This Decision on Appeal constitutes FINAL AGENCY ACTION in these proceedings.

David F. P. O’Connor
Special Counsel to the Senior Counsel
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of
Henry M. Paulson,
Secretary of the Treasury)

February 12, 2008
Washington, D.C.

³ A copy of the Successor ALJ’s Supplemental Decision on Remand appears as Attachment C to this Decision on Appeal.

⁴ Each of the violations in issue involves mixed questions of fact and law, and are accordingly reviewed by me under a “clearly erroneous” standard.