

KAREN L. HAWKINS,
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
INTERNAL REVENUE SERVICE

Respondent.

ORDER GRANTING COMPLAINANT'S MOTION FOR A DECISION BY DEFAULT

On May 28, 2013, counsel for the IRS filed with the undersigned a letter sent to Respondent by Complainant. The letter explained U.S. Postal Service records indicated that, to date, Respondent had not retrieved the Complaint from the post office. IRS counsel indicated that, pursuant to 31 C.F.R. § 10.63(a)(3), he was re-serving the Complaint via designated private delivery service (UPS Next Day Air). Complainant

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also served Respondent and the undersigned with the evidentiary file. 31 C.F.R. § 10.63(d).

Thereafter, on July 18, 2013, Complainant filed a Motion for a Decision by Default. Complainant explained UPS had confirmed delivery of the Complaint to Respondent's home on May 29, 2013, and that, to date, IRS had not received an Answer from Respondent. 31 C.F.R. § 10.62. Respondent did not file a response to the Motion for a Decision by Default. See 31 C.F.R. § 10.68(b). To date, the undersigned has not received any filings from Respondent.

Applicable Law

a. Jurisdiction

Pursuant to 31 C.F.R. § 10.50, the Secretary of the Treasury (or a delegate) may, "after notice and an opportunity for a proceeding...censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable...". 31 C.F.R. § 10.50(a). 31 U.S.C. § 330.

b. Failure to Respond/Default

Pursuant to 31 C.F.R. § 10.62(c), a respondent must be notified in the Complaint of "the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint...and that a decision by default may be rendered against the respondent in the event an answer is not filed as required."

Title 31 C.F.R. § 10.64(d), in turn, explains that "[f]ailure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a

hearing or further procedure.” Further, “[i]f a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.” 31 C.F.R. § 10.68(b).

c. Standard

The applicable regulations explain “[i]f the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an 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). In the instant case, because the IRS seeks disbarment, the clear and convincing standard applies. See Davis v. Combes, 294 F.3d 931, 936-37 (7th Cir. 2002) (explaining evidence is considered clear and convincing when there is no reasonable doubt as to the truth of a proposition.)

d. Disreputable Conduct

Title 31 C.F.R. § 10.51, “Incompetence and disreputable conduct” explains incompetence and disreputable conduct for purposes of the regulations includes, but is not limited to, certain enumerated activities. One such enumerated activity is:

Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax. 31 C.F.R. § 10.51(a)(6).

Discussion

In the instant case, IRS properly served the Complaint in accordance with 31 C.F.R. § 10.63. The Complaint clearly explained Respondent needed to file a response

with the undersigned ALJ within thirty (30) days, and provided Respondent with the undersigned's mailing address. See 31 C.F.R. § 10.62(c).

Respondent failed to file anything in response to either the Complaint or the Motion for a Decision by Default. The regulations explain that “[f]ailure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure.” 31 C.F.R. § 10.64(d). See also 31 C.F.R. § 10.64(c) (“Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.”).

Here, Respondent never requested an extension from the undersigned; in fact, Respondent failed to file anything with the undersigned. Accordingly, Respondent has waived his right to a hearing, and all of the allegations in the Complaint are deemed admitted. 31 C.F.R. § 10.64(d). Furthermore, since Respondent failed to file anything in response to the Motion for Decision by Default, he is deemed not to oppose the motion. 31 C.F.R. § 10.68(b).

Findings of Fact

The following findings of fact summarize the allegations in the Complaint, all of which have been deemed admitted:

1. Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4), as an attorney licensed by the State of Florida and as a Certified Public Accountant licensed by the State of Florida.
2. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and of the Office of Professional Responsibility.

3. On November 30, 2012, Respondent was advised in writing of the law and facts warranting the issuance of the Complaint and was provided an opportunity to dispute facts, assert additional facts, and make arguments to the Office of Professional Responsibility regarding his conduct. 31 C.F.R. § 10.60(c).
4. From approximately 1997 until 2003, Respondent was the sole owner and operator of (b)(3)/26 USC 6103; Respondent failed to file an annual report on behalf of (b)(3)/26 USC 6103.
5. On September 19, 2003, the State of Florida administratively dissolved (b)(3)/26 USC 6103; Respondent (b)(3)/26 USC 6103.
6. From November 26, 2002 to present, Respondent has been the sole owner and operator of (b)(3)/26 USC 6103, which was housed in the same location as (b)(3)/26 USC 6103 and was the same business entity as (b)(3)/26 USC 6103 in all material respects.
7. From 1997 until February 7, 2009, Respondent was the sole owner and operator of (b)(3)/26 USC 6103 (b)(3)/26 USC 6103.
8. Between January 26, 2009 and May 7, 2009, Respondent ceased operations under (b)(3)/26 USC 6103; Respondent (b)(3)/26 USC 6103.
9. From May 7, 2009 to present, Respondent has been the sole owner and operator of (b)(3)/26 USC 6103, which performed the same services as (b)(3)/26 USC 6103 and was housed in the same location.
10. From 1997 until February 17, 2009, Respondent was the sole owner and operator of (b)(3)/26 USC 6103. On (b)(3)/26 USC 6103.
11. Respondent failed to file an annual report on behalf of (b)(3)/26 USC 6103, as required by the State of Florida. On February 17, 2009, Respondent ceased operations of (b)(3)/26 USC 6103, then recommenced his law practice under a new corporate entity, the (b)(3)/26 USC 6103.
12. On or about September 25, 2009, the State of Florida administratively dissolved (b)(3)/26 USC 6103 for failing to file an annual report, rendering (b)(3)/26 USC 6103.

