

United States

Department of the Treasury

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Director, Office of Professional  
Responsibility,  
Complainant-Appellant  
("C-A")

v.

Complaint No. 2008-03

(b)(3)/26 USC 6103

Respondent-Appellee  
("R-A")

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Decision on Appeal

Authority

Under the authority of Treasury General Counsel Order No. 9 (January 19, 2001) and the authority vested in her as Acting Assistant General Counsel of the Treasury who was acting Chief Counsel of the Internal Revenue Service, through a Delegation Order dated February 9, 2009, Clarissa Potter delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of Treasury filed under Part 10 of Title 31, Code of Federal Regulations ("Practice Before the Internal Revenue Service," sometimes known and hereinafter referred to as "Treasury Circular 230"). This is such an Appeal from a Decision By Default entered by Judge Robert A. Giannasi, Chief Administrative Law Judge of the National Labor Relations Board (the "ALJ"), against R-A, on September 23, 2008.<sup>1</sup>

**Background**

This proceeding was commenced on June 18, 2008, when C-A issued a Complaint against R-A alleging that R-A had committed five separate acts of disreputable conduct under § 10.51 and (b)(3)/26 USC 6103 of Treasury Circular 230 (Rev. 1994) or (b)(3)/26 USC 6103 (Rev. 2002) (b)(3)/26 USC 6103

. The Complaint also alleged that R-A:

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<sup>1</sup> The ALJ's Decision By Default appears as Attachment 1 to this Decision on Appeal. This Attachment, together with all other Attachments referred to in this Decision on Appeal, are hereby incorporated by reference in this Decision on Appeal as if fully set forth herein.

<sup>2</sup> At the time the Complaint was filed, the charge pertaining to (b)(3)/26 USC 6103

had engaged in practice before the Internal Revenue Service as an attorney, and was subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility. The Complaint also informed R-A that he was required to Answer the Complaint within 30 calendar days of the date of service and informed R-A that a failure to timely answer the Complaint could result in a Decision by Default being entered against him.

R-A did not file a timely Answer to the Complaint. On September 8, 2008, after R-A's time to file an Answer had passed, C-A filed a Motion for Decision By Default with the ALJ, accompanied by a Declaration and Certificate of Service. Copies of the foregoing documents were served upon R-A.<sup>3</sup> When R-A filed no response to C-A's Motion, the ALJ entered his Decision by Default on September 23, 2008.

R-A then filed his Notice of Appeal on October 23, 2008.<sup>4</sup> The Notice of Appeal is unclear and subject to two interpretations. Under one interpretation, the Notice of Appeal states that (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 can never be viewed as disreputable conduct as described in § 10.51, (b)(3)/26 USC 6103 of Treasury Circular 230. Under the other interpretation, you can read R-A's Appeal as limited to the particular circumstances that pertained to R-A (b)(3)/26 USC 6103

(b)(3)/26 USC 6103. I find the first argument without merit and the second argument unpersuasive given other courses of action that may have been available to R-A (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

. Subsequently, the charge relating to

(b)(3)/26 USC 6103

Copies of these documents appear as Attachment 2 to this Decision on Appeal.

<sup>4</sup> A copy of R-A's Appeal and the April 9, 2006 letter from R-A to Elizabeth Ahn of the Office of Professional Responsibility (which accompanied it) collectively appear as Attachment 3 to this Decision on Appeal.

<sup>5</sup> There is a hint in R-A's April 9, 2006 letter to Ms. Ahn that his

(b)(3)/26 USC 6103

While R-A may have been correct that

(b)(3)/26 USC 6103

, R-A had no right to

(b)(3)/26 USC 6103

his letter to Ms. Ahn, R-A described

(b)(3)/26 USC 6103; (b)(6)

In

It is hard to know where the truth lay. The administrative record does not include the version of events

(b)(3)/

(b)(3)/26 USC 6103. Even if

(b)(3)/26 USC 6103

, it hardly justifies

(b)(3)/26 USC 6103

Of course,

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103. See United States v. Boyle, 469 U.S. 241 (1985), where the Supreme Court stated:

Deadlines are inherently arbitrary; fixed dates, however, are often essential to accomplish necessary results. The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one with strict filing standards. Any less rigid standard would risk a lax attitude toward filing dates. Prompt payment of taxes is imperative to the Government, which should not have to assume the burden of unnecessary ad hoc determinations.

469 U.S. at 249. I find this statement equally true (b)(3)/26 USC 6103

Subsequently, C-A filed both a Reply and an Amended Reply to R-A's Appeal.<sup>6</sup> In her Amended Reply to R-A's Appeal, C-A properly noted that R-A had not timely raised these issues either in an Answer to the Complaint or in a timely Response to C-A's Motion for Default Judgment. C-A noted that R-A had provided no explanation of either of these failures and stated that R-A should not now be permitted to raise these issues on Appeal. I agree. In fact, I see a disturbing commonality between R-A's conduct with respect to (b)(3)/26 USC 6103 (i.e., the underlying charges against him) and his conduct during this proceeding. I therefore AFFIRM the ALJ's findings and conclusions with respect to the charges against R-A.

### Sanction

I review the ALJ's sanction determination *de novo* and with the full authority of the Secretary of the Treasury and the charging agency. Accordingly, I may increase the penalty, decrease the penalty or affirm the penalty. For the reasons (b)(3)/26 USC 6103, I view (b)(3)/26 USC 6103. When confronted by (b)(3)/26 USC 6103, I have uniformly imposed a sanction of disbarment. I do not find (b)(3)/26 USC 6103 to constitute a mitigating factor that I should consider in deviating from my prior practice of disbarring practitioners for such conduct. Accordingly, I hereby DISBAR R-A from practice before the Internal Revenue Service.

<sup>6</sup> These documents appear as Attachments 4 and 5 to this Decision on Appeal.

<sup>7</sup> R-A has not raised in his Appeal the issue of whether (b)(3)/26 USC 6103. I have had many occasions to discuss this issue in Treasury Circular 230 disciplinary proceedings. I first did so in a Decision on Appeal in Director, Office of Professional Responsibility v. (b)(3)/26 USC 6103, Complaint No. 2003-02. A copy of pages 40 through 52 of the (b)(3)/26 USC 6103 Decision on Appeal appear as Attachment 6 to this Decision on Appeal. For the reasons discussed in Attachment 6, I find (b)(3)/26 USC 6103

**Conclusion**

This Decision on Appeal constitutes FINAL AGENCY ACTION in this proceeding.

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David F. P. O'Connor  
Special Counsel to the Senior Counsel  
Office of Chief Counsel  
Internal Revenue Service  
(As Authorized Representative of the Secretary of the Treasury)

April 10, 2009  
Washington, D.C.