United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellant and Appellee

v. Complaint No. 2013-07

[redacted] (b)(3)/26 USC 6103

Respondent-Appellant and Appellee

Decision on Appeal

Pursuant to General Counsel Order No. 9 (January 19, 2001) and Office of Chief Counsel Notice CC-2014-008 (September 8, 2014), 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), hereinafter referred to as Circular 230 (all references are to Circular 230 as in effect for the periods at issue). This is such an appeal from a Decision and Order entered into this proceeding by Administrative Law Judge Harvey C. Sweitzer (the ALJ) on September 22, 2014.

Background

This proceeding was commenced on April 15, 2013 when Timothy E. Heinlein, an attorney acting as the authorized representative of the Complainant Appellant-Appellee Office of Professional Responsibility (henceforth, OPR or Complainant) filed a Complaint against Respondent Appellant-Appellee [redacted] (henceforth, Respondent) under the authority of 31 C.F.R part 10[1] (Circular 230), alleging that the Respondent engaged in disreputable conduct under § 10.51 of Circular 230, based upon the revocation of his Certified Public Accountant (CPA) license by the California state authority, and his [redacted] (b)(3)/26 USC 6103 [redacted] The Complainant requested that the Respondent (b)(3)/26 USC 6103 be disbarred from practice before the Internal Revenue Service (IRS).

(b)(3)/26 USC 6103

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[1] Portions of Circular 230 were amended on June 12, 2014. See 79 Fed. Reg. 33685 (June 12, 2014); Circular 230 (Rev. 6-2014). However, these proceedings were conducted under the prior version of Circular 230 and Respondent's past conduct is governed by the regulatory provisions in effect at the time the conduct occurred. See 31 C.F.R. § 10.91 (2014). Thus, regulatory citations will reference the applicable revisions to Circular 230 as codified in the 2008 or 2011 Code of Federal Regulations ("C.F.R."). See 72 Fed, Reg. 54540 (Sept. 26, 2007); 76 Fed. Reg. 32286 June 3, 2011); see also Circular 230 (Rev. 4-2008); Circular 230 (Rev. 8-2011).

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Complainant originally initiated disciplinary action against Respondent on March 4, 2011, pursuant to the regulation governing expedited suspensions at § 10.82 of Circular 230 (2008). Complainant sought an expedited suspension based upon the revocation of Respondent's California CPA license by the California Board of Accountancy ("CBA") which became effective on [redacted]. As part of that license revocation proceeding, a state Administrative Law Judge ("state ALJ") identified six separate bases for revocation, including a finding that Respondent willfully practiced and held himself out as a CPA during periods of time when his license to practice had lapsed; that Respondent knowingly and willfully submitted untrue statements to the CBA and failed to respond to inquiries of the CBA; and, the Respondent knowingly misrepresented to a client whether the client's tax return had been filed. Respondent failed to respond to Complainant's expedited suspension complaint, and a Decision by Default was issued, suspending Respondent from practice before the IRS beginning May 4, 2011. (b)(6)

On March 14, 2013, within the two-year period authorized by the disciplinary regulations, Respondent requested the issuance of a complaint in accordance with § 10.60 of Circular 230. Complainant sent Respondent a notice in a Supplemental Allegation Letter (dated March 25, 2013) of the additional allegations that could be included in any complaint issued under § 10.60 and allowed Respondent 14 days to respond. On April15, 2013, Complainant issued a formal Complaint instituting the above-captioned proceeding.

Although the Complaint initially contained six separate counts of alleged incompetence and disreputable conduct, the Complainant made a motion to withdraw two of the counts, which was granted on May 14, 2013. The four remaining counts allege that Respondent engaged in incompetence and disreputable conduct under § 10.51 of Circular 230 (2008 and 2011) based upon the revocation of his CPA license by the CBA (Count 1) [redacted] (b)(3)/26 USC 6103 [redacted] (Counts 2 through 4, respectively). The Complaint seeks (b)(3)/26 USC 6103 the sanction of disbarment from practice before the IRS.

As part of Respondent's Answer, he acknowledged that the CBA revoked his CPA license, but disagreed with the CBA's reasoning and noted that he was actively pursuing judicial review of the CBA's revocation decision. With respect to the [redacted] counts, (b)(3)/26 USC 6103 Respondent asserted in his Answer that he [redacted] (b)(3)/26 USC 6103 [redacted] (b)(3)/26 USC 6103 [redacted] As to each of the [redacted] counts, the (b)(3)/26 USC 6103 Respondent denied that his actions were willful, citing his father's illness and the CBA's proceedings against him.

