

**THE DEPARTMENT OF THE TREASURY
OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.**

Sharyn Fisk, Director,
Office of Professional Responsibility,

Complainant,

v.

Stephen C. Wallick,

Respondent.

Docket No.: 19-IRS-0001

Complaint No.: 2019-00004

INITIAL DECISION and ORDER

HON. WALTER J. BRUDZINSKI
Chief Administrative Law Judge

I. STATEMENT OF THE CASE

Complainant Office of Professional Responsibility (OPR) brings this action to disbar enrolled agent Stephen C. Wallick (Respondent) from practice before the Internal Revenue Service (IRS) for incompetence and disreputable conduct related to a felony theft conviction.

Complainant originally initiated this action as an expedited suspension pursuant to 31 C.F.R. § 10.82 and suspended him from practice. As provided for in § 10.82(g), Respondent demanded the IRS institute this proceeding under § 10.60 and issue a complaint described in § 10.62. Therefore, on October 17, 2019, OPR filed the present Complaint seeking disbarment and the ALJ Docketing Center assigned the case to me for adjudication.

On February 19, 2020, the undersigned convened a one-day hearing in Nashville, Tennessee. Ameer Patel, Esq. represented Complainant and John A. Beam III, Esq. appeared on behalf of Respondent. Ms. Patel introduced the testimony of three witnesses, and Mr. Beam introduced the testimony of two witnesses. Ms. Patel introduced one rebuttal witness as well. The parties introduced a total of eight exhibits. A complete list of witnesses and exhibits is contained at Attachment A.

After review of the entire record including all filings, documentary evidence and testimony, I find the OPR's allegations proved by clear and convincing evidence. Respondent's incompetence and disreputable conduct warrants **DISBARMENT** from practice before the IRS. The effective date of Respondent's disbarment is July 24, 2019.

II. FINDINGS OF FACT

1. In mid-2012, Respondent and Blankenship CPA Group (Blankenship) entered into a two-part oral agreement to: 1) purchase Respondent's accounting business, and 2) employ Respondent in its accounting business. (Tr. 122:4-126:4; 196:11-198:20).
2. Blankenship paid Respondent \$158,422.14 for his accounting business, and Respondent began working as a Blankenship employee in August 2012. (Tr. 196:15-21; 218:19-25; 270:12-19).
3. **(b)(3)/26 U.S.C. 6103** (Tr. 219:24-220:4; 236:1-4; 247:8-23).
4. While an employee of Blankenship, Respondent provided services to the clients whose business he sold to Blankenship as well as to previously existing Blankenship clients. (Tr. 270:20-271:2).
5. Blankenship billed clients for Respondent's services. (Tr. 232:21-24; 270:20-271:15).
6. Respondent did not have authority to bill clients. (Tr. 160:9-161:24).
7. In March 2014, Respondent obtained privileges as an enrolled agent eligible to practice before the IRS. (Tr. 119:10-12).
8. Respondent resigned from employment with Blankenship on or about November 29, 2015. (Tr. 140:24-141:1).
9. An investigation of Blankenship's past-due accounts receivable revealed clients paid Respondent directly for work performed by Respondent during the time he was a Blankenship employee. (Tr. 230:8-233:4).
10. The past-due accounts were billed through Blankenship's billing system and all work was completed during Respondent's employment with Blankenship. (Tr. 232:17-233:4).
11. Respondent deposited monies from these past-due accounts which were owed to Blankenship, into his personal checking account. (Tr. 233:5-17).

12. The amounts Respondent personally collected total approximately \$60,000. (Tr. 242:21-243:5).
13. On October 16, 2016, Respondent was indicted in Dickson County, Tennessee for unlawfully, knowingly and feloniously obtaining or exercising control over approximately \$60,765.45 belonging to Blankenship CPA Group without its consent. (Ex. 1).¹
14. A jury convicted Respondent of “theft (\$60,000 less \$250,000.00)” in the amount of \$60,765.45 under Tennessee Code § 39-14-103, a Class B Felony, on January 25, 2019. (Ex. 2).
15. The IRS indefinitely suspended Respondent from practice before the IRS on July 24, 2019. (Complaint, Ex. F).
16. From July 24, 2019, to date, Respondent has not possessed a valid license to practice before the IRS as an enrolled agent. (Complaint, Ex. F).

