THE DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, Complainant, v. WILLIAM L. MCCOY, Respondent.	Complaint No. 2018-00001 Docket No. 18-JM-0053-OD-001 May 29, 2018

ORDER GRANTING MOTION FOR SUMMARY ADJUDICATION

This matter arises from a *Complaint* filed by the Director of the Internal Revenue Service's Office of Professional Responsibility ("OPR Director") seeking disciplinary action against IRS practitioner William L. McCoy ("Respondent") pursuant to 31 U.S.C. § 330 as implemented by 31 C.F.R. part 10. The matter is currently before the Court upon the OPR Director's *Motion for Summary Adjudication*.

I. PROCEDURAL HISTORY

On March 2, 2017, the OPR Director issued an Order to Show Cause alleging that Respondent had been convicted of grand larceny in the third degree in the state of New York on December 14, 2016. On June 27, 2017, the OPR Director met with Respondent and Respondent's legal counsel to provide him an opportunity to respond to the allegations. On June 29, 2017, the OPR Director issued an Amended Order to Show Cause again alleging that Respondent had been convicted of grand larceny and requiring him to show cause why he should not be suspended from practice before the IRS based on the conviction.[1]

On September 7, 2017, after holding another conference with Respondent and his legal counsel to discuss the allegations, the OPR Director issued an order suspending Respondent indefinitely pursuant to 31 C.F.R. § 10.82(f).[2] Thereafter, Respondent requested that the OPR Director initiate a formal disciplinary proceeding pursuant to 31 C.F.R. § 10.60.

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[1] Respondent has submitted copies of both show cause orders. The original Order referenced the December 2016 grand larceny conviction, but also referenced a "failure to file" and included a printout of a news article indicating that Respondent had been arraigned for withholding more than $135,000 in taxes from employees at his consulting business and then failing to pay these taxes to the state of New York. The Amended Order omits any allegation of failure to file taxes, and the record contains no other evidence substantiating such an allegation.

[2] Section 10.82 permits the IRS to suspend a practitioner on an expedited basis under certain circumstances, after which the practitioner may demand that the IRS institute a formal proceeding for sanctions under § 10.60. See 31 C.F.R. § 10.82(f), (g).

On November 14, 2017, the OPR Director duly filed the *Complaint* initiating the instant proceeding. The *Complaint* alleges, based on the grand larceny conviction, that Respondent willfully violated the rules of conduct for IRS practitioners by engaging in "disreputable conduct" within the meaning of 31 C.F.R. § 10.51(a)(2) and (3). The cited regulations provide that an IRS practitioner may be sanctioned for incompetence or disreputable conduct if he is convicted of a crime involving dishonesty or breach of trust or a felony involving conduct that renders him unfit to practice before the IRS. 31 C.F.R. § 10.51(a)(2), (3). The *Complaint* seeks a $50,000 monetary penalty and an order disbarring Respondent from practice before the IRS due to his alleged misconduct.

The *Complaint* was assigned to this Court for adjudication.[3] On November 16, 2017, the Court issued a *Notice of Hearing and Order* scheduling a hearing to commence on April 10, 2018, in Washington, D.C.

On December 13, 2017, Respondent filed an *Answer* in which he admitted he had been convicted of grand larceny, but denied engaging in disreputable conduct. He also raised twelve affirmative defenses to the charges levied against him.

On February 2, 2018, the OPR Director filed a *Motion to Strike Affirmative Defenses*, which Respondent opposed. On February 23, 2018, the OPR Director further filed a *Motion for Summary Adjudication* supported by five documentary exhibits. The OPR Director contended that the documentary evidence, coupled with Respondent's admissions, established by clear and convincing evidence that Respondent had engaged in sanctionable disreputable conduct.

On February 26, 2018, the Court issued a ruling on the *Motion to Strike Affirmative Defenses*. The Court struck six of Respondent's affirmative defenses, declined to strike another, and held in abeyance its ruling on the remaining five.