During the pendency of this case, Respondent separately pursued appeals in the State of California related to his license revocation by the CBA. He initially petitioned the California Superior Court for a writ of administrative mandamus which the court denied, concluding that the CBA's findings were supported by the weight of the evidence and that the license revocation was not an abuse of discretion. See [redacted] (b)(6) [redacted] On September 27, 2013, the Fourth (b)(6)

District of the California Court of Appeals affirmed, finding that the CBA had not abused its discretion by revoking Respondent's license. [redacted] On [redacted] the California Supreme Court denied Respondent's request for review, thereby concluding Respondent's judicial appeals related to the revocation of his CPA license by the State of California. (b)(6)

On February 4 and 5, 2014, Administrative Law Judge Harvey C. Sweitzer (the ALJ) of the Department of the Interior held an evidentiary hearing in this matter. Complainant presented the testimony of three witnesses and submitted exhibits that were accepted into evidence. Respondent testified on his own behalf and entered one exhibit into evidence.

Following the hearing, by Decision and Order dated September 22, 2014, the ALJ determined the following conclusions of law, based upon proof established by clear and convincing evidence:

1. At all times material hereto, Respondent was subject to the disciplinary authority of the Secretary of the Treasury and OPR in accordance with 31 U.S.C. § 330 and 31 C.F.R. part 10 (Circular 230).

2. Respondent engaged in incompetent and disreputable conduct within the meaning of § 10.51(a)(10) of Circular 230 (2008) based upon the revocation of his California CPA license.

3. Respondent also engaged in incompetent and disreputable conduct within the meaning of § 10.51(a)(6) based upon his [redacted] (b)(3)/26 USC 6103 [redacted] (b)(3)/26 USC 6103 The ALJ determined that because the Respondent's [redacted] (b)(3)/26 USC 6103 [redacted] fell after the effective date for his suspension from practice before the IRS (May 4, 2011), this was an aggravating factor, but not a separate basis of misconduct. (b)(3)/26 USC 6103

4. The ALJ determined the proper sanction for Respondent's conduct to be a suspension of forty-eight (48) months, with reinstatement after the period of suspension conditioned on Respondent becoming [redacted] (b)(3)/26 USC 6103 and otherwise becoming authorized to practice.

On October 21, 2014, Complainant filed its Notice of Appeal of the ALJ's decision. The Complainant's appeal asserted: 1) The ALJ's decision to treat the respondent's [redacted] (b)(3)/26 USC 6103 [redacted] as an aggravating factor and not as a separate count of (b)(3)/26 USC 6103 misconduct was clearly erroneous; and 2) The ALJ's decision to reduce complainant's recommended disbarment to a forty-eight month suspension was clearly erroneous.

On October 22, 2014, Respondent filed his Notice of Appeal of the ALJ's decision. In summary, the Respondent's appeal asserted: First, with respect to jurisdiction that the ALJ improperly determined jurisdiction over the respondent as practicing before the

IRS. Second, that the ALJ did not properly address alleged procedural and evidentiary deficiencies in the proceeding. Third, with respect to the counts concerning the (b)(3)/26 USC 6103 that the ALJ did not provide a clear and convincing calculati(b)(3)/26 USC 6103 of Respondent's gross income supporting the filing requirements for the Respondent for each year at issue, and the circumstances surrounding the (b)(3)/26 USC 6103

Findings of Fact

The Appellate Authority reviews the ALJ's findings of fact under a clearly erroneous standard of review. § 10.78 of Circular 230. The ALJ's findings of fact are well supported by the record and are not clearly erroneous.

Analysis

Both parties have appealed the decision of the Administrative Law Judge. Because the consideration of the Complainant's appeal regarding the additional count and appropriate sanction would be obviated if I were to hold in favor of the Respondent's appeal, I will first consider the Respondent's appeal contesting the findings of the ALJ that the Respondent engaged in incompetence and disreputable conduct.

