UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASUREY [sic]
WASHINGTON, D.C.

January 18, 2013

ORDER

KAREN L. HAWKINS, DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY, U.S. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,	)	Complaint No. IRS 2012-00001
Complainant	)	
v.	)	
[redacted],	)	
Respondent	)	

Motion for Decision by Default Granted
Sanction of Disbarment Imposed

I. Introduction

A Complaint, dated July 9, 2012, was issued by Karen L. Hawkins, in her official capacity as Director, Office of Professional Responsibility, Internal Revenue Service ("IRS"), United States Department of the Treasury, pursuant to the authority set forth at 31 U.S.C. § 330 (2006) and 31 C.F.R. § 10.60.[1] The Complaint charges

[1] The current version of the regulations governing practice before the IRS, found at 31 C.F.R. part 10, is effective August 2, 2011. *See* 31 C.F.R. § 10.0(b) (2011). These regulations are commonly referred to as Circular 230. The saving provision contained at 31 C.F.R. § 10.91 of the regulations provides that any proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, shall apply the procedural rules of the current regulations

Respondent with misconduct sufficient to warrant her disbarment from practice before the IRS under 31 C.F.R. §§ 10.51, 10.22(a) (2007) and 31 C.F.R. §§ 10.51[redacted], 10.22(a) (2005). (b)(3)/26 USC 6103

Complainant has filed a motion for decision by default and a supplement to that motion. In these filings, Complainant argues that the Director of the Office of Professional Responsibility (hereinafter "Director") is entitled to an order granting the motion for decision by default because Respondent allegedly failed to answer the Complaint.

II. Background

Respondent has failed to respond to either the motion for decision by default or the supplement to that motion. Accordingly, pursuant to 31 C.F.R. § 10.68(b), it is appropriate to deem Complainant's motion unopposed by Respondent. For that reason, and the reasons discussed below, Complainant is entitled to an or for decision by default.

Complainant served the Complaint on Respondent on July 17, 2012, pursuant to 31 C.F.R. § 10.63. The Complaint charges Respondent with eight counts of incompetent and disreputable conduct. The first six paragraphs of the Complaint provide background information about Respondent and this matter. The allegations of counts one and two read as follows:

COUNT 1

7. The allegations set forth in paragraphs 1 through 6 are re-alleged and incorporated by reference herein.
8. Respondent was engaged by [Taxpayer 1] in 2007 to [redacted] (b)(3)/26 USC 6103 in respect of [Taxpayer 1's] [redacted] (b)(3)/26 USC 6103.

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contained in Subpart D (Rules Applicable to Disciplinary Proceedings) and E (General Provisions). *See* 31 C.F.R. § 10.91 (2011); *see also* 31 C.F.R. §§ 10.50(f), 10.51(b), 10.52(b) (2011). However, conduct engaged in prior to September 26, 2007, shall be judged by the regulations in effect at the time the conduct occurred. *Id*. Previous versions of these regulations became effective September 26, 2007, and June 20, 2005, and are cited as 31 C.F.R. part 10 (2007) and 31 C.F.R. part 10 (2005) as applicable. *See* 31 C.F.R. § 10.52(b) (2007); 31 C.F.R. § 10.52(b) (2005).

9. On or about (b)(3)/26 USC 6103, [Taxpayer 1] [redacted].

10. Instead of providing [redacted], Respondent [redacted].

11. Respondent did not have authorization from [Taxpayer 1] to [redacted].

12. Respondent [redacted] at a Redacted [redacted].

13. Respondent did not [redacted] for [Taxpayer 1], did not [redacted] [Taxpayer 1].

14. Respondent's conduct towards [Taxpayer 1] as described above was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51[redacted] (2005), for which (b)(3)/26 USC 6103 Respondent may be censured, suspended or disbarred from practice before the IRS.

COUNT 2

15. The allegations set forth in paragraphs 1 through 6 are re-alleged and incorporated by reference herein.

16. Respondent was engaged by [Taxpayers 2 and 3] to [redacted].

17. Respondent [redacted] for [Taxpayers 2 and 3]. [redacted].

18. Certain of the [redacted]

(b)(3)/26 USC 6103

19. Respondent failed to provide (b)(3)/26 USC 6103 at any time prior to or during (b)(3)/26 USC 6103.

20. The (b)(3)/26 USC 6103 [Taxpayers 2 and 3's] (b)(3)/26 USC 6103.

21. Respondent was (b)(3)/26 USC 6103 of her clients [Taxpayers 2 and 3]. (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 "which is a willful attempt in any manner to understate the liability for tax on the return . . . or a reckless or intentional disregard of rules or regulations."