On March 1, 2018, counsel for Respondent filed a *Motion to Withdraw as Counsel* on grounds that she had lost communication with her client. The Court granted the motion. On March 13, 2018, the clerk of the Court sent Respondent a letter requesting updated contact information, as the Court had been unable to contact Respondent since his counsel withdrew. The letter also notified Respondent of the outstanding *Motion for Summary Adjudication* and remarked that no response had been received. (Pursuant to the Court's *Notice of Hearing and Order*, a response was due on March 5, 2018.)

Respondent subsequently emailed the Court on March 22 and 26, 2018, requesting a continuance of the hearing, additional time to retain new counsel, and a 90-day extension of time to respond to the *Motion for Summary Adjudication*. In light of Respondent's requests, on March 26, 2018, the OPR Director moved to postpone certain prehearing deadlines pending a ruling on the *Motion for Summary Adjudication*.

By order dated March 27, 2018, the Court continued the hearing and suspended all outstanding prehearing deadlines. The Court also instructed Respondent to respond to the *Motion*

[3] Pursuant to an Interagency Agreement in effect beginning June 10, 2015, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases brought by the Internal Revenue Service.

for Summary Adjudication no later than April 20, 2018. Respondent subsequently requested and was granted an additional extension of this deadline.

On May 16, 2018, Respondent filed his response in opposition to the *Motion for Summary Adjudication*, which was supported by nine documentary exhibits.[4] Respondent maintains that he did not engage in sanctionable misconduct warranting disbarment or a civil penalty. He also moves the Court to lift the indefinite suspension that has been imposed on him since September 2017.

II. APPLICABLE LEGAL PRINCIPLES

IRS Disciplinary Proceedings

The Secretary of the Treasury is authorized by statute to "regulate the practice of representatives of persons before the Department of the Treasury," including representatives who practice before the IRS. 31 U.S.C. § 330(a). The standards of conduct for IRS representatives are set forth in 31 C.F.R. part 10, commonly known as Circular 230.[5] The OPR Director is charged with enforcing these standards. See 31 C.F.R. § 10.1(a).

The OPR Director may suspend, disbar, censure, or impose a monetary penalty on any IRS representative who is incompetent or disreputable or who violates the Secretary's standards of conduct for IRS representatives. 31 U.S.C. § 330(c); 31 C.F.R. § 10.50(a), (c). Sanctionable incompetence and disreputable conduct is defined as including "[c]onviction of any criminal offense involving dishonesty or breach of trust" and "[c]onviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service." 31 C.F.R. § 10.51(a)(2), (3).

When the OPR Director determines that a practitioner has violated the rules of conduct, he may initiate a proceeding for sanctions after giving the practitioner notice and an opportunity to respond to the allegations against him. 31 C.F.R. § 10.60(a), (c). Proceedings for sanctions are conducted before an administrative law judge in accordance with the Administrative Procedure Act and the procedural rules set forth in 31 C.F.R. part 10, subpart D. Id. §§ 10.0, 10.70, 10.72(a)(1), (a)(3)(ii). The judge must enter a decision that includes a statement of findings and conclusions, as well as the reasons and basis therefor, and an order of censure, suspension, disbarment, monetary penalty, or dismissal of the complaint. Id. § 10.76(a).

Any sanctions imposed "shall take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(e). If the sanction is censure or a suspension of less than six months' duration, necessary facts need only be proven by a preponderance of the evidence. Id. § 10.76(b). However, if the sanction is a monetary penalty, disbarment, or a suspension of six months or

[4] The response was due on May 15, 2018. Respondent submitted it after close of business that day (at approximately 8:40 PM eastern time), making it late-filed. Also, two pages of the response were missing, which Respondent later submitted on May 21, 2018. Although the response was not timely filed, the OPR Director has not raised any objections. Considering that Respondent is proceeding pro se, the Court accepts his late-filed response.

[5] See Treasury Department Circular No. 230 (Rev. 8-2011), *available at* https://www.irs.gov/pub/irs-utl/pcir230.pdf. The Department of the Treasury initially published the standards of conduct in department circulars, and later promulgated them in the Code of Federal Regulations as well.

longer, "an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record." Id.

Summary Adjudication

In a proceeding for sanctions against an IRS practitioner, "[e]ither party may move for a summary adjudication upon all or any part of the legal issues in controversy." 31 C.F.R. § 10.68(a)(2). The Court may render summary judgment if "the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law." Id. § 10.76(a)(2).

