

**UNITED STATES
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.**

CAROLYN H. GRAY)
ACTING DIRECTOR,)
OFFICE OF PROFESSIONAL)
RESPONSIBILITY,)
)
Complainant,)
)
)
v.)
)
(b)(3)/26 USC 6103)
)
Respondent)

Complaint No. 2009-15

DECISION BY DEFAULT AND ORDER

A Complaint, dated March 20, 2009, was issued on behalf of Carolyn H. Gray in her official capacity as Acting Director, Office of Professional Responsibility (OPR), United States Department of the Treasury, Internal Revenue Service (IRS), pursuant to 31 C.F.R. Part 10 (“IRS Rules”).¹ The Complaint charges the Respondent **(b)(3)/26 USC 6103** in six counts with engaging in disreputable conduct sufficient to warrant suspension or disbarment from practice before the IRS pursuant to 31 C.F.R. § 10.51

No answer to the Complaint having been received from the Respondent, on June 23, 2009, the Complainant filed a Motion for Decision by Default (“Motion”).

¹ The IRS Rules have been amended from time to time. The most recent revision occurred on September 26, 2007, and as to its application Rule 10.91 provides that “[a]ny proceeding under this part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, will apply [the procedural rules] subpart D and E or this part as revised, *but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.*” 31 C.F.R. § 10.91 (Rev. 2007)(italics added). The versions of the regulations in effect at the time the conduct at issue here occurred are the 1994 revision (applicable to Counts 1-2) and the 2002 revision (applicable to Counts 3-6). *See*, 59 Fed. Reg. 31528 (June 20, 1994) and 67 Fed. Reg. 48760 (July 26, 2002).

A. Service

IRS Rule 10.63 provides in pertinent part as follows:

(a) Service of complaint – in general. The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(b) Service by certified or first class mail. (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, providing the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

31 C.F.R. § 10.63 (Rev. 2007)

The Complaint and Certificate of Service thereto, as well as the Motion and Declaration attached thereto, all indicate that on March 20, 2009, the Complaint was sent by both Certified mail, return receipt requested, and regular mail to the Respondent at (b)(3)/26 USC 6103, Respondent's last known address of record with the IRS. *See*, Complaint, Certification of Service attached thereto, Motion, Ex. 1; and the Declaration attached to the Motion ("Declaration"). On April 21, 2009, the envelope containing the Complaint sent to Respondent by certified mail, return receipt requested, was returned to the IRS marked "UNCLAIMED." *See*, Motion Ex. 2 and Declaration. The Complaint that was sent regular first-class mail was never returned. *See*, Complainant's Response to Request for Proof of Service.

Pursuant to 31 C.F.R. § 10.63(a)(2)(ii), on May 15, 2009, OPR then again mailed the Complaint by both certified mail, return receipt requested, and regular mail to Respondent at (b)(3)/26 USC 6103, his last known address of record with the IRS as well as to Respondent at (b)(3)/26 USC 6103, another address the IRS had for him. *See* Motion Ex. 3; Declaration

OPR indicates in its Motion that none of the envelopes containing the four copies of the Complaint as sent to respondent on May 15, 2009 have been returned to it. *See*. Motion at 2; Declaration.

Based upon the foregoing, it is hereby found that sufficient service of process of the Complaint was made upon Respondent on May 15, 2009.

B. Default

IRS Rule 10.64 provides in pertinent part as follows:

(a) Filing. The respondent's answer must be filed with the Administrative Law Judge, and served on the Director of the Office of Professional Responsibility, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

* * *

(c) Failure to deny or answer allegations in the complaint. 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.

(d) Default. 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 hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under § 10.76

31 C.F.R. § 10.64(a), (c), (d).

Consistent therewith, the Complaint filed in this action stated:

Pursuant to 31 C.F.R. § 10.62, Respondent's answer to this complaint must be filed with the Honorable Susan L. Biro, Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Environmental Protection Agency, Mail Code 1900L 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460, and a copy served on Robert E. Norman, Senior Attorney, Office of Chief Counsel, area counsel (GLS), as designated representative of the Acting Director, Office of Professional Responsibility, within thirty (30) calendar days from date of service. The designated representative's address is as follows: Office of Chief Counsel, Area Counsel (IRS), 401 W. Peachtree Street, N.W., Suite 640, Stop 180-R, Atlanta, GA 30308-3510. Failure to file an Answer to the Complaint may result in a decision by default being rendered against Respondent.

See, Complaint at 1.

To date, Respondent has failed to file an answer to the Complaint or request additional time to do so. *See*, Declaration.

As such, in accordance with 31 C.F.R. § 10.64(d), Respondent is hereby found in default.

C. Motion

By Motion dated June 18, 2009, the Complainant moved for a decision by default in this matter. Specifically, OPR requested that based upon the allegations set forth in the Complaint, now deemed admitted, Respondent be found to have engaged in disreputable conduct in violation of 31 C.F.R. § 10.51 and, as sanction therefore, be suspended from practice before the Internal Revenue Service for a period of 48 months and that reinstatement thereafter be at the sole discretion of OPR and “at a minimum requiring [REDACTED] (b)(3)/26 USC 6103 [REDACTED]

” *See*, Motion at 3.

OPR sent a copy of the Motion to Respondent by both certified and regular mail to both of his known addresses. *See*, Certificate of Service attached to the Motion. To date, no response to the Motion has been received.

IRS Rule 10.68 provides in pertinent part that –

If a nonmoving party does not respond with 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).

Based upon the foregoing, it is hereby found that Respondent does not oppose the Motion for Default, and as such, the motion is hereby granted. Consistent therewith, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. At all times material hereto, the Respondent was an attorney and as such, was eligible to, and did in fact engage in practice before the Internal Revenue Service by reason of the provisions of 5 U.S.C. § 500 and 31 C.F.R. § 10.3(a). Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility. Respondent’s last known address of record with the IRS is: [REDACTED] (b)(3)/26 USC 6103 [REDACTED].

