

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C.

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY
Complainant

v.

Complaint No 2007-35

(b)(3)/26 USC 6103

Respondent

Wendy Yan, Esq.,
for the Complainant.

Dennis M. Haase, Esq.
for the Respondent, pro se.

DECISION

MICHAEL A. ROSAS, Administrative Law Judge: This matter arises from a complaint issued on July 13, 2007, by the Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service (OPR), pursuant to 31 C.F.R. § 10.60 (also referred to as Section 10.60 of the Treasury Department Circular No. 230).

The complaint seeks to have the Respondent, (b)(3)/26 USC 6103 (the Respondent), a certified public accountant engaged in practice before the Internal Revenue Service (IRS), disbarred from such practice, pursuant to 31 C.F. R. §§ 10.50 and 10.70, for having engaged in disreputable conduct as set forth in 31 C.F. R. § 10.51. Specifically, it is alleged that (b)(3)/26 USC 6103

[REDACTED]

[REDACTED] . In his answer, filed December 7, 2007, the Respondent denied the material allegations in the complaint. He contends that (b)(3)/26 USC 6103

[REDACTED]

On November 26, 2007, a hearing was held before me in New York, New York, at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Closing arguments were made at the conclusion of the hearing, and the parties submitted proposed findings and conclusions of law and supporting reasons.

Upon the entire record, and based on my observation of the demeanor of the witnesses, I make the following:

FINDING OF FACT

The Respondent, (b)(3)/26 USC 6103 has been a self-employed certified public accountant, licensed by the State of New Jersey since 1985. (b)(3)/26 USC 6103 His address of record is Address 1, South Orange, New Jersey. (Tr. 86, 108-109, 116-117.)¹

As a certified public accountant engaged in practice before the Internal Revenue Service, as defined by 31 CFR. §10.2(d), the Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director of the Office of Professional Responsibility. (C. Exh. 4, 7.)

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103 During (b)(3)/26 USC 6103, the Respondent prepared several hundred individual and corporate income tax returns for clients. He also appeared before the Internal Revenue Service on behalf of clients. (Tr. 77-79, 101-102; C. Exh. 20.)

(b)(3)/26 USC 6103

¹ "Tr." refers to transcript pages, "C. Exh." refers to Complainant's exhibits, and "R. Exh." refers to the Respondent's exhibits.

² I found (b)(3)/26 USC 6103 credible and credit his testimony that (b)(3)/26 USC 6103 (Tr. 38-40.)

(b)(3)/26 USC 6103

On October 16, 2006, the Complainant informed the Respondent that (b)(3)/26 USC 6103

The Respondent failed to respond to the Complainant's letter. As a result, the Complainant forwarded his case to the Internal Revenue Service's Office of Chief Counsel for litigation. On May 8, 2007, the Office of Chief Counsel informed the Respondent by certified mail, return receipt requested, that it was considering a proceeding to disbar him from practice before the Internal Revenue Service. The letter was returned as unclaimed. However, the Office of Chief Counsel resent the letter on June 7, 2007 by first class mail. This time, the letter was not returned. (Tr. 63; C. Exh. 2-3.) On July 13, 2007, the Office of Chief Counsel commenced the instant proceeding seeking the Respondent's disbarment from practice before the Internal Revenue Service. (C. Exh. 4.) The Respondent, in its answer and at trial, asserted that (b)(3)/26 USC 6103

As explained above, that defense lacks merit.

ANALYSIS AND DISCUSSION

The Respondent is a certified public accountant who has engaged in practice before the Internal Revenue Service. As such, he is subject to the disciplinary authority of the Secretary of the Treasury and the Director or Acting Director of OPR. 31 U.S.C. §

³ I found (b)(3)/26 USC 6103 credible on this point as well and did not credit the Respondent's assertion that (b)(3)/26 USC 6103. There was no evidence offered by the Respondent [as] to accuracy of [his] history, which corroborated (b)(3)/26 USC 6103. (Tr. 76-77,91-96; Exh. 9, 13-14.)