A motion for summary adjudication under § 10.68(a)(2) is analogous to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. (b)(3)/26 USC 6103, Complaint No. 2012-00002, slip op. at 7 (Dec. 7, 2012). Summary judgment is available under Rule 56 where the moving party demonstrates "lack of a genuine, triable issue of material fact" and where "under the governing law, there can be but one reasonable conclusion as to the outcome." Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). An issue is "genuine" only if the evidence is such that a reasonable fact finder could rule in favor of either party. Anderson, 477 U.S. at 248. A fact is "material" only if it is capable of affecting the outcome of the case under governing law. Id.

In considering a summary judgment motion, the court must view the evidence in the light most favorable to the nonmoving party. Tolan v. Cotton, 134 S. Ct. 1861, 1866 (2014). Summary judgment is not available where "material facts are at issue, or, though undisputed, are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 637 (D.C. Cir. 1994); see Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970) (requiring consideration of "reasonable inferences" that can be drawn from the facts). However, summary judgment against a party is appropriate if, after adequate time for discovery, he has failed to make a sufficient showing on an essential element as to which he has the burden of proof. Celotex, 477 U.S. at 322-23.

III. FINDINGS AND CONCLUSIONS

As explained above, an IRS practitioner who is convicted of a criminal offense involving dishonesty or breach of trust, or who is convicted of a felony involving conduct that renders him unfit to practice before the IRS, is subject to sanctions for incompetence or disreputable conduct under 31 C.F.R. § 10.51(a)(2) and (3).

In this case, the OPR Director has charged Respondent with one count of violating 31 C.F.R. § 10.51(a)(2) and (3) based on his conviction of grand larceny in the state of New York. The OPR Director seeks summary adjudication on this count and sanctions in the form of disbarment and a $50,000 monetary penalty. After considering the parties' pleadings and arguments and the admissible evidence of record, the Court will grant summary adjudication and impose sanctions of disbarment and a $10,000 penalty, for the following reasons.

A. The material facts are undisputed.

Respondent agrees that he has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4), as an enrolled agent. As such, he is subject to the disciplinary authority of the Secretary of the Treasury and the OPR Director.

Respondent also concedes that he has been convicted of grand larceny in the state of New York. On December 14, 2016, after a jury trial in Suffolk County Court, Respondent was convicted of violating New York Penal Law § 155.35(1). The statute provides that a person is guilty of grand larceny in the third degree, a class D felony, "when he or she steals property and ... the value of the property exceeds three thousand dollars." N.Y. PENAL LAW § 155.35(1).

The OPR Director has submitted a copy of the indictment and complaint, including the larceny victim's sworn statement, that precipitated Respondent's criminal trial. In her sworn statement, the victim explained that she knew Respondent as a tax attorney and Certified Public Accountant (CPA) whose company, McCoy Consultants Ltd., had prepared her taxes for about four years. In February 2013, the victim's sister received a check in the amount of $50,000 made out to their deceased mother. The victim and her sister mailed the check to Respondent with the understanding that he would help them cash it through the probate process. According to the victim, Respondent's office informed her that his fee would be $2,500, that each of the five beneficiaries to her mother's estate would receive $9,500, and that it would take about three months to finalize the probate process.

In May 2013, the victim contacted Respondent's office because the date on the check was becoming stale. She was told that Respondent would deposit the check in escrow. In November 2013, the victim contacted Respondent again to inquire about disbursements and was told that the probate process had been delayed. However, a call to the probate court confirmed that the matter had been settled earlier that month. As of May 21, 2015, the victim stated that she and the other beneficiaries to her mother's estate had not received any disbursements from Respondent and that she believed he had stolen their money.

Respondent has not expressly conceded the factual allegations underpinning the larceny conviction. However, he admits that the victim engaged him to negotiate a check and to prepare letters of administration for her deceased mother's estate and that he deposited the client's $50,000 check into his business account after holding it for about three months. Respondent also admits that he later used some of the client's funds for his own business expenses when his business began to struggle, a "mistake" he "deeply regrets."