III. ANALYSIS

A. OPR's Authority to Regulate and Discipline IRS Practitioners under 31 U.S.C. § 330(a)(1) and 31 C.F.R. § 10.50(a)

The Secretary of the Treasury (Secretary) has the authority to “regulate the practice of representatives of persons before the Department of the Treasury.” 31 U.S.C. § 330(a)(1). Regulations help to ensure “competent representation that protects the taxpayer, the IRS, and the general public.” Wright v. Everson, 543 F.3d 649, 656 (11th Cir. 2008). Circular 230 grants the Secretary authority to bring proceedings to censure, suspend, or disbar practitioners before the IRS. See 31 C.F.R. § 10.50(a). Sanction proceedings are “conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.” 31 C.F.R. § 10.70(a). Pursuant to Memoranda of Agreement dated June 6, 2011 and January 15, 2013, the United States Coast Guard Office of the Administrative Law Judge is authorized to hear cases pending before the United States Department of the Treasury. As such, this case was assigned to me for adjudication.

¹ I note the indictment contains two typographical errors. It states T.C.A. § 39-14-1031 instead of § 39-14-103, and “six” thousand instead of “sixty” thousand.

B. Standard of Proof

The standard of proof in IRS disciplinary proceedings depends on the nature of the proposed sanction. Where the sanction is a monetary penalty, disbarment, or suspension of six months or longer, “the allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record.” 31 C.F.R. § 10.76(b). The clear and convincing standard “is an intermediate standard which lies somewhere between ‘beyond a reasonable doubt’ and a ‘preponderance of the evidence.’” Sealmaster, L.L.C. v. Silver Line Bldg. Prod., 199 F. Supp. 2d 783, 796 (E.D. Tenn. 2001). It 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); see also Kelley v. Apria Healthcare, LLC, 232 F. Supp. 3d 983, 1003 (E.D. Tenn. 2017).

C. Incompetence and Disreputable Conduct under 31 C.F.R. § 10.51(a)

Incompetence and disreputable conduct for which a practitioner may be sanctioned under 31 C.F.R. § 10.50 includes “conviction of any criminal offense involving dishonesty or breach of trust.” 31 C.F.R. § 10.51(a)(2). After “notice and opportunity for a proceeding” the Secretary may censure, suspend, or disbar any practitioner from practice before the IRS “if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51)” 31 C.F.R. § 10.50(a); see also 31 U.S.C. § 330(c). Complainant alleges Respondent’s felony conviction constitutes incompetent and disreputable conduct pursuant to 31 C.F.R. § 10.51(a)(2) and § 10.51(a), and thus, Respondent may be suspended or disbarred from practice before the IRS.

D. Respondent's Actions Amount to Incompetence and Disreputable Conduct

A practitioner may be sanctioned under 31 C.F.R. § 10.50 for incompetence and disreputable conduct including “conviction of any criminal offense involving dishonesty or breach of trust.” 31 C.F.R. § 10.51(a)(2). A jury convicted Respondent of felony theft under Tennessee Code § 39-14-103 for knowingly obtaining or exercising control over \$60,765.45 of property belonging to his former employer, Blankenship, without Blankenship's consent. (Ex. 2; T.C.A. § 39-14-103). After reviewing the criminal conviction and the underlying conduct regarding same, I find Respondent's felony theft conviction involves dishonesty and breach of trust.