(b)(3)/26 USC 6103

. Respondent

(b)(3)/26 USC 6103

13. From February 17, 2009 to present, Respondent has been the sole owner and operator of the (b)(3)/26 USC 6103, which performs the same services as (b)(3)/26 USC 6103, is housed in the same location, and is the same business entity in all material respects.

14. Respondent (b)(3)/26 USC 6103

15. On or about (b)(3)/26 USC 6103

Thereafter, Respondent

(b)(3)/26 USC 6103

16. (b)(3)/26 USC 6103

17. (b)(3)/26 USC 6103

18. (b)(3)/26 USC 6103

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32. (b)(3)/26 USC 6103
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35. (b)(3)/26 USC 6103
36. (b)(3)/26 USC 6103
37. (b)(3)/26 USC 6103
38. (b)(3)/26 USC 6103
39. (b)(3)/26 USC 6103

40. [REDACTED] (b)(3)/26 USC 6103
41. [REDACTED] (b)(3)/26 USC 6103
42. [REDACTED] (b)(3)/26 USC 6103
43. [REDACTED] (b)(3)/26 USC 6103
44. [REDACTED] (b)(3)/26 USC 6103

Analysis

a. The Allegations

As discussed, 31 C.F.R. § 10.51 specifically lists “[w]illfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading...any assessment or payment of any Federal tax” as an example of “Incompetence and disreputable conduct.” 31 C.F.R. § 10.51(a)(6).

In the Complaint, IRS alleges Respondent’s actions constitute disreputable conduct as set forth in 31 C.F.R. § 10.51 generally, and [REDACTED] (b)(3)/26 USC 6103 [REDACTED]. The Complaint alleges five (5) separate counts of violations, and seeks a sanction of disbarment.

Count 1 alleges that [REDACTED] (b)(3)/26 USC 6103 [REDACTED]
[REDACTED]
[REDACTED]. The Agency alleges [REDACTED] (b)(3)/26 USC 6103 [REDACTED]
[REDACTED].

Count 2 alleges Respondent (b)(3)/26 USC 6103

[REDACTED]

[REDACTED].

Count 3 alleges Respondent (b)(3)/26 USC 6103

[REDACTED]

[REDACTED].

Count 4 alleges Respondent (b)(3)/26 USC 6103

[REDACTED]

[REDACTED].

Count 5 alleges Respondent (b)(3)/26 USC 6103

[REDACTED]

[REDACTED].

The factual allegations, which the undersigned has deemed admitted, clearly demonstrate Respondent (b)(3)/26 USC 6103, and (b)(3)/26 USC 6103. See United States v. Pomponio, 429 U.S. 10 (1976) (explaining willfulness requires only an intentional violation of a known legal duty.). As such, the IRS has clearly proven all five (5) counts alleged.

b. Sanction

Pursuant to 31 C.F.R. § 10.50(e), any sanction imposed against Respondent shall consider “all relevant facts and circumstances.” As aggravating factors, the undersigned notes the IRS has alleged five (5) separate counts of disreputable conduct, all of which the undersigned has found proven. Furthermore, as enumerated above in the Findings of Fact, Respondent, an attorney and Certified Public Accountant, has (b)(3)/26 USC 6103

(b)(3)/26 USC 6103. Accordingly, the undersigned finds the sanction of disbarment appropriate in the instant matter.

ORDER

WHEREFORE,

IT IS HEREBY ORDERED THAT Complainant's Motion for a Decision by Default is **GRANTED**. Respondent (b)(3)/26 USC 6103 is **DISBARRED** from practice before the IRS from the date of this Decision and Order.

SO ORDERED.

/s/ Dean C. Metry
Administrative Law Judge

Dated: August 30, 2013
Galveston, Texas

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. 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 forgoing Order upon the following parties in this proceeding at the addresses indicated below:

Andrew M. Greene, Esq.
IRS Office of Chief Counsel (GLS)
Redacted
Redacted
Atlanta, GA Redacted
(Copy by First-Class Mail)

(b)(3)/26 USC 6103

Redacted

(b)(3)/26 USC 6103 Redacted

(Copy by First-Class Mail)

ALJ Docketing Center
U.S. Coast Guard
U.S. Customs House, Redacted
Redacted
Baltimore, MD Redacted
(Copy sent electronically Redacted)

Ms. Diana Gertscher
Internal Revenue Service
(Copy sent electronically Redacted)

Ms. Karen Hawkins
Director of the Office of Professional Responsibility
Internal Revenue Service
Redacted
Redacted
Washington, DC Redacted
(Copy by First Class Mail)

Done and dated this 30th day of August, 2013, at
Galveston, Texas

Janice M. Emig
Paralegal Specialist to the
Administrative Law Judge