

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2009-21

(b)(3)/26 USC 6103,
Respondent-Appellant

Decision on Appeal

Authority

Under the authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in him as the Chief Counsel of the Internal Revenue Service (IRS), through a delegation order dated March 2, 2011, William J. Wilkins delegated the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Part 10 of Title 31, Code of Federal Regulations (Practice Before the Internal Revenue Service, reprinted by the Treasury Department and hereinafter referred to as Circular 230 – all references are to Circular 230 as in effect for the period(s) at issue). This is such an appeal from an Order Granting Complainant's Motion for Summary Judgment (ALJ Order) entered into this proceeding by Chief Administrative Law Judge Susan L. Biro (the ALJ) on November 16, 2010.

Procedural History

This proceeding was commenced on June 29, 2010, when the Complainant-Appellee Director of the Office of Professional Responsibility (OPR) filed a Complaint against Respondent-Appellant (b)(3)/26 USC 6103, an attorney. The Complaint alleges that (b)(3)/26 USC 6103 has practiced before the IRS as defined in § 10.2(a)(4) of Circular 230; that (b)(3)/26 USC 6103

; and that

(b)(3)/26 USC 6103

The Complaint asserts that (b)(3)/26 USC 6103 conduct constitutes disreputable conduct under §10.51 of Circular 230 that warrants (b)(3)/26 USC 6103 disbarment from practice before the IRS. OPR requested that (b)(3)/26 USC 6103 be disbarred from practice before the IRS pursuant to §§10.50 and 10.70 of Circular 230.

Information as to (b)(3)/26 USC 6103 is set out in tabular form below:

Count	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
1	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
3	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
5	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
7	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
9	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
11	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103
13	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103	(b)(3)/26 USC 6103

(b)(3)/26 USC 6103, but he states in his appeal that (b)(3)/26 USC 6103.

On July 29, 2010, (b)(3)/26 USC 6103 filed his answer. (b)(3)/26 USC 6103 did not deny the allegations in the Complaint that (b)(3)/26 USC 6103. However, the answer asserted that (b)(3)/26 USC 6103; but rather due to medical, factual and financial circumstances beyond the control of respondent.” Each party submitted a pretrial memorandum, and the parties submitted a set of jointly stipulated facts and exhibits. On September 28, 2010, an extensive deposition of (b)(3)/26 USC 6103 was held. On October 7, 2010, OPR submitted a motion for summary adjudication. The motion was granted on November 16, 2010, prior to the November 30, 2010, hearing date. The ALJ found that (b)(3)/26 USC 6103. See ALJ Order at 9-10. In finding that (b)(3)/26 USC 6103, the ALJ found that (b)(3)/26 USC 6103 explanation as to (b)(3)/26 USC 6103. The ALJ found that the appropriate sanction was disbarment. In imposing the disbarment sanction the ALJ only considered (b)(3)/26 USC 6103 under Counts 7, 9, 11, and 13. See ALJ Order at n. 9. (b)(3)/26 USC 6103 timely appealed the ALJ Order and (b)(3)/26 USC 6103 and OPR have briefed the issues.

Findings of Fact and Analysis

The Appellate Authority reviews the ALJ’s findings of fact under a clearly erroneous standard of review, and matters of law with de novo review. Section 10.78 of Circular 230.

It is undisputed that (b)(3)/26 USC 6103. The issue on appeal is whether (b)(3)/26 USC 6103.

¹ (b)(3)/26 USC 6103, which have no bearing on the result herein.

² In his appeal, (b)(3)/6103 also states that (b)(3)/26 USC 6103.

On appeal, (b)(3)/26 USC 6103 states four bases for appeal: (i) the ALJ applied a willful negligence standard rather than a willfulness standard; (ii) the ALJ applied the wrong standard for willfulness; (iii) summary adjudication was inappropriate because of the presence of material issues of fact; and (iv) (b)(3)/26 USC 6103 was denied due process because the standards were changed from willfulness rather than willful negligence subsequent to the issuance of the Complaint. (b)(3)/26 USC 6103 sets out in great detail medical, financial, marital, and other personal difficulties and setbacks that run from 1998 through September 2010 in support of his claim that (b)(3)/26 USC 6103.

The standard of willfulness that the ALJ applied was a voluntary, intentional violation of a known duty. ALJ Order at 9. This was a proper standard under §10.51 of Circular 230 and is in accord with the Supreme Court holdings in *Cheek v. United States*, 498 U.S. 192, 12 (1991) and *United States v. Pompino*, 429 U.S. 10, 12 (1976). (b)(3)/26 USC 6103 statements that the ALJ applied a different standard are incorrect. It is clear that (b)(3)/26 USC 6103 personal circumstances do not vitiate (b)(3)/26 USC 6103 and do not make (b)(3)/26 USC 6103. During (b)(3)/26 USC 6103 prepared the returns of others, represented clients in legal matters, and carried on numerous other activities. See ALJ Order at 6. (b)(3)/26 USC 6103. Further, (b)(3)/26 USC 6103 claim is belied by his own conduct (b)(3)/26 USC 6103. As shown in the table above, (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 (b)(3)/26 USC 6103

(b)(3)/26 USC 6103 also claims that summary adjudication was inappropriate because of material issues of fact as to (b)(3)/26 USC 6103 medical condition (b)(3)/26 USC 6103, and that the medical conditions support a (b)(3)/26 USC 6103. However, the undisputed evidence shows that (b)(3)/26 USC 6103 prepared the returns of others, represented clients in legal matters, and carried on numerous activities (b)(3)/26 USC 6103. I find that that [sic] the ALJ correctly decided that there was no genuine issue of fact as to whether (b)(3)/26 USC 6103 and that granting summary adjudication as provided for in §10.68 of Circular [sic] was appropriate. See generally *OPR v. (b)(3)/26 USC 6103*, Complaint No. 2003-02 (Decision on Appeal, June 25, 2004) at p. 96, with regard to