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

DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, Complainant, v. (b)(3)/26 USC 6103, Respondent.	HUDOHA No. 20-JM-0009-OD-001 (Complaint No. 2020-00002) April 23, 2020

ORDER GRANTING SUMMARY JUDGMENT

This matter is before the Court upon a disciplinary complaint ("*Complaint*") filed by the Director of the Office of Professional Responsibility ("Complainant") for the Internal Revenue Service ("IRS") against (b)(3)/26 USC 6103, CPA ("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 Complainant's *Motion for Summary Judgment and Motion for a Decision by Default.*

PROCEDURAL HISTORY

The *Complaint* in this matter charges Respondent with five counts of violating the rules of conduct for IRS practitioners at 31 C.F.R. § 10.51(a)(6) and asks the Court to disbar Respondent from practice before the IRS pursuant to 31 C.F.R. § 10.50 and § 10.52. The *Complaint* was received by this Court on October 19, 2019, and assigned to the undersigned for hearing.[1] On October 25, 2019, the Court issued a *Notice of Hearing and Order* scheduling a hearing to take place in March 2020 and setting forth various other deadlines. Among other things, the Court ordered Respondent to file an answer to the *Complaint*, as specified in 31 C.F.R. § 10.64, within 30 calendar days of receipt of the *Complaint*. The cited regulation mandates that Respondent file a written answer setting forth the facts constituting his grounds of defense, and specifically admitting or denying each of Complainant's allegations, within the time specified in the *Complaint* (which, in this case, was 30 days). See 31 C.F.R. § 10.64(a).

However, Respondent did not timely file an answer to the *Complaint*, nor did he ask the Court for an extension of time to do so. Instead, by letter dated January 15, 2020, he asked the Court to postpone the hearing for 90 days to give him more time to hire an attorney.

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

On February 6, 2020, Complainant filed a *Motion for Summary Judgment and Motion for a Decision by Default* arguing she is entitled to summary judgment against Respondent. In the alternative, given Respondent's failure to file an answer to the *Complaint*, Complainant asked the Court to render default judgment against Respondent under 31 C.F.R. § 10.64.

On February 11, 2020, the Court issued an *Order to Show Cause and Order to Vacate Hearing Date*. The Court vacated the hearing date and all outstanding prehearing deadlines pending ruling on Complainant's *Motion for Summary Judgment and Motion for a Decision by Default* and ordered Respondent to show cause why judgment should not be entered against him. Specifically, the Court ordered Respondent to file a response on or before March 11, 2020, that (1) explained why he had not timely filed an answer to the *Complaint*, and, (2) set forth any grounds of defense he wished the Court to consider with respect to the allegations raised against him in the *Complaint* and in Complainant's motion.

On March 11, 2020, Respondent submitted a two-page *Reply* containing a cursory response to the allegations against him and a plea for an additional 60 days to respond more fully to the *Complaint*; an additional 75 days to respond to the *Motion for Summary Judgment and Motion for a Decision by Default*; and a hearing on sanctions. On March 12, 2020, Complainant filed a *Response to Respondent's Reply to the Order to Show Cause* reiterating her request that the Court render summary or default judgment against Respondent.

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 those who represent taxpayers before the IRS. 31 U.S.C. § 330(a). The standards of conduct for such practitioners are set forth in 31 C.F.R. part 10, commonly known as Circular 230.[2] Complainant, as Director of the Office of Professional Responsibility ("OPR"), is charged with enforcing these standards. See 31 C.F.R. § 10.1(a).

Complainant may suspend, disbar, censure, or impose a monetary penalty on any IRS practitioner who is incompetent or disreputable or who violates the Secretary's standards of conduct for IRS practitioners. 31 U.S.C. § 330(c); 31 C.F.R. § 10.50(a), (c). Specific examples of sanctionable "[i]ncompetence and disreputable conduct," as defined by the Secretary, are listed in 31 C.F.R. § 10.51(a). When Complainant determines that a practitioner has violated the Secretary's rules of conduct, including by engaging in any of the conduct listed under § 10.51(a), she 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). Such proceedings 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 his 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).

[2] See Treasury Department Circular No. 230 (Rev. 6-2014), *available at* https://www.irs.gov/pub/irs-pdf/pcir230.pdf. The Department of the Treasury initially published these standards of conduct in department circulars, and later promulgated them in the Code of Federal Regulations as well.

Standard of Proof. 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. 31 C.F.R. § 10.76(b). However, if the sanction is a monetary penalty, disbarment, or a suspension of six months or 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.

Default Judgment. Failure to timely file an answer to an IRS disciplinary complaint "constitutes an admission of the allegations of the complaint and a waiver of hearing." 31 C.F.R. § 10.64(d). If a practitioner fails to timely file an answer, the Court may render a default decision against him without a hearing or further procedure. Id.

Summary Judgment. In IRS disciplinary proceedings, "[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 adjudication 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).

Thus, 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. [redacted], Complaint No. 2012-00002, slip op. at 7 (ALJ Dec. 7, 2012), [redacted] Rule 56 permits summary judgment 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." Fed. R. Civ. Pro. 56; 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 where 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.