330(a)(1).

(b)(3)/26 USC 6103

In conclusion, the clear and convincing evidence establishes that

(b)(3)/26 USC
6103

for which he may be suspended from practice before
the Internal Revenue Service pursuant to (b)(3)/26 USC 6103

SANCTION

The complaint seeks to have the Respondent disbarred from practice before the IRS because of (b)(3)/26 USC 6103

. The Director's decision is entitled to substantial deference and I concur with his determination as to the sanction sought - disbarment from practicing before the Internal Revenue Service.

The Respondent, a CPA for approximately 23 years, (b)(3)/26 USC 6103
He completed many individual and corporate tax returns during the (b)(3)/26 USC 6103

The allegations against the Respondent are serious in nature and it is important to deter similar conduct by other certified professional accountants. Accordingly, I find that, under all the circumstances, disbarment from practicing before the IRS is appropriate.

I find that the allegations against the Respondent have been proven by clear and convincing evidence in the record, the standard provided in 31 C.F.R. § 10.50 to support the sanction of debarment from practicing law before the IRS.

CONCLUSIONS OF LAW

1. The Respondent, (b)(3)/26 USC 6103 is a certified public accountant who has practiced before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.

2. 31 C.F.R. §10.51 (f) (2002) provides that willfully failing to make a Federal income tax return is grounds for discipline.

2. [REDACTED] (b)(3)/26 USC 6103

[REDACTED] That violation has been proven by clear and convincing evidence in the record.

3. Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. §10.76, I issue the following:

ORDER⁴

The Respondent, [REDACTED] (b)(3)/26 USC 6103 is disbarred from practice before the Internal Revenue Service.

Dated at Washington, D.C. February 20, 2008

Michael A. Rosas
Administrative Law Judge

⁴ Pursuant to 31 C.F.R. §10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days from the date of issuance of this Decision.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision was sent by first class mail on this 21st day of February, 2008, to each of the following:

Wendy Yan, Esq.
Department of the Treasury
Internal Revenue Service
Office of Chief Counsel
Associate Chief Counsel General legal Services
33 Maiden Lane, 14th Floor
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Internal Revenue Service
SE: OPR Room 7238/1R
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Washington, DC 20224

Secretary, Division of Judges
National Labor Relations Board

CERTIFICATE OF RECORD

I, Michael A. Rosas, Administrative Law Judge, hereby certify that the attached documents consisting of the following:

1. One volume of the transcript of the hearing held on November 26, 2007.

2. Complainant Exhibits:

1- Letter, dated October 16, 2006, from Stephen A. Whitlock to the Respondent.

2 - Letter, dated May 8, 2007, Heather A. Southwell, Esq. to the Respondent.

3 - Letter, dated June 7, 2007, from Heather A. Southwell, Esq. to the Respondent.

4 - Letter, dated July 13, 2007, from Heather A. Southwell, Esq. to Chief Judge Robert A. Giannasi.

5 - Letter, dated September 12, 2007, from Heather A. Southwell, Esq. to Chief Judge Robert A. Giannasi.

6 - Letter, dated September 17, 2007, from the Respondent to Chief Judge Robert A. Giannasi.

8 - Letter, dated October 4, 2007, from Heather A. Southwell, Esq. to Chief Judge Robert A. Giannasi.

10 - (b)(3)/26 USC 6103

11- (b)(3)/26 USC 6103

12- (b)(3)/26 USC 6103

13- (b)(3)/26 USC 6103

14- (b)(3)/26 USC 6103

15- (b)(3)/26 USC 6103

16- (b)(3)/26 USC 6103

17- (b)(3)/26 USC 6103

18- (b)(3)/26 USC 6103

19- (b)(3)/26 USC 6103

20- (b)(3)/26 USC 6103

3. Respondent's Exhibits

1- (b)(3)/26 USC 6103

2- (b)(3)/26 USC 6103

3- (b)(3)/26 USC 6103

4- (b)(3)/26 USC 6103