The Respondent's Appeal

Jurisdiction

Under 31 U.S.C. § 330(a)-(b), the Secretary of the Treasury has authority to "regulate the practice of representatives" before the Department, and may suspend or disbar a representative shown to be incompetent or disreputable. For purposes of OPR's disciplinary authority, jurisdiction exists if: (1) the practitioner is authorized to practice before the IRS and (2) the practitioner has in fact practiced before the IRS. *Director, OPR v. Ohendalski*, Complaint No. 2007-10 (Decision on Appeal, June 2008). CPAs who have not been suspended or disbarred from practice before the IRS may engage in practice before the IRS. See 10.3(b) of Circular 230 (2008 & 2011). The regulations define a CPA as "any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, ..." § 10.2(a)(2) of Circular 230 (2008 & 2011).

The ALJ correctly found that when Respondent filed his Answer to the Complaint, he did not raise the issue of jurisdiction as an affirmative defense or otherwise deny the jurisdictional allegations pled in the Complaint. The first paragraph of the Complaint alleged that "Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4), as a certified public accountant." In response, the Respondent stated: "Respondent has not engaged in practice before the IRS, as defined by C.F.R. sec. 10.2(a)(4) at any time after calendar year 2009." Ex. B at 11. The ALJ correctly found that by doing so, Respondent conceded that he had engaged in practice as a CPA before the IRS prior to that date (2009). Moreover, in response to the second paragraph of the Complaint, Respondent stated: "Respondent accepts and stipulates to

the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility." Only days prior to the hearing before the ALJ did the Respondent first attempt to reverse his admissions in response to the allegations contained in the Complaint.

As found by the ALJ, by the Respondent not denying that he had engaged in past practice before the IRS when he filed his Answer, the allegation was deemed admitted, and the Complainant had no obligation to proffer additional evidence on this point. See § 10.64(c) of Circular 230 (2011). Additionally, the Respondent affirmatively stipulated to the disciplinary authority of the Complainant in this case. To require the Complainant to offer evidentiary proof related to allegations admitted in the Answer, as advocated by Respondent, would abrogate the regulatory scheme and add unnecessarily expense and delay to the hearing process.

The ALJ correctly determined that the Respondent had conceded that he had practiced before the IRS, sufficient to confer jurisdiction with OPR under 31 USC § 330.

Incompetence and Disreputable Conduct -- Disbarment

Section 10.51(a)(10) of Circular 230 provides that incompetence and disreputable conduct includes disbarment as a CPA by any duly constituted authority of any state. With regard to this count, the findings of fact and the record as a whole clearly establish that the Respondent's license to practice as a CPA was revoked by the CBA effective March 14, 2011, and that this revocation was sustained by both the California Court of Appeals and the California Supreme Court. The loss of Respondent's CPA license in California meets the standards of IRS disreputable conduct under § 10.51(a)(10) of Circular 230. That section merely requires the fact of Respondent's disbarment or suspension as a CPA, which occurred in California. With regard to Count 1, this clearly and convincingly establishes that the Respondent committed acts that are deemed incompetent or disreputable under Circular 230. *Director, OPR v. Christensen*, Complaint No. 2012-05 (July 23, 2013).

Incompetence and Disreputable Conduct -- [redacted] (b)(3)/26 USC 6103

Counts 2 through 4 of the Complaint allege that Respondent engaged in disreputable conduct under § 10.51(a)(6) of Circular 230 (2008 and 2011) based upon his [redacted] (b)(3)/26 USC 6103
[redacted] (b)(3)/26 USC 6103

Respondent first challenges these counts as "supplemental charges" that did not serve as a basis for his original expedited suspension from practice before the IRS, and were therefore improperly raised by Complainant. The ALJ correctly determined that the Complainant did not improperly raise these counts; the Complainant included them in the original Complaint issued on April 15, 2013; the Complainant detailed the counts in a Supplemental Allegation letter to the Respondent; the Complainant afforded the Respondent the opportunity to respond to the counts; and the Complainant conducted a

conference call with the Respondent which included these counts. It was not improper for the Complainant to include these Counts in the Complaint, even though they were not included in the Expedited proceeding. The Respondent's reference to supplemental charges is misplaced. Under Circular 230, supplemental charges are charges made against the Respondent by amending the Complaint with the permission of the ALJ. § 10.65(a) of Circular 230. The counts alleging the [redacted] (Counts 2 (b)(3)/26 USC 6103 through 4), were contained in the original Complaint; they were not amendments to the Complaint. The supplemental charges provisions asserted by the Respondent are not applicable. The ALJ correctly determined that Counts 2 through 4, asserting the [redacted] (b)(3)/26 USC 6103 [redacted], were properly contained in (b)(3)/26 USC 6103 the Complaint.