22. Respondent, in communicating with the IRS, suggested a person in her office named "Redacted" was involved in preparing and filing returns but provided no documentation supporting this assertion.

23. Respondent's conduct in handling (b)(3)/26 USC 6103 her clients [Taxpayers 2 and 3] as described above constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (2007) and a willful violation of 31 C.F.R. § 10.22(a) (2007) for which Respondent may be censured, suspended or disbarred from practice before the IRS. In the alternative, if Respondent establishes that she has relied on the work product of some other person in her office in her defense to this charge, then Respondent's conduct constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (2007) and a willful violation of 31 C.F.R. § 10.22(a) (2007) because of Respondent's failure to exercise due diligence and reasonable care in engaging, supervising, training and evaluating that other

> person in accordance with 31 C.F.R. § 10.22(b) (2007).

Complaint at 3-5.

Counts three through eight deal with different taxpayers but are otherwise similar to count two. These remaining six counts address (b)(3)/26 USC 6103 for which Respondent failed to (b)(3)/26 USC 6103. For each count there was an (b)(3)/26 USC 6103, and (b)(3)/26 USC 6103. Because of the similarity between count two and counts three through eight, it would be unduly repetitive to reproduce the remaining counts in this Order.

After receiving the Complaint, Respondent wrote a letter dated August 17, 2012, to the then presiding administrative law judge ("prior ALJ") asking for additional time to respond to the Complaint. Respondent did not serve a copy of her August 17, 2012, letter on Complainant. On August 29, 2012, Complainant filed a motion for decision by default based on Respondent's alleged failure to file a timely answer to the Complaint.

By Order dated September 6, 2012, the prior ALJ granted Respondent until September 17, 2012, to file an answer to the Complaint. In that Order, the prior ALJ also advised Respondent that, pursuant to 31 C.F.R. § 10.68(b), failure to file a timely response to Complainant's motion for decision by default would result in a determination that Respondent did not oppose that motion. *See* September 6, 2012, Order at 2.

On September 21, 2012, a letter from Respondent dated September 12, 2012 (hereinafter "Respondent's Letter"), purporting to respond to the allegations in the Complaint, was received at the prior ALJ's office. Respondent's Letter was not served on Complainant. Therefore, the prior ALJ transmitted a copy of Respondent's Letter to Complainant on October 2, 2012.

On October 22, 2012, Complainant filed a supplement to the motion for decision by default. On November 8, 2012, this proceeding was transferred to the undersigned for further processing. To date, Respondent has not filed any response to Complainant's motion for decision by default or Complainant's supplement to its motion for decision by default.

III. Discussion

As discussed above, Complainant filed a motion for decision by default and a supplement to that motion. Respondent was specifically advised by the prior ALJ that if a nonmoving party fails to respond to a motion for decision by default, said party is deemed not to oppose the motion pursuant to 31 C.F.R. § 10.68(b). *See* September 6, 2012, Order at 2. To date, Respondent has not filed any response to the motion or the supplement. Accordingly, Complainant is entitled to an order granting decision default on this basis alone.

Complainant is entitled to default judgment for the additional reason that Respondent's Letter is not a valid answer because it violates the provisions of 31 C.F.R. § 10.64(e). That section provides that an answer "must be signed by the respondent or the respondent's authorized representative" and "must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. § 1001."[2] Respondent violated section 10.64(e) by failing to include the statement of acknowledgement and therefore Respondent's Letter is not a valid answer.

Use of the word "must" in section 10.64(e) indicates that the required language and reference to 18 U.S.C. § 1001 is mandatory. In other words, it is not within the discretion of this forum to excuse Respondent's failure to include the citation to 18 U.S.C. § 1001 and the specified language.

Because Respondent failed to file a valid answer, 31 C.F.R. § 10.64(d) applies. It states:

> Failure 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

[2] Respondent cites Circular 230 in her August 17, 2012, letter asking for additional time to answer the Complaint. It is therefore evident that she is aware of the regulations. However, ignorance of the Circular 230 regulations would not be a viable defense. This is the case because it is well-established that those who do business with the Government are charged with knowledge of the Government's duly promulgated regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 385 (1947).

> hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. . . .

Accordingly, default judgment is warranted for Respondent's failure to file a valid answer.

The requirement that a respondent acknowledge the accuracy of her statements is particularly important in view of the other provisions of 31 C.F.R. § 10.64. Under section 10.64(b), a respondent "must specifically admit or deny each allegation set forth in the complaint" or, alternatively, explain that they lack enough information to form a belief as to whether an allegation is correct. *Id*. If a respondent does not deny an allegation, or explain that she cannot conclude whether an allegation is true, the allegation "is deemed admitted and will be considered proved . . . ." 31 C.F.R. § 10.64(c).