Respondent alleges the conviction is not final because he has not exhausted his appeal rights. He claims the conviction is merely a “presumption” of guilt. See State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000). However, for the purpose of expedited sanctions under Circular 230, OPR can proceed while an appeal is still pending; OPR is “not bound to wait until the ultimate conclusion” of an appeal. (Tr. 92:4-10; 31 C.F.R. § 10.82(b)(2)). At this time, Respondent's conviction stands. In an effort to thoroughly understand the circumstances surrounding the conviction, but not re-litigate the criminal case, I will examine the “underlying conduct” and how that conduct affects “the representation of taxpayers and the ability to practice before the IRS.” (Tr. 89:9-90:7).

Both Respondent and the IRS's rebuttal witness provided testimony regarding the facts underlying Respondent's theft conviction; specifically, his relationship and interactions with Blankenship. Respondent and Blankenship negotiated for the sale of Respondent's book of business and for Respondent's employment with Blankenship. (Tr. 123:6-125:10; 218:19-219:9). Negotiations led to an oral agreement. (Tr. 123:6-126:4; 196:11-198:20). Blankenship paid Respondent \$158,422.14 for his book of business. (Tr. 196:15-21; Tr. 270:12-19). Respondent

became a Blankenship employee, working on client files he brought to the firm as well as Blankenship's existing client files. (Tr. 218:19-220:4; 270:20-271:2).

When Respondent resigned from employment with Blankenship, he digitally copied all client files without authorization. (Tr. 228:20-24; 232:1-6; 233:18-234:6). A forensic investigation of Respondent's work laptop revealed information related to Blankenship accounts receivable. (Tr. 230:8-232:6). Further examination showed Respondent collected money on these accounts for work he, and other Blankenship employees, performed while Respondent was a Blankenship employee. (Tr. 230:8-233:4). In some cases, Respondent personally cashed checks received as payment for services billed by Blankenship and performed during Respondent's employment with Blankenship. (Tr. 233:5-17). These amounts totaled approximately \$60,000. (Tr. 242:21-243:5).

Disagreement exists between Respondent and Blankenship as to whether Blankenship paid Respondent in full for his business assets and his work production pursuant to their oral agreement. (Tr. 219:7-9; 210:5-11; 212:1-9; 138:22-139:16). Respondent argues this is merely a business dispute between a former employee and his employer which should never have manifested into a criminal matter. (Tr. 219:7-9; 210:5-11; 212:1-9; 138:22-139:16). He claims Blankenship was the first to breach any agreement by failing to properly pay him while he was an employee of the firm, rendering Respondent's subsequent breach moot under the "first to breach" doctrine. See Forrest Const. Co., LLC v. Laughlin, 337 S.W.3d 211, 226 (Tenn. App. 2009). Even assuming, *arguendo*, Blankenship failed to perform under the contract, this alleged breach would not excuse Respondent's disreputable and dishonest conduct in attempting to self-remedy the situation. Whether Respondent may have been entitled to some additional money "is separate from the unlawful means by which he elected to conduct himself." OPR v. Christensen, Complaint No. 2012-00005 (Decision and Order July 23, 2013). The work Respondent collected

payment on occurred prior to his resignation. Blankenship invoiced the work and sent bills to clients; he then personally collected the money due on those accounts. (Tr. 230:8-233:17; 241:3-243:5).

Respondent's conduct is clearly dishonest and in breach of trust between an employer and employee. It raises significant "concerns about his honesty, integrity, and ability to comport himself in an appropriate manner with someone else's money." Christensen, *17. Accordingly, I find the allegations in the Complaint proved by clear and convincing evidence.

IV. SANCTION

After "notice and opportunity for a proceeding" the Secretary may censure, suspend, or disbar any practitioner from practice before the IRS "if the practitioner is shown to be incompetent or disreputable." 31 C.F.R. § 10.50(a); see also 31 U.S.C. § 330(c). Sanctions "shall take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(e). In determining an appropriate sanction, I may examine factors such as the nature and seriousness of the misconduct, absence of a prior disciplinary record, the practitioner's remorse (or lack thereof), absence of a selfish motive, and the need to protect the public. See McCoy, Complaint No. 2018-00001 (Order Granting Summary Adjudication, May 29, 2018), *8; OPR v. Everett, Complaint No. 2009-27 (Order on Motion for Summary Adjudication, July 22, 2010), *6.