The Respondent next asserts that the ALJ erred in finding that the Respondent [redacted] (b)(3)/26 USC 6103 [redacted] because there was not sufficient legal (b)(3)/26 USC 6103 evidence or process for a determination of income to determine whether or not [redacted]. In so alleging, Respondent confuses (b)(3)/26 USC 6103 the [redacted] when one is due, with the determination of tax due from (b)(3)/26 USC 6103 an individual. These are two separate obligations, as the ALJ correctly determined.

On Appeal, the Respondent insists that there is an obligation on the Complainant to determine a "deficiency" of tax due from the Respondent before a [redacted] (b)(3)/26 USC 6103 [redacted] may be asserted. This is incorrect. The record is clear, and the ALJ correctly (b)(3)/26 USC 6103 found, that for each of the [redacted] (b)(3)/26 USC 6103 [redacted] (b)(3)/26 USC 6103 [redacted]. Indeed, the Respondent himself presented putative (b)(3)/26 USC 6103 draft return forms at the hearing which included these amounts of income (Exhibit L).

In summary, the ALJ correctly determined that the Respondent had a legal obligation to [redacted] and that he (b)(3)/26 USC 6103 [redacted] (the additional determination by the ALJ with respect to Count 4 (b)(3)/26 USC 6103 and the [redacted] will be discussed below). (b)(3)/26 USC 6103

I have considered all of the arguments made on Appeal by Respondent, and to the extent not mentioned herein, I find them to be irrelevant or without merit. The Respondent's appeal is denied.

Complainant's Appeal

I will now consider the Appeal filed by the Complainant. The Complainant contests as clearly erroneous the ALJ's findings that: 1) The Respondent's [redacted] (b)(3)/26 USC 6103 [redacted] should be treated as an aggravating factor, rather than a separate count (b)(3)/26 USC 6103 of incompetence and disreputable conduct; and 2) that the recommended sanction of disbarment is to be reduced to a forty-eight month suspension.

Count 4 and the (b)(3)/26 USC 6103

When summarizing his determination that the Respondent (b)(3)/26 USC 6103 and engaged in incompetence and disreputable conduct, the ALJ stated:

> ...there is some ambiguity as to whether OPR can pursue discipline against Respondent for his (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 given that his suspension before the IRS became effective on May 4, 2011. However, for purposes of this Decision and the sanction imposed herein, it is unnecessary to resolve that ambiguity. Respondent's (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 constitutes disreputable conduct under 31 C.F.R. § l0.51l(a)(6) (2008) for which Respondent may be sanctioned. *Decision and Order*, 19.

From this, it is unclear whether this determination by the ALJ had any impact on the proposed sanction. In determining the appropriate sanction, the ALJ stated the following with respect to (b)(3)/26 USC 6103

> Although Respondent's (b)(3)/26 USC 6103 is not being considered as a separate basis of misconduct in this Decision given that the (b)(3)/26 USC 6103 arose after OPR suspended him from practice (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 constitutes an aggravating factor. Specifically, it demonstrates an ongoing pattern of (b)(3)/26 USC 6103 - a behavior that is particularly troubling for a tax practitioner. Respondent's lack of respect for the tax laws is further supported by his persistent (b)(3)/26 USC 6103 As of the hearing, Respondent had yet to (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 *Decision and Order*, 20 – 21.

The Complainant asserts that the determination by the ALJ to treat the Respondent's (b)(3)/26 USC 6103 as an aggravating factor, and not as a separate count of incompetence or disreputable conduct, as asserted in the Complaint, was clearly erroneous.

During (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 Complainant's Exhibit G. The (b)(3)/26 USC 6103 The (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103. The ALJ's ambiguity on the issue appears to arise because the extended due date of October 15, 2011, falls after the effective date of the suspension proposed by the Complainant in the original expedited proceeding, i.e., May 4, 2011. An examination of the timeline of the assertion of the (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 reveals the troubling aspect of the ALJ's breaking-out of this instance of incompetence and disreputable conduct, and how that is inconsistent with the provisions of Circular 230 in effect at the time.

