

UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

STEPHEN A. WHITLOCK,
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant,

v.

JOHN H. ZHONG,
Respondent

Complaint Number: 2017-00003
Docket Number: 17-IRS-0001

INITIAL DECISION and ORDER

**HON. PARLEN L. MCKENNA,
Presiding**

STATEMENT OF THE CASE

The Office of Professional Responsibility (OPR) initiated this action to disbar Respondent from practice before the Internal Revenue Service (IRS) alleging twelve counts of incompetence and disreputable conduct. Subsequently, I granted OPR's motion to include two supplemental counts of incompetence and disreputable conduct bringing the total to fourteen. Prior to the hearing, I granted, in-part, OPR's Motion for Judgment on the Pleadings or Summary Adjudication for thirteen of the fourteen Counts. At the in-person hearing, I granted OPR's motion to withdraw Count 12. As such, the only issue remaining at the hearing was the appropriate sanction. For the reasons set forth below, I find that the appropriate sanction in this case is **DISBARMENT** from practice before the IRS.

Pre-hearing Motions

Prior to the hearing, OPR filed a Motion for Judgment on the Pleadings and Summary Adjudication. Based upon Respondent's admissions, either express or deemed, I granted judgment on the pleadings for Counts 3, 4, 5, 6, 13, and 14. *See Order*

Granting, In-Part, Complainant's Motion for Judgment on the Pleadings and Summary Adjudication issued December 1, 2017. Further, because there were no genuine issues of material fact for hearing, I granted summary adjudication for Counts 1, 2, 7, 8, 9, 10, and 11. *Id.* I denied OPR's request for summary adjudication on the proposed sanction. As such, the only issues remaining for the in-person hearing were Count 12 and the appropriate sanction.

On December 5, 2017, Respondent requested a sixty-day continuance because he

and would not be able to attend the hearing on December 12, 2017.

(b)(6)

See Motion for Continuance dated December 5, 2017. On December 7, 2017, I denied Respondent's request for a continuance because it was untimely and because he failed to provide any supporting information or justification sufficient to postpone a hearing that had been scheduled for several months. On December 10, 2017, Respondent renewed his request in an email and provided pictures of documents demonstrating that he had been

on December 6, 2017. I again denied Respondent's request as

(b)(6)

untimely and because neither his request nor his documentation explained in any way why he was unable to attend the hearing. The hearing proceeded on December 12, 2017.

In-Person Hearing

On December 12, 2017, I convened a hearing pursuant to 31 C.F.R. §§ 10.60 and 10.72 in Pasadena, California. Mr. Richard Anstruther, Esq. represented OPR and introduced the testimony of one witness. Based upon my ruling in the *Order Granting, In-Part, Complainant's Motion for Judgment on the Pleadings and Summary Judgment*, OPR moved to withdrawal Count 12 which I **GRANTED**. Respondent did not appear at the hearing. Two of Respondent's family members appeared on his behalf to present

[redacted] concerning Respondent and to renew a request to continue the hearing. Due to Respondent's failure to appear, OPR moved for default pursuant to 31 C.F.R. § 10.72(f). These two issues are addressed below. (b)(6)

Request for a Continuance

I set this matter and provided notice of hearing on September 20, 2017. *See Order Granting OPR's Motion to Postpone Summary Judgment Deadline and Hearing Date.* As I stated at the hearing, Respondent has a history in the case of requesting stays or continuances without providing adequate supporting information or legal justification. *See Tr.* at 6-7. The presentation of Respondent's [redacted] on the day of the hearing is untimely. Further, there is no evidence, including the [redacted] provided at hearing, demonstrating Respondent's inability to be at the hearing. *See Tr.* at 12-13. (b)(6)

Respondent's records indicate that he was released from [redacted] on December 6, 2017. The records further indicate that he was [redacted] [redacted] [redacted] There is no indication that he could not be physically present at the hearing or was [redacted] of attending the hearing. To try to best accommodate Respondent, I inquired at the hearing if Respondent would be able to participate over the phone. His family members stated that he could not. *See Tr.* at 11-12. Further, Respondent's family members claim that Respondent's [redacted] *See Tr.* at 10-11. While his family members asserted that Respondent [redacted] Respondent's (b)(6)

[redacted] do not support the claims that he is not able to be present at or participate in the hearing. (b)(6)

Moreover, from the outset of this case, Respondent has been actively engaged in every aspect of his defense against OPR's allegations. Respondent has filed numerous legal documents setting forth his legal and factual arguments. At no point in this proceeding has Respondent demonstrated that he lacked the [redacted] to defend himself. Indeed, Respondent was able to file his Motion for Continuance even while his

[redacted] It is therefore strange that Respondent did not submit any [redacted] until immediately prior to the hearing. (b)(6)

Furthermore, Respondent has never provided a statement from any [redacted] (b)(6)

[redacted] or his ability to attend the hearing or to participate in this proceeding. Respondent's recent requests for a continuance were untimely and he has failed to support them with sufficient, reliable information. I therefore affirm my decisions to deny his repeated requests for a continuance. (b)(6)

Motion for Default

Because Respondent failed to appear at the hearing, OPR moved for default pursuant to 31 C.F.R. § 10.72(f). That regulation provides that "[i]f either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default." After thoroughly reviewing the medical records presented by Respondent's family, I find that Respondent is in default and OPR's Motion for Default is **GRANTED**.