Respondent contends that he repaid the entire $50,000 to his client prior to the conclusion of the criminal trial. He has submitted copies of checks written by his legal counsel on December 31, 2016, about two weeks after he was convicted of larceny, remitting a total of $50,000 in restitution to the victims of his crime.

On January 18, 2017, a judge of the Suffolk County Court sentenced Respondent to 6 months of imprisonment and 5 years of probation and ordered him to pay $50,000 in restitution as a result of the crime. Respondent appealed this judgment to the Appellate Division of the Supreme Court of the State of New York on February 2, 2017. The appeal is still pending.

B. The undisputed facts and evidence establish that Respondent engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(2) and (3).

Under 31 C.F.R. § 10.51(a)(2), "disreputable conduct for which a practitioner may be sanctioned" includes "[c]onviction of any criminal offense involving dishonesty or breach of trust." Respondent contends that larceny is a crime of stealth, not dishonesty, citing legal analysis from several cases involving larceny offenses such as shoplifting. Respondent further argues that he did not breach his client's trust because the client did not formally engage him as a trustee, administrator, or conservator of her deceased mother's estate, meaning that he "owed no fiduciary duty to any party."

Regardless of whether larceny offenses are dishonest per se, the underlying facts show that Respondent's specific actions in this case that led to his larceny conviction involved dishonesty and breach of trust. Although Respondent was not formally appointed as a fiduciary, his client entrusted him to handle money belonging to her mother's estate, which Respondent then spent for his own benefit and failed to repay for almost four years. Respondent does not allege that he obtained the client's permission to spend the funds, and even when he finally repaid the money—without interest—he did so only after the client had pressed charges and a jury had returned a criminal conviction against him. This conduct was highly unprofessional and constituted an abuse of Respondent's relationship with the client and a betrayal of the client's trust. Because the conduct involved breach of trust and resulted in a criminal conviction, it was "disreputable" within the meaning of § 10.51(a)(2).

Further, the Court finds that Respondent's conduct rendered him unfit to practice before the IRS, making the conduct "disreputable" within the meaning of § 10.51(a)(3), because it involved a breach of a client's trust, a lack of professionalism, and extremely poor judgment. See 31 C.F.R. § 10.51(a)(3) (stating that disreputable conduct includes "[c]onviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service").

Respondent argues that his misconduct did not affect his fitness to practice because it was not repeated or willful and because he remains fully competent to perform work as an enrolled agent before the IRS. However, fitness to practice encompasses more than mere competence. Both § 10.51(a) and the enabling statute, 31 U.S.C. § 330, expressly list disreputable conduct as a separate ground for sanctions. Willfulness and repeated misconduct are not necessary prerequisites to a finding of disreputable conduct under the plain language of the statute and regulation. "With respect to attorneys or other agents, 'disreputable' conduct has generally included 'unprofessional' conduct and, at the time [the original version of 31 U.S.C. § 330] was written, was well understood to include 'any conduct violative of the ordinary standard of professional obligation and honor.'" Poole v. United States, No. 84-0300, 1984 U.S. Dist. LEXIS 15351, at *7 (D.D.C. June 29, 1984). Even assuming that Respondent's misconduct was an isolated incident[6] and did not rise to the level of willfulness, his actions violated the "ordinary

[6] The OPR Director has submitted a copy of a news article which indicates that Respondent was convicted of second degree grand larceny and scheme to defraud on February 14, 2018, after falsely representing himself as an attorney and stealing $192,000 from a client. The OPR Director states that he will amend his *Complaint* to include this additional charge if the Court denies the *Motion for Summary Adjudication*. Respondent counters that the news article contains erroneous content and does not prove he was convicted. He states that he will address the allegations set forth in the article if the OPR Director renews the *Motion for Summary Judgment* to include these allegations.

standard of professional obligation" owed to the client and demonstrated very poor judgment and a lack of integrity. Thus, his conduct was disreputable.