FACTUAL BACKGROUND

The following facts are not subject to reasonable dispute.

Respondent was licensed as a CPA in 1980 and has run an accounting firm in Charleston, South Carolina for more than thirty years. In this capacity, he has engaged in practice before the IRS within the meaning of 31 C.F.R. § 10.2(a), subjecting him to Complainant's disciplinary authority under 31 U.S.C. § 330.

(b)(3)/26 USC 6103

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FINDINGS AND CONCLUSIONS

The *Complaint* and *Motion for Summary Judgment and Motion for a Decision by Default* charge Respondent with five counts of violating 31 C.F.R. § 10.51(a) , which provides that "[i]ncompetence and disreputable conduct" for which an IRS practitioner may be sanctioned includes (b)(3)/26 USC 6103

[3] Pursuant to 26 U.S.C. § 6151 and § 6654, an individual taxpayer is required to pay his liability for each tax year in full at the time his return is due in order to avoid a penalty. (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

Complainant asserts that Respondent should be disbarred from practice before the IRS on account of this misconduct.

In his *Reply*, Respondent agrees that Complainant's allegations "are accurate in general" except for "minor inaccuracies," which he does not identify. However, he asserts that the sanction of disbarment is not warranted. As previously noted, he asks for an additional 60 days to respond to the *Complaint*, 75 days to respond to the *Motion for Summary Judgment and Motion for a Decision by Default*, and a "full hearing" on sanctions. He indicates he will present evidence of his extensive experience as a certified public accountant ("CPA"), lack of disciplinary history, and civic contributions to his community, as well as evidence (b)(3)/26 USC 6103 (b)(3) / 6103 stem from two catastrophic personal events. Respondent asserts that he needs more time to present this evidence because he has been unable to afford an attorney to represent him in this matter. (His *Reply* was actually signed and filed by an attorney, but the attorney states that he is Respondent's friend and is helping him only in a personal capacity.)

Notwithstanding the arguments raised in Respondent's *Reply*, Complainant maintains that she is entitled to summary or default judgment. Complainant argues that Respondent still has not filed an adequate answer that admits or denies each allegation in the *Complaint*. Complainant further asserts that Respondent's purported inability to hire an attorney does not explain why he has not attempted to file any sort of response to the *Complaint*, given that it was served on him in October. As for the defenses Respondent says he plans to raise, Complainant contends that none of them explain (b)(3)/26 USC 6103 .

Upon consideration, the Court declines to grant default judgment against Respondent under 31 C.F.R. § 10.64(d) because he has appeared before the Court and has now filed a *Reply*, which the Court will accept as an answer to the *Complaint*. However, after reviewing the entire record, the Court will grant summary judgment in Complainant's favor under 31 C.F.R. § 10.76(a)(2), for the following reasons.[5]

I. No material facts remain in dispute.

(b)(3)/26 USC 6103

[5] Respondent's requests for an additional 60 days to respond to the *Complaint* and 75 days to respond to the *Motion for Summary Judgment and Motion for Entry of a Default Judgment* are hereby **DENIED**. The *Complaint* was filed more than six months ago, and the Court already gave Respondent an extension of time to prepare an answer when it issued the show cause order. The summary judgment motion, which was filed more than ten weeks ago, hinges on the same allegations raised in the *Complaint*. Respondent has had ample time to formulate a response to these allegations, regardless of whether he is represented by an attorney.

[redacted]

Under the procedural rules governing this proceeding, "[e]very allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved" without further evidence. 31 C.F.R. § 10.64(c). Here, Respondent concedes that the allegations in the *Complaint* are generally accurate. He does not challenge any of Complainant's particular factual allegations, nor does he dispute the authenticity of the documentary evidence offered by Complainant. Respondent argues only that his conduct does not warrant the sanction of disbarment, citing his extensive experience, civic contributions, personal financial difficulties, and lack of disciplinary history. Complainant, without questioning Respondent's experience, clean disciplinary record, civic contributions, or history of financial difficulties, maintains that Respondent's actions nonetheless constituted willful violations of [redacted] which merit disbarment.

Based on the foregoing, the operative facts are clear—Respondent does not dispute that he engaged in the conduct alleged in the *Complaint*, and Complainant does not challenge the factual bases of his defenses. Thus, no material facts remain in dispute. The only questions left to be decided are questions of law, namely, whether Respondent's conduct was sanctionable [redacted] and, if so, what sanction is appropriate.

II. The undisputed facts and evidence establish that Respondent engaged in conduct that was sanctionable [redacted]

Under 31 C.F.R. § 10.51(a) [redacted] constitutes "[i]ncompetence and disreputable conduct" for which an IRS practitioner may be sanctioned. [redacted]

Federal tax laws generally require any person liable for a tax for a given calendar year, including any individual liable for federal income tax, to make a return or statement according to the forms and regulations prescribed by the IRS by April 15 of the following year. 26 U.S.C. §§ 6011, 6012, 6072. [redacted]

This conduct was willful. Willfulness is generally understood to refer to wrongful conduct that goes beyond mere negligence, meaning that the wrongdoer, at minimum, "either knew or showed reckless disregard for the matter of whether [his] conduct was prohibited." McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988). Thus, where willfulness is a

condition of civil liability, the Supreme Court has held that it encompasses both knowing and reckless violations of a given standard. See Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 (2007); see also Cheek v. United States, 498 U.S. 192, 200 (1991) (holding that, where willfulness is a condition of criminal liability for violating a tax law, the term connotes "a voluntary, intentional violation of a known legal duty"); (b)(3) / 6103, Complaint No. 2009-31, slip op. at 4 n.1 (Treasury Sec'y Aug. 8, 2011) (Decision on Appeal), (b)(3) / 6103 (b)(3) / 6103.