2. (b)(3)/26 USC 6103
[Redacted]

3. (b)(3)/26 USC 6103
[Redacted]

4. (b)(3)/26 USC 6103
[Redacted]

5. (b)(3)/26 USC 6103
[Redacted]

6. (b)(3)/26 USC 6103
[Redacted]

7. (b)(3)/26 USC 6103
[Redacted]

CONCLUSIONS

It is well established that there exists within the agencies the power to regulate those who practice before them. Congress authorized the Secretary of the Treasury to regulate the practice of representative of persons before the Department of the Treasury, in 31 U.S.C. § 330. The Secretary may suspend or disbar from practice before the Department a representative who is disreputable or who violates regulations prescribed under Section 330. 31 U.S.C. § 330(b).

The Secretary of the Treasury has implemented such authority by promulgating regulations at 31 C.F.R. Part 10, which have been amended from time to time. As to disreputable conduct, the regulations in pertinent part:

Disreputable conduct for which an attorney . . . may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

* * *

(d) Willfully failing to make [a] Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof . . .

31 C.F.R. § 10.51(d) (Rev. 1994). *See also*, 31 C.F.R. § 10.51(f) (Rev. 2002)(same).

Findings of Fact 1 through 7 clearly evidence that [REDACTED] (b)(3)/26 USC 6103
[REDACTED] (b)(3)/26 USC 6103 as alleged in Count 1 and 2,
and [REDACTED] (b)(3)/26 USC 6103 as alleged in Counts 3-6.

As to the specific sanction to be imposed upon Respondent for having engaged in such disreputable conduct, IRS Rule 10.50 (Rev. 1994) allows for suspension or disbarment. IRS Rule 10.50 (Rev. 2002) allows for censure, suspension or disbarment. Neither version of the Rules requires that the sanction requested in the Complaint be imposed in the case of a default. Further, neither version of the Rules provides any guidelines for determining the appropriate sanction in a particular case, however, the Rules as revised in 2007 provide that the sanction imposed "shall take into account all relevant facts and circumstances." 31 C.F.R. § 10.50(d)(Rev. 2007).

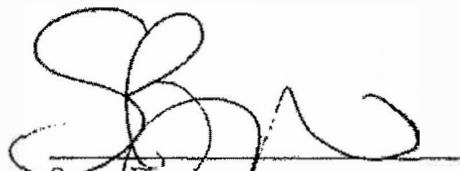
The issue in a disciplinary proceeding is essentially fitness to practice. *Harary v. Blumenthal*, 555 F. 2d 1113, 1116 (2d Cir. 1977). It has long been observed that "[t]he lawyer who disregards his duty as a citizen [REDACTED] (b)(3)/26 USC 6103 fails to uphold the standards of his profession. For such disregard of law attorneys have consistently been disciplined by the courts, usually by suspension." *In re Bennethum*, 52 Del. 504, 512 (Del. 1960) (citing cases collected at 59 A.L.R. 2d 1398). Such observation is particularly apt as to attorneys who practice before the IRS. Practice before the IRS is a privilege, and one cannot partake of that privilege without also taking on the responsibilities of complying with the regulations that govern such practice. Suspension furthers the Internal Revenue Service's regulatory duty to protect the public interest and the Department by conducting business only with responsible persons. *See, Morton Owrutsky v. Brady*, No. 89-2402, 1991 U.S. App. LEXIS 2613 (4th Cir. 1991)(attorney disbarred for willful failure to file timely tax returns for six consecutive years, albeit he had no tax liability for any of those years).

Respondent's willful failure to follow the requirements of 31 C.F.R. Part 10, reflected by [REDACTED] (b)(3)/26 USC 6103

█ shows a disregard of the standards established for the benefit of the IRS and the public. His failure to answer the Complaint prevents consideration of any mitigating circumstances. As such, suspension for a period of 48 months, appears commensurate with the seriousness of the violations found herein.

ORDER

It is hereby ORDERED that Respondent █ (b)(3)/26 USC 6103 █, an attorney, be suspended from practice before the Internal Revenue Service for a period of forty-eight (48) months to be readmitted at the sole discretion of the Office of Professional Responsibility.


Susan Biro
Chief Administrative Law Judge²

Dated: July 24, 2009
Washington, D.C.

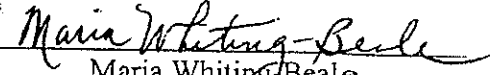
Pursuant to 31 C.F.R. § 10.77 (Rev 2007), this Decision and Order may be appealed to the Secretary of the Treasury within thirty (30) days from the date of this Decision. The appeal must be filed in duplicate with the Director of the Office of Professional Responsibility and shall include a brief that states exceptions to the Decision of the Administrative Law Judge and supporting reasons therefor, as more fully set forth in 31 C.F.R. § 10.77 (Rev 2007).

² This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of the Treasury, pursuant to an Interagency Agreement effective for a period beginning October 1, 2008.

In the Matter of (b)(3)/26 USC 6103, Respondent
Complaint No. 2009-15

CERTIFICATE OF SERVICE

I certify that a true copy of **Decision By Default And Order**, dated July 24, 2009, was sent this day in the following manner to the addressees listed below:


Maria Whiting-Beale
Staff Assistant

Dated: July 24, 2009

Copy by First Class Regular Mail to:

Robert E. Norman, Attorney
Internal Revenue Service
Office of Chief Counsel
General Legal Services
401 W. Peachtree Street, N.W.
Suite 640, Stop 180-R
Atlanta, GA 30308-3510

Copy By Certified Mail Return Receipt:

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