Historically, these regulations have been rigorously enforced. For instance, in *Dir., Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2009-07 (Decision on Motion for Default Judgment, July 1, 2009), a letter which did not specifically admit or deny each allegation in a complaint was not considered an answer. Similarly, in *Dir., Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2007-10 (Decision by Default, August 10, 2007), a document titled "Notice of Fraudulent Complaint; Notice of Lack of Jurisdiction; Requirement for More Definite Statement; Motion to Dismiss Complaint" was not considered an answer because it did not address the allegations in the complaint. On appeal, the (b)(3)/26 USC 6103 Decision was affirmed, and the appellant's argument that his "answer" should be treated with leniency because he was appearing pro se was rejected. *Dir., Office of Prof'l Responsibility v.* (b)(3)/26 USC 6103, Complaint No. 2007-10 at 7 (Decision on Appeal, June 2008).

Additionally, under 31 C.F.R. § 10.64(b), a respondent "may not deny a material allegation in the complaint that the respondent knows to be true." Complainant persuasively argues that this provision has little practical importance if a respondent does not subject herself to the higher risk of liability incurred by acknowledging the accuracy of her statements under 18 U.S.C. § 1001.

Complainant argues that even if Respondent's letter were considered to be an answer, Complainant would be entitled to judgment on the pleadings. While it is unnecessary to reach a conclusion as to that argument, it further illustrates the importance of compliance with the provisions of 31 C.F.R. § 10.64 and Respondent's failure to do so.

In Respondent's Letter, she uses numbered paragraphs and a narrative format to address the allegations against her. However, she does not specifically admit or deny each of the allegations in the Complaint as required by 31 C.F.R. § 10.64(b).

For example, under Count 1 at ¶ 13, the Complaint charges Respondent with [redacted] Taxpayer 1. According to the Complaint, she [redacted] Taxpayer 1 [redacted]. In Respondent's Letter, and with regard to whether she [redacted] Taxpayer 1, Respondent states: "[redacted]." *Id*. at 1. Then on the second page of Respondent's Letter she states: "[Taxpayer 1] [redacted]." *Id*. at 2.

Thus, Respondent's Letter does not admit or deny whether she [redacted]. Complainant avers that Respondent's statements are literally true, but only because [redacted] Taxpayer 1, not because Respondent [redacted].

IV. Conclusion

Because Complainant's motion for decision by default is deemed unopposed pursuant to 31 C.F.R. § 10.68(b), and because Respondent did not file a valid answer, the allegations of the Complaint are deemed admitted and Complainant's motion for decision by default is hereby **GRANTED.**

Findings of Fact

1. Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(4) (2011), as an enrolled agent.

2. At all times material, Respondent was a practitioner before the IRS as defined in 31 C.F.R. § 10.2(a)(5) (2011).

3. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director, under 31 C.F.R. § 10.0 (2011) *et seq*.

4. Respondent willfully engaged in the actions alleged in counts one through eight of the Complaint. Such actions constitute incompetence and disreputable conduct, as alleged in the Complaint.

Conclusions of Law

1. Respondent's eligibility to practice before the IRS is subject to suspension or disbarment by reason of incompetence and disreputable conduct.

2. Respondent's actions as described in counts one through eight of the Complaint constitute incompetence and disreputable conduct within the meaning of 31 C.F.R. §§ 10.51, 10.22(a) (2007) and 31 C.F.R. §§ 10.51(g), 10.22(a) (2005), and reflect adversely on her current fitness to practice before the IRS. Therefore, Respondent's conduct warrants her disbarment. There is no evidence of extenuating or mitigating circumstances that justifies reducing this penalty. Accordingly, the penalty sought by the Director is reasonable.

It is therefore **ORDERED** that Respondent, [redacted], is disbarred from practice before the IRS pursuant to the provisions of 31 C.F.R. §§ 10.50 and 10.70 (2011) issued under the authority of 31 U.S.C. 330 (2006). Reinstatement to practice is at the sole discretion of the Office of Professional Responsibility.

/s/
Harvey C. Sweitzer
Administrative Law Judge
U. S. Department of the Interior

Please see **Attachment A** for Respondent's appeal rights. [Redacted]

See page 10 for distribution.

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(b)(3)/26 USC 6103
Redacted
(b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted]
(Respondent)

(b)(3)/26 USC 6103
Redacted
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(Respondent)

(b)(3)/26 USC 6103
Redacted
(b)(3)/26 USC 6103, (b)(3)/26 USC 6103 [Redacted]
(Respondent)

Attachment A

31 C.F.R. PART 10
SUBPART D, APPEALS

' 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal*. Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of [the] Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal*. The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non-appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response*. Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right*. Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses*. Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011

Attachment A