In this case, Respondent is an experienced CPA who should be familiar with federal tax law. (b)(3)/26 USC 6103

(b)(3)/26 USC 6103

For this reason, Complainant is entitled to summary judgment against Respondent as to liability on Counts I, II, IV, and V.

(b)(3)/26 USC 6103

(b)(3)/26 USC 6103

See (b)(3) / 6103, supra, slip op. at 3. Yet (b)(3)/26 USC 6103

See , supra, slip op. at 4 (b)(3)/26 USC 6103

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(b)(3)/26 USC 6103 Therefore, Complainant is entitled to summary judgment as to liability on Count III.

III. The appropriate sanction is disbarment.

As a sanction for Respondent's misconduct (b)(3) / 26 USC 6103 Complainant asks the Court to disbar Respondent from practice before the IRS pursuant to 31 C.F.R. § 11.50 and § 11.52, with his reinstatement conditioned upon the provisions of 31 C.F.R. § 10.79 and § 10.81. (b)(3)/26 USC 6103 aggravating factors supporting the sanction of disbarment in this matter. Complainant further asserts that, in her role as OPR Director, she is the official within the Department of the Treasury with the primary day-to-day responsibility of investigating allegations of misconduct by practitioners and enforcing the regulations governing practice before the IRS. Therefore, she argues that she possesses substantial expertise in weighing the seriousness of a practitioner's misconduct, and as such, her proposed sanction is entitled to deference. See (b)(3) / 6103, Complaint No. 2008-12, slip op. at 6 (ALJ Nov. 18, 2008), (b)(3) / 6103.

Respondent counters that his conduct does not warrant disbarment. In support, he cites his extensive experience as a CPA, his lack of disciplinary history, and his civic contributions to his community. (b)(3)/26 USC 6103/(b)(6)

Any sanction imposed on an IRS practitioner by this Court must "take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(e). Other courts imposing sanctions in IRS disciplinary proceedings have considered factors such as the nature and seriousness of the misconduct; whether it involved dishonesty, fraud, or illegal acts; and any other aggravating or mitigating factors cited by the parties. See, e.g., OPR v. Christensen, Complaint No. 2012-00005, slip op. at 15-17 (ALJ July 23, 2013), (b)(3)/26 USC 6103 supra, slip op. at 24-28.

In this case, Complainant does not allege that Respondent's conduct involved any fraud or dishonesty, that he has been charged with any crimes, or that he has harmed any clients. In this regard, his misconduct was not as serious as some of the other forms of wrongdoing for which IRS practitioners may be sanctioned.

(b)(3)/26 USC 6103 Failure to timely file tax returns has been deemed "a serious offense for a tax professional." (b)(3) / 6103, supra, slip op. at 25. Such conduct "imposes a considerable cost … [upon] the IRS and fellow citizens who comply with the tax laws" and "demonstrates a disregard for the tax laws that all tax preparers, including CPAs, must follow." Id. Further, other administrative law judges have found that a tax professional's evasion of his own tax liabilities constitutes disreputable conduct warranting disbarment from

practice before the IRS. See, e.g., (b)(3) / 6103, supra, slip op. at 5 (b)(3)/26 USC 6103

Respondent suggests that (b)(3) / 26 USC 6103, namely, a divorce and (b)(6). While the Court is sympathetic to Respondent's personal circumstances, they do not excuse him from (b)(3) / 26 USC 6103. Respondent's purported civic contributions to his community and clean disciplinary history, while commendable, also do not excuse (b)(3) / 26 USC 6103. See OPR v. Christensen, supra, slip op. at 16 ("[S]urely, compliance should be the norm and the lack of prior discipline cannot be construed as a significant mitigating factor."). Considering his many years of experience as a CPA, it should not have been difficult for Respondent (b)(3)/26 USC 6103.

For all the foregoing reasons, the Court finds that the appropriate sanction in this matter is disbarment.

ORDER

Complainant's motion for summary judgment is hereby **GRANTED**. Respondent (b)(3)/26 USC 6103 hall be **DISBARRED** from practice before the IRS, with reinstatement conditioned upon compliance with the requirements of 31 C.F.R. § 10.81.

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.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING SUMMARY JUDGMENT** issued by J. Jeremiah Mahoney, Chief Administrative Law Judge, in HUDOHA 20-JM-0009-OD-001 were sent to the following parties on this 23rd day of April 2020, in the manner indicated:

Cinthia Matos, Docket Clerk

VIA E-MAIL

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

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