

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC

DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY,

Complainant,

v.

Complaint No. 2007-20

(b)(3)/26 USC 6103,

Respondent.

DECISION ON MOTION FOR SUMMARY JUDGMENT

On April 18, 2007, a Complaint was issued on behalf of the Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury, pursuant to 31 C.F.R. 10.60, issued under the authority of 31 U.S.C. 330, alleging that the Respondent, (b)(3)/26 USC 6103, a certified public accountant who practices before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The complaint seeks to have the Respondent disbarred from such practice. Specifically, it is alleged that Respondent (b)(3)/26 USC 6103. The Complaint was duly served upon Respondent. He subsequently submitted a letter addressed to Judge Richard Scully, who was at that point assigned this case, dated May 28, 2007. The case has subsequently been reassigned to me. I shall treat the May 28 letter as a timely filed answer to the Complaint. Respondent asserted that (b)(3)/26 USC 6103 (b)(3)/26 USC 6103. But Respondent did not deny the allegation in paragraph 10 of the Complaint that (b)(3)/26 USC 6103. Thus, he did not deny the allegations in the complaint alleging (b)(3)/26 USC 6103 as set forth in the Complaint. Under 31 C.F.R. Section 10.64(c), every complaint allegation that is not denied in the answer is deemed admitted and will be considered proved, without the need for further evidence at a hearing.

On April 8, 2008, counsel for the Director filed a motion for summary judgment and supporting affidavit, which was served on Respondent by certified mail. The Director asserts that there are no genuine and material issues of fact in dispute in this matter and that thus no evidentiary hearing is necessary. In the motion the Director withdraws paragraph 9 of the Complaint and any other claims regarding (b)(3)/26 USC 6103. Respondent has failed to file a response to the motion for summary judgment.

Having carefully reviewed the pleadings and the affidavit in support of the motion for summary judgment, I find that there are no material issues of fact to be resolved and that the matter can appropriately be decided without a hearing. According to the affidavit of Carolyn H.

Gray, Deputy Director of the Office of Professional Responsibility (OPR) of the Internal Revenue Service (IRS), by letter dated April 7, 2006, OPR informed Respondent that (b)(3)/26 USC 6103 [REDACTED]. On or about May 8, 2006, Respondent telephoned an attorney at OPR and received a 30 day extension of time to respond to the April 7 letter. According to Gray, Respondent has had no further contact with OPR until after the Complaint was filed in this case. Gray also asserts that she has reviewed (b)(3)/26 USC 6103 [REDACTED], which confirms that Respondent (b)(3)/26 USC 6103 [REDACTED].

Gray's affidavit points out that Respondent (b)(3)/26 USC 6103 [REDACTED] (b)(3)/26 USC 6103 [REDACTED]. In these circumstances, Respondent (b)(3)/26 USC 6103 [REDACTED] (b)(3)/26 USC 6103 [REDACTED]. In this context, "willful" as used in the applicable regulations simply means the "voluntary intentional violation of a known legal duty." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). Respondent is a CPA licensed to practice in Florida and engaged in practice before the IRS. His eligibility to practice before the IRS subjects him to suspension or disbarment by reason of engaging in disreputable conduct. As a CPA, authorized to represent other taxpayers and practice before the IRS, Respondent knew that (b)(3)/26 USC 6103 [REDACTED] (b)(3)/26 USC 6103 [REDACTED]. No other excuse appears on this record. (b)(3)/26 USC 6103 [REDACTED]. Such disreputable conduct has been shown by clear and convincing evidence, as required under 31 C.F.R. Section 10.76(a).

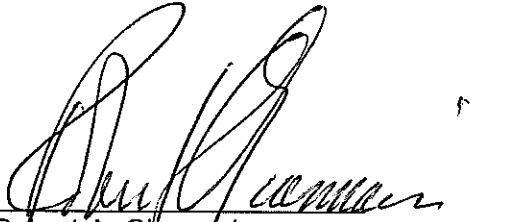
In support of the requested penalty of disbarment, Gray's affidavit points out that Respondent (b)(3)/26 USC 6103 [REDACTED] and that there are no mitigating factors apparent in the record. The affidavit also mentions that (b)(3)/26 USC 6103 [REDACTED].

It is true that Respondent has offered no evidence or circumstances in mitigation of his disreputable conduct. Nor has he responded to the motion for summary judgment and the supporting affidavit. However, I note that the Director has withdrawn the Complaint allegations involving (b)(3)/26 USC 6103 [REDACTED]. I also note that, in my experience, similar cases of (b)(3)/26 USC 6103 [REDACTED] have been punished by a lengthy suspension rather than by disbarment. I also note that the Director does not dispute that (b)(3)/26 USC 6103 [REDACTED]. In these circumstances, I find that a suspension of Respondent from practice before the IRS for 48 months is a more appropriate punishment than outright disbarment. Accordingly, it is

ORDERED that Respondent (b)(3)/26 USC 6103 [REDACTED] is hereby suspended from practice before the Internal Revenue Service for a period of forty-eight (48) months from the date of this Order.¹

¹ Pursuant to 31 C.F.R. Section 10.77, either party may appeal this decision to the Secretary of the Treasury within thirty (30) days of issuance.

Dated at Washington, D.C., May 9, 2008



Robert A. Giannasi
Administrative Law Judge

CERTIFICATION OF RECORD

I, Robert A. Giannasi, Administrative Law Judge, certify that the attached documents, consisting of the following:

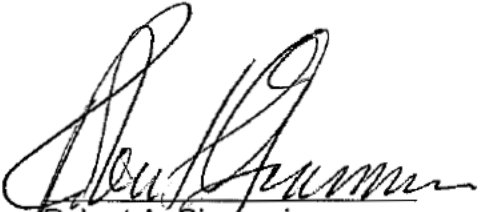
Complaint No. 2007-20, *Director, Office of Professional Responsibility v. (b)(3)*
26 USC 6103, dated April 18, 2007;

Motion for Summary Judgment and supporting affidavit, along with covering letter, dated April 8, 2008; and

Decision on Motion for Summary Judgment, dated May 9, 2008;

constitute the complete administrative record in the matter of *Director, Office of Professional Responsibility v. (b)(3)/26 USC 6103*, Complaint 2007-20.

Dated at Washington, DC, May 9, 2008



Robert A. Giannasi
Administrative Law Judge