OPR's witnesses testified about sanctions available to OPR and the appropriateness of disbarment as a sanction for Respondent's conduct. After reviewing potentially mitigating factors in Respondent's favor, I agree with OPR and find none to "excuse or lessen the explicitly unlawful conduct in which he engaged." Christensen, *16.

Respondent argues his criminal conviction is not "tax related," and therefore does not adversely affect taxpayers or tax administration. Although Respondent's misconduct does not involve the IRS or any violations of tax laws, it involves Respondent's job as an enrolled agent

representing clients in financial matters before the IRS. See McCoy, *8. Conviction of a crime involving dishonesty or breach of trust affects tax administration. As the only regulatory body governing enrolled agents, it is imperative OPR ensures “practitioners are honest and have that trust that taxpayers need.” (Tr. 89:5-20; 40:13-41:11).

Concerning Respondent’s lack of prior discipline, “it was not enough to overcome [OPR’s] decision that sanction of disbarment was appropriate.” (Tr. 93:20-94:2). I find Respondent’s clean disciplinary record “commendable, but surely, compliance should be the norm and the lack of prior discipline cannot be construed as a significant mitigating factor.” Christensen, *16.

Regarding Respondent’s alleged whistleblower claim, “there were not enough facts for [OPR] to consider that a heavily mitigating factor.” (Tr. 93:5-19). Director Fisk testified “it was unclear whether he made that whistleblowing action after he was terminated and, therefore, was kind of a retaliatory measure against [Blankenship] or whether he left the firm because he was aware that they were being unethical.” (Tr. 93:5-19). At the hearing, we learned Respondent reported Blankenship for alleged fraud in September 2017, nearly a year after his indictment and two years after his resignation. (Tr. 140:24-141:1; 148:3-149:9; 157:11-18; 159:7-12). An investigation by the Tennessee Board of Accountancy showed the allegations against Blankenship lacked merit and no disciplinary action was taken. (Tr. 225:8-226:11).

After considering “all relevant facts and circumstances,” I conclude disbarment is the appropriate sanction. Respondent’s disbarment is effective July 24, 2019, the date of his expedited suspension from practice before the IRS. Respondent may petition for reinstatement after the expiration of five years following disbarment. 31 C.F.R. § 10.81(a).

V. ORDER

IT IS HEREBY ORDERED THAT Respondent Stephen C. Wallick is **DISBARRED**
from practice before the IRS effective July 24, 2019.

Done and dated July 8, 2020
New York, New York



HON. WALTER J. BRUDZINSKI
CHIEF ADMINISTRATIVE LAW JUDGE

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.

ATTACHMENT A: LIST OF WITNESSES AND EXHIBITS

OPR Witnesses

1. Mr. Jeff Kim
2. Ms. Sharyn Fisk
3. Mr. Stephen Wallick
4. Mr. William Michael Walters

Respondent's Witnesses

1. Mr. Clayton Cooper
2. Mr. Stephen Wallick

OPR Exhibits

1. Indictment
2. Judgment

Respondent's Exhibits

- A. Asset Purchase Agreement
- B. Email Chain
- C. Collection Summary
- D. Centralized Complaint Form
- E. Curriculum Vitae of Clayton Cooper
- F. Report of Clayton Cooper

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 at the addresses below:

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Done and dated July 8, 2020
Washington, DC

A handwritten signature in black ink that reads "Regina V. Maye". The signature is written in a cursive style with a large initial 'R' and 'M'.

Regina V. Maye
Senior Paralegal Specialist for the
Chief Administrative Law Judge