Respondent argues that this proceeding should be stayed because his grand larceny conviction is not yet final. He has appealed the conviction on grounds that he lacked intent to permanently deprive the victim of her money and that the jury was improperly instructed on this element of the crime.[7] However, the issue in a disbarment proceeding "is essentially fitness to practice, rather than the criminality of the acts involved." Harary v. Blumenthal, 555 F.2d 1113, 1116 (2d Cir. 1977) (rejecting IRS practitioner's argument that collateral estoppel prevented IRS from disbarring him when he had been acquitted in prior criminal proceeding). Even if Respondent prevails on his appeal of the criminal conviction, the undisputed underlying facts still demonstrate that he engaged in disreputable conduct, for the reasons discussed above.

Similarly, although Respondent claims as an affirmative defense that he acted in good faith because he always intended to repay his client for the stolen funds, this allegation, even if proven true, would not absolve Respondent of liability. Respondent used a client's money that was entrusted to him in early 2013 to pay his own business expenses, and then failed to repay the client until after being convicted of grand larceny in December 2016. Even if Respondent had intended to eventually repay the client at a later date, this conduct was still disreputable and involved a breach of trust. Accordingly, the Court rejects Respondent's good faith defense.

Respondent has raised other affirmative defenses that include violation of his Fifth Amendment rights; retaliation; estoppel; waiver; and violation of principles of sound public policy, fundamental fairness, and equity. In a February 26, 2018 order, this Court noted that Respondent had not pled any facts to support these five defenses. However, instead of ruling on the OPR Director's motion to strike the defenses in question, the Court gave Respondent a deadline to supplement his *Answer* to provide adequate notice of the bases, if any, for the defenses. Since then, Respondent has not sought to amend or supplement his *Answer*. Accordingly, the five defenses in question are rejected as unsupported and insufficiently pled.

The undisputed facts establish, by clear and convincing evidence, that Respondent engaged in disreputable conduct within the meaning of § 10.51(a), and thus the OPR Director is entitled to judgment as a matter of law on Count 1 of the *Complaint*. Accordingly, the Court will grant summary adjudication against Respondent on this count.

C. The appropriate sanction is disbarment and a monetary penalty of $10,000.

As noted above, the OPR Director seeks disbarment and a monetary penalty of $50,000 against Respondent. The procedural rules for IRS disciplinary proceedings provide that any

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Viewing the evidence in the light most favorable to Respondent, the Court disregards the unproven allegations in the article and assumes that Respondent's December 2016 grand larceny conviction was an isolated incident.

[7] The state of New York defines larceny as wrongfully taking, obtaining, or withholding property "with intent to deprive another of [the] property or to appropriate the same to [one]self or to a third person." N.Y. PENAL LAW § 155.05(1). "Depriving" another of property is defined as withholding or disposing of property in such a way that its value is permanently lost to the owner. Id. § 155.00(3). "Appropriating" property is defined as either permanently exercising control over the property or "dispos[ing] of the property for the benefit of oneself or a third person." Id. § 155.00(4). According to the appellate court, Respondent has been given permission to proceed with his appeal, but he has not yet filed a brief and no hearing date has been set.

sanctions imposed on a practitioner "shall take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(e). Other courts have considered factors such as the nature and seriousness of the misconduct involved, the practitioner's remorse (or lack thereof), and the need to protect the public. See, e.g., OPR v. Christensen, Complaint No. 2012-00005 (ALJ July 23, 2013); [redacted], Complaint No. 2012-00002 (ALJ Dec. 7, 2012); OPR v. Everett, Complaint No. 2009-27 (ALJ July 22, 2010); (b)(3) / 6103 [redacted], Complaint No. 2008-12 (ALJ Nov. 18, 2008), aff'd (IRS Jan. 20, 2010). Courts have also looked to the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards"). See Everett, slip op. at 5. The ABA recommends that, in imposing sanctions on a practitioner after a finding of misconduct, a court should consider the duty violated by the practitioner; the practitioner's mental state; the potential or actual injury caused by the misconduct; and the existence of any aggravating or mitigating factors. ABA Standards § 3.0.

(b)(3) / IRC 6103

In this case, Respondent's misconduct was very serious, as it involved misappropriation of client funds and resulted in a felony conviction. Although the misconduct did not involve the IRS or any violations of tax laws, it did involve Respondent's job as a consultant representing clients in financial matters. Respondent abused this position of trust for his own benefit, raising serious concerns about his fitness to represent clients in tax matters before the IRS.