Pursuant to 31 C.F.R. § 10.64(d), “[a] decision by default constitutes a decision under § 10.76.” However, should any appellate body find that a disposition by default was inappropriate, I will also rule on the merits of the appropriate sanction.

STANDARD OF PROOF

The standard of proof differs depending on the nature of the proposed sanction. See 31 C.F.R. § 10.76(b). Because OPR sought Respondent’s disbarment, the applicable standard is clear and convincing evidence. *Id.* The clear and convincing evidence standard has been defined “as evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable.” *Jimenez v. Daimler Chrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also *Addington v. Texas*, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

FINDINGS OF FACT

1. Prior to August 31, 2014, Respondent was a certified public accountant (CPA) authorized to practice in California. See *Complaint* at ¶¶ 1 and 3; *Answer* at ¶ 1; see also *Exhibit B* attached to *Respondent’s Answer*.
2. Respondent was also a CPA in Minnesota and was an enrolled agent authorized to practice before the IRS. See *Exhibit B* attached to *Respondent’s Answer*; see also *Complaint* at ¶¶ 2, 4, and 5.
3. The California Board of Accountancy (CBA) brought an action against Respondent’s California CPA license alleging that he engaged in conduct sufficient to warrant discipline. See *Complaint* at ¶ 13; see also *Exhibits A and B* attached to *Respondent’s Answer*.

4. Respondent entered into a settlement agreement with the CBA in which he admitted to the truth of all allegations against him; agreed that cause existed for discipline; and surrendered his license for three years beginning on August 31, 2014. *Id.*
5. The CBA settlement agreement constituted discipline against Respondent. *See Exhibit B* attached to *Respondent's Answer*; *see also Exhibit 1* attached to *Complainant's Motion for Judgment on the Pleadings* or, in the Alternative, for *Summary Judgment*.
6. During the CBA proceeding, Respondent introduced a document in his defense that purported to be a "CP 2000" notice issued by the IRS. *See Supplemental Charges* at ¶¶ 73-8 attached to *Complainant's Motion for Leave to Amend Complaint*; *see also Exhibit 5* attached to *Complainant's Motion to Amend Complaint*; *see also Respondent's Opposition to Complainant's Motion for Leave to Amend Complaint*; *see also Tr.* at 42-5.
7. The IRS has never issued a "CP 2000" notice and it was a fabrication. *Id.*
8. Following the loss of his California CPA license, the California Tax Education Council (CTEC) revoked Respondent's license to prepare California state tax returns. *See Complaint* at ¶¶ 27-31; *see also Respondent's Answer* at ¶¶ 60-3.
9. Between September and December 2014, Respondent filed at least forty Form 2848, *Power of Attorney and Declaration of Representative* forms with the IRS falsely identifying himself as a CPA licensed in California when in fact his California license was not valid after August 31, 2014. *See Complaint* at ¶¶ 32-45; *Supplemental Complaint* at ¶¶ 68-72; *Respondent's Answer* at ¶¶ 64-71; *see also Exhibit 3* attached to *Complainant's Motion for Judgment on the Pleadings* or, in the Alternative, for *Summary Judgment*.
10. Respondent failed to file timely tax returns to the IRS on behalf of different tax payers. *See Complaint* at ¶¶ 46-61; *Respondent's Answer* at ¶¶ 72-3; *see also Declaration and Exhibit 4* attached to *Complainant's Motion for Judgment on the Pleadings*, or in the Alternative, for *Summary Judgment*.

ANALYSIS

As stated above, the charges against Respondent were found proved either by judgment on the pleadings or summary adjudication. Respondent either expressly admitted to the factual underpinnings of the charges or failed to deny the facts of the

allegations against him. As such, pursuant to 31 C.F.R. § 10.64(c) I found Counts 3, 4, 5, 6, 13, and 14 proved. Further, I found no genuine issues of material fact exists concerning the allegations in Counts 1, 2, 7, 8, 9, 10, and 11. Therefore, I found those counts proved by way of summary adjudication. At the hearing, I granted OPR's motion to withdrawal Count 12. Thus, all the extant allegations in the Complaint were found proved through OPR's dispositive motion by clear and convincing evidence.

SANCTION

Pursuant to 31 C.F.R. § 10.50(a), “[t]he Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51)” OPR argues the appropriate sanction in this case is disbarment. I agree.