The Complainant's Expedited Notice of Proceeding, asserting the single ground of Respondent's disbarment by the CBA, was mailed on March 4, 2011. The Respondent did not reply; accordingly, a Decision by Default was entered on May 4, 2011, providing the sanction of an indefinite suspension. It is important to note here that the Respondent's [redacted] was not asserted at (b)(3)/26 USC 6103 this time. Indeed, under the provisions of Circular 230 in effect at the time, it would not have been appropriate for the Complainant to have asserted [redacted] (b)(3)/26 USC 6103 [redacted] as part of the expedited suspension proceedings. The (b)(3)/26 USC 6103 [redacted] was not described in the conduct included under § 10.82(b) (b)(3)/26 USC 6103 of Circular 230 (2008 and 2011). The only appropriate charge to have been brought under the expedited suspension proceedings was the Respondent's disbarment by the CBA, which was described by § 10.82(b)(1) of Circular 230 (2008 and 2011).

The ambiguity raised by the ALJ with respect to the [redacted] (b)(3)/26 USC 6103 [redacted] results from the ALJ treating that violation as being raised as part of (b)(3)/26 USC 6103 expedited proceedings under §10.82 of Circular 230, in March of 2011. Using that analysis, it would appear the Complainant was asserting a violation that was not yet ripe; the expedited suspension predated the [redacted] (b)(3)/26 USC 6103

However; the [redacted] counts (Counts 2 – 4 in the Complaint) were not raised (b)(3)/26 USC 6103 in the expedited proceeding, and appropriately not raised. Under the provisions of Circular 230 in effect at the time, the [redacted] was not a basis for an (b)(3)/26 USC 6103 expedited suspension under § 10.82 of Circular 230. It would not have been appropriate for the Complainant to have included a claim of [redacted] (b)(3)/26 USC 6103 [redacted] in the expedited suspension proceedings. (b)(3)/26 USC 6103

The Respondent's [redacted] (b)(3)/26 USC 6103 two and a half years by the time the Respondent requested the filing of the Complaint under § 10.82(g). Once the Respondent elected to pursue relief through the Complaint process under § 10.60, it was *then* appropriate for the Complainant to include the [redacted] (b)(3)/26 USC 6103 [redacted] as additional instances of incompetent or disreputable (b)(3)/26 USC 6103 conduct. The respondent was properly notified of these additional counts. Count 4, asserting Respondent's [redacted] was properly first (b)(3)/26 USC 6103 raised over two years and five months [redacted] (b)(3)/26 USC 6103 [redacted] had passed. Thus, Count 4 is not the (b)(3)/26 USC 6103 case of the Complainant seeking a sanction for [redacted] (b)(3)/26 USC 6103 it was raised.

For these reasons, the decision of the ALJ not to sustain Count 4 for the willful failure of Respondent to [redacted] was clearly erroneous. There is no (b)(3)/26 USC 6103 ambiguity as to the Respondent's continuing and [redacted] which (b)(3)/26 USC 6103 [redacted] at the time of the filing of the Complaint, when it (b)(3)/26 USC 6103 was appropriately first raised.

<u>Appropriate Sanction</u>

The issue in an IRS disciplinary proceeding is essentially whether the practitioner in question is fit to practice. Discipline, including disbarment and suspension is "imposed in furtherance of the IRS' regulatory duty to protect the public interest and the Department by conducting business only with responsible persons. *Director, OPR v. Bohn*, Complaint No. 2012-02 (December 7, 2012), citing *Director, OPR v. Ross*, Complaint No. 2011-01(June 7, 2011).

In his Decision and Order, the ALJ imposed a sanction of suspension for a period of forty-eight months, and any reinstatement after the period of suspension is properly conditioned on Respondent becoming [redacted] (b)(3)/26 USC 6103 and otherwise becoming authorized to practice. (It is not clear if this reduction was attributable to the ALJ's inclusion of [redacted] as (b)(3)/26 USC 6103 an aggravating factor, and not a separate count.). The Complainant asserts that this reduction of the Complainant's proposed sanction of disbarment was clearly erroneous.

The Appellate Authority reviews the sanction sought by the Complainant and imposed by the Administrative Law Judge in light of the charges proved and in light of other aggravating and mitigating circumstances. The Appellate Authority does so *de novo*, with the full authority of the Secretary of the Treasury and the Internal Revenue Service (the charging agency). In doing so, the Appellate Authority can affirm, decrease, or increase the sanction imposed by the ALJ. *Director, OPR v. Hurwitz*, Complaint No. 2007-12 (April 21, 2009); *Director, OPR v. Chandler*, Complaint No. 2006-23 at 3 (April, 2008).