Respondent violated his duty to his client to preserve the property she entrusted to him and to faithfully represent her financial interests. He also violated a general duty, as an enrolled agent approved to represent members of the public before the IRS, to maintain personal integrity.

Regarding his mental state, Respondent disputes the OPR Director's characterization of his conduct as willful. However, Respondent has failed to adequately plead a basis in fact or in law for his position. He contends that he used the client's funds for his own business expenses under the "mistaken belief that such a temporary measure would be permitted based on the course of dealings with his client over their 4-year business and personal relationship." Yet he does not allege any facts or provide any evidence to support this allegation, such as evidence of a personal relationship with the client or evidence that she gave him permission to spend her money. To the contrary, she pressed criminal charges to recover the funds.

Respondent also asserts that he did not intend to permanently deprive the client of her money and always planned to repay her. But, as noted above, he did not do so until after being convicted by a jury of grand larceny more than three years later. Although he asserts that his client did not believe he intended to steal the funds, no evidence supports this assertion.[8] Further, willfulness does not require a showing of any specific motive, such as intent to permanently deprive, but requires only a voluntary, intentional violation of a known duty. (b)(3) / 26 USC 6103,

[8] The only supportive evidence cited by Respondent is a remark in the victim impact statement that the victim believed he "may have been in trouble, and used the money to 'borrow from Peter to pay Paul.'" However, in her sworn statement attached to the Indictment, the victim attested that she believed Respondent had stolen the funds. Her victim impact statement also referred to the incident as a "painful and horrible experience that ha[d] desecrated [her] mother's memory," and she indicated that "it ha[d] been a difficult three years" and that "she just want[ed] to move forward." Under the circumstances, her use of the phrase "borrow[ing] from Peter to pay Paul" could not be understood by any reasonable fact finder as an indication that she did not believe Respondent had stolen her money. "Borrowing from Peter to pay Paul" is a common expression that simply refers to taking from one source to pay another. See, e.g., United States v. Rumsavich, 313 F.3d 407, 410 (7th Cir. 2002) (using expression to describe mail fraud); United States v. Cook, 573 F.2d 281, 282 n.3 (5th Cir.) (using expression to describe Ponzi scheme), cert. denied, 439 U.S. 836 (1978); In re Worley, 251 F. Supp. 725, 729 (W.D.Va. 1966) (using expression to describe incurring a new debt to pay off an old one – i.e., not truly paying off one's indebtedness).

Complaint No. 20008-12, slip op. at 5 (IRS Jan. 20, 2010); see also Safeco Ins. Co. of America v. Burr, 551 U.S. 47, 56-58 (2007) (explaining that willfulness, in civil context, generally extends beyond intentional and knowing actions to reach actions taken in reckless disregard of an obligation, as well). Respondent has admitted that he intentionally used money belonging to a client to manage his own business expenses. This conduct was willful.

Respondent's conduct caused actual injury to his client. Although he did repay the full $50,000 to the victims of the larceny after he was convicted, he had held the money for several years at that point without paying any interest. In addition, his client expended time and effort pressing criminal charges against him to obtain a jury verdict, which is still on appeal.

Respondent points to several factors that purportedly mitigate his conduct. He argues that, unlike most of the cases cited by the OPR Director, Respondent has not been subject to revocation of an attorney or CPA license by the state of New York. The Court does not consider this a mitigating factor, as there is no evidence that Respondent had an attorney or CPA license to be revoked. The pleadings allege only that he is an enrolled agent. See 31 C.F.R. § 10.3(c).

Respondent also points to his lack of disciplinary history before the IRS as a mitigating factor. While a clean disciplinary history is commendable, compliance with the standards of conduct for IRS practitioners "should be the norm[,] and the lack of prior discipline cannot be construed as a significant mitigating factor." Christensen, slip op. at 16.

Respondent claims that his moral character, professional reputation, and history of successful representations of clients in tax matters before the IRS should be considered mitigating factors. In support, he has submitted copies of letters from clients, friends, and family, which were apparently prepared for submission to the criminal court during the sentencing phase of his larceny trial, attesting to his good character. The Court has taken Respondent's character evidence into account. The Court has also taken into account the fact that Respondent has expressed remorse for his actions and claims to have "taken full responsibility for his mistake, despite his legal claim of innocence."