The record establishes a pattern of conduct and occurrences that demonstrate Respondent is not fit to practice before the IRS. *See* Tr. at 32-45. In 2014, Respondent lost his California CPA license for three years after the California Board of Accountancy (CBA) proceeding. Therein, Respondent admitted to conduct such as: making false responses at a CBA inquiry; disseminating false or misleading advertising; and, obstruction of a CBA investigation. Also during this CBA proceeding, Respondent supplied the CBA with a fabricated document purporting to be a “CP 2000” notice issued by the IRS. Based upon the CBA proceeding, Respondent also had his license to prepare California state tax returns revoked by the California Tax Education Council. After he lost his California CPA license, Respondent continued to file documents with the IRS falsely indicating that he was a licensed CPA in the state of California. The record

contains forty examples of these submissions that were made under penalty of perjury to the IRS. Finally, the record also contains evidence that he failed to file timely tax returns to the IRS.

At the hearing, Mr. Stephen A. Whitlock, Director of OPR, testified concerning his decision to propose disbarment as the requested sanction. Importantly, Mr. Whitlock testified concerning the seriousness of the various charges against Respondent. For example, the loss of his California CPA license is a foundational requirement for being authorized to practice before the IRS. Thus, being the subject of a disciplinary proceeding in which a practitioner loses a CPA license is an extremely serious matter. *See* Tr. at 33. Further, Mr. Whitlock was deeply troubled by Respondent's admitted conduct in the CBA proceeding concerning Respondent's false response to the CBA and obstruction of a CBA investigation. *See* Tr. at 36-7. Mr. Whitlock explained that regulatory and enforcement authorities must have "honest and forthright interactions with those we regulate" and that providing false information or obstructing an investigation is "a very serious matter." *Id.* Similarly, Respondent's numerous false statements under penalty of perjury where he held himself out as a California CPA after he had lost his license was a "particularly serious matter". Finally, Mr. Whitlock testified that Count 14, supplying a fabricated document purporting to be a "CP 2000" notice issued by the IRS, would warrant disbarment by itself. Mr. Whitlock described this as "a fundamental act of disreputable behavior that has to call into question someone's fitness to practice before the Internal Revenue Service."

Respondent's pattern of perfidious behavior is troubling and bears directly on his fitness to represent taxpayers before the IRS. Furthermore, Respondent's complete lack

of contrition is alarming. Throughout the course of this proceeding, Respondent has taken no responsibility for his own actions, including actions to which he admitted in the CBA proceeding. Instead, Respondent has attempted to characterize his admitted conduct as insignificant. As another example, Respondent has continuously tried to downplay the severity of filing at least forty forms with the IRS, under penalty of perjury, containing false information. Although Respondent admits that he did not act with due diligence to make sure these documents were correct, he simultaneously blames a clerk in his office for supplying the incorrect information on the documents. Like Mr. Whitlock, I also find Respondent's inability or unwillingness to accept responsibility particularly concerning.

In view of the foregoing, Respondent's conduct demonstrates he does not have the integrity or character to be trusted representing taxpayers before the IRS. Based upon the charges against Respondent that are found proved, the testimony of Mr. Whitlock at the in-person hearing, and a review of the entire administrative record, I find that the only appropriate sanction is **DISBARMENT**.

CONCLUSIONS OF LAW

1. Respondent was engaged in practice before the IRS as defined in 31 C.F.R. § 10.2(a)(4) and is therefore subject to the disciplinary authority of the Secretary of the Treasury.
2. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when, on August 31, 2014, he lost his California CPA license as part of a disciplinary action against him initiated by the California Board of Accountancy.
3. Respondent's conduct, which he admitted to during the CBA disciplinary proceeding, constitutes incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10).

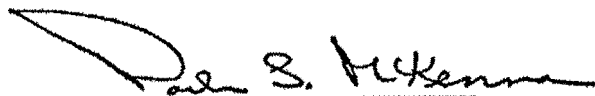
4. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when the California Tax Education Council revoked Respondent's license to prepare California state tax returns.
5. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when he submitted at least forty Form 2848 forms under penalty of perjury which contained false information.
6. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when he failed to file timely tax returns to the IRS on behalf of different taxpayers.
7. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when he introduced a fabricated or false document in his defense during the CBA disciplinary proceeding.
8. The proper sanction for Respondent's incompetent and disreputable conduct is disbarment.

ORDER

IT IS HEREBY ORDERED that Respondent, John Zhong is **DISBARRED** from practice before the IRS effective January 27, 2017.

IT IS HEREBY FURTHER ORDERED that pursuant to 31 C.F.R. § 10.81(a), Respondent may petition for reinstatement after 5 years following disbarment. Respondent may therefore petition for reinstatement on or after January 27, 2022.

SO ORDERED.



Hon. Parlen L. McKenna
Administrative Law Judge

Dated: December 26, 2017 at Alameda CA

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 service. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing *Initial Decision and Order* upon the following parties and entities in this proceeding as indicated in the manner described below:

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Done and dated: December 26, 2017 at
Alameda, California.

/s/ Cindy J. Melendres
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Paralegal Specialist to the
Hon. Parlen L. McKenna