In this case, the Respondent has been disbarred as a CPA by his state licensing board, the CBA. That Board's findings with respect to the disbarment include: the Respondent held himself out as a CPA when he failed to have a valid license; he knowingly and willfully submitted untrue statements to the CBA and failed to respond to inquiries of the CBA; and, he knowingly misrepresented to a client whether the client's tax return had been filed. The disbarment by the CBA, standing alone, is considered an act of incompetence and disreputable conduct by Circular 230. *Director of OPR v. Ross*, Complaint No. 2011-01 (June 7, 2011); *Director of OPR v. Christensen*, Complaint No. 2012-05 (July 23, 2015). In addition, the Respondent engaged in incompetence and disreputable conduct by his [redacted] (b)(3)/26 USC 6103
[redacted] (b)(3)/26 USC 6103

The [redacted] dishonorable, (b)(3)/26 USC 6103 unprofessional and adversely reflects on the Respondent's fitness to practice. This is particularly true of our tax system, whose very effectiveness depends upon voluntary compliance. *Poole v. United States*, 1984 No. 84-0300, 1984 U.S. Dist. LEXIS 15351 (D.D.C. June 29, 1984).

These serious violations of the public trust in the CPA profession could have been mitigated had the Respondent engaged in some degree of acceptance of the errors, or

taken some measurable action to correct them. He has done neither. (b)(3)/26 USC 6103 as of the date of the ALJ's Decision and Order in this case -- this, despite (b)(3)/26 USC 6103 the Respondent attempting to introduce partially completed 1040 forms of one sort or another at the hearing, while not attesting to their accuracy or completeness. On Appeal, the Respondent continues to insist that it is the duty of the Complainant to determine his tax liabilities.

The Respondent was authorized to practice before the Service solely due to his status as a CPA. He has been disbarred from that status by his state licensing board. Although the readmission requirements for practice before the two bodies may differ, it appears incongruous for the State licensing board to determine revocation of the license to be appropriate, but for practice before the Service (which would require that license) to be a suspension. Additionally, the egregious, continuing nature of the Respondent's are very serious violations. I find (b)(3)/26 USC 6103 that it is appropriate for the sanction of disbarment to be appropriate with respect to Respondent's practice before the Service. Accordingly, I reverse the determination of a forty-eight month suspension by the ALJ, and determine the appropriate sanction for the Respondent to be disbarment.

Other Matters

As part of his Response to the Complainant's Notice of Appeal, the Respondent appears to request both an opportunity to further brief issues on Appeal, and for dismissal of the Complaint. Those requests are denied. All issues were adequately addressed by the parties.

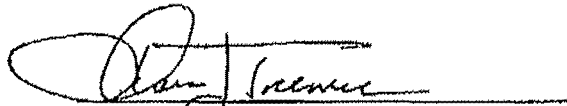
Respondent asserted that to the extent he performed work as a tax return preparer (rather than as a CPA), he is no longer subject to Circular 230 based upon the recent appellate decision in *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014). As correctly noted by the ALJ, this disciplinary matter concerns the Respondent's fitness to practice before the IRS as a CPA practitioner. Respondent has admitted to practicing before the IRS prior to 2009. This matter involves Respondent's practice before the Service as a CPA. It should be noted that on May 23, 2014, the Complainant's office advised that, in light of the *Loving* decisions, OPR has determined that a suspension or disbarment from practice before the IRS may not include a restriction on return preparation for compensation, and that access to the Preparer Tax Identification Number (PTIN) required for such services may no longer be blocked based on discipline under Circular 230. There are still certain separate statutory requirements to obtain a PTIN. No opinion is made here by me with reference to Respondent's qualifications or eligibility to obtain a PTIN.

I have considered all other arguments made by the parties with respect to this matter, 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 [redacted] is disbarred from practice before the IRS, and may seek reinstatement as provided by § 10.81 of Circular 230. This constitutes FINAL AGENCY ACTION in this proceeding.

(b)(3)/26 USC 6103



Thomas J. Travers
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)
April 20, 2015
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that the Decision on Appeal dated April 20, 2015 in Complaint No. 2013-07 was sent this day by UPS Next Day Air to the addresses listed below:

UPS Next Day Air:

Honorable Harvey C. Sweitzer
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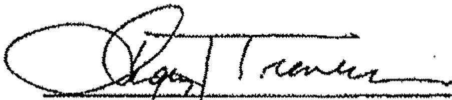

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April 20, 2015
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