Nonetheless, Respondent committed serious misconduct that negatively reflects on his professionalism, integrity, and fitness as a representative. Disbarment is an appropriate sanction for his misconduct. Although Respondent claims that this is an unduly harsh and punitive measure, the Court views disbarment primarily as a means of protecting the public from practitioners who will not faithfully represent their interests. Practice before the IRS is a privilege, and disbarments "are imposed in furtherance of the IRS's regulatory duty to protect the public interest and the Department [of the Treasury] by conducting business only with responsible persons." Everett, slip op. at 7. Further, disbarment under the IRS' regulations does not prohibit Respondent from continuing to work as a financial consultant, but only restricts his ability to appear before the IRS. Accordingly, the Court will issue an order disbarring Respondent from practice before the IRS, subject to reinstatement at the discretion of the OPR Director upon compliance with the requirements of 31 C.F.R. § 10.81.[9]

[9] The disbarment order supersedes the expedited suspension order imposed on Respondent on September 7, 2017. The OPR Director was within his discretion to issue the expedited suspension order under 31 C.F.R. § 10.82(b)(2), which provides that a practitioner may be suspended on an expedited basis if he has been convicted of any crime involving dishonesty or breach of trust, or of any felony involving conduct that renders him unfit to practice before the IRS, irrespective of whether an appeal has been taken. The OPR Director complied with all the procedural

Respondent contends that the recommended $50,000 monetary penalty is unduly harsh and punitive considering that he has already served jail time and paid restitution for his crime. He also argues that he has suffered loss of income due to negative publicity, professional disgrace, and the fact that he has been suspended from practice before the IRS since September 2017.

Considering that Respondent has repaid the $50,000 he took from his client, the Court agrees that a $50,000 penalty would not be commensurate with the relevant statute and regulations, which limit the amount of the penalty imposed in an IRS disciplinary proceeding to the gross income the practitioner derived from his misconduct. See 31 U.S.C. § 330(c); 31 C.F.R. § 10.50(c)(2). The Court is also mindful that Respondent has already incurred criminal punishment for his actions. However, it is appropriate for Respondent to pay a civil penalty both in recognition of the harm he caused his client and to defray the expenses incurred by the IRS in investigating and prosecuting this disciplinary proceeding. The Court concludes that a $10,000 civil monetary penalty is appropriate.

IV. ORDER

As to Count I, the OPR Director's *Motion for Summary Adjudication* is **GRANTED.**

Respondent William L. McCoy is **DISBARRED** from practice before the IRS effective September 7, 2017 (the date of Respondent's expedited suspension), with reinstatement conditioned on compliance with the requirements of 31 C.F.R. § 10.81.

Respondent is further **ORDERED** to pay a monetary penalty of $10,000 to the Secretary of the Treasury.

So **ORDERED,**

J. Jeremiah Mahoney
United States Administrative Law Judge

Notice of Appeal Rights. Pursuant to 31 C.F.R. § 10.77, this decision may be appealed by any party by filing a Notice of Appeal within thirty (30) days of the date this decision is served on the party. The Notice of Appeal must be filed with the Secretary of the Treasury, or delegate deciding appeals, and must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. The Notice of Appeal must be filed in duplicate with the OPR Director, and a copy of the Notice of Appeal and supporting brief must be served on any non-appealing party's representative.

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requirements set forth in § 10.82 before issuing the expedited suspension order, including providing Respondent with notice of the charges against him and an opportunity to respond, and promptly initiated this proceeding for sanctions at Respondent's request pursuant to § 10.82(f). Because the expedited suspension order was properly issued and is now superseded by an order of disbarment, Respondent's cross-motion to lift the suspension is **DENIED** as baseless and moot.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING MOTION FOR SUMMARY ADJUDICATION** issued by J. Jeremiah Mahoney, Chief Administrative Law Judge, in HUDOHA 18-JM-0053-OD-001 were sent to the following parties on this 29th day of May 2018

for Cinthia Matos, Docket Clerk

VIA E- MAIL

William L. McCoy
(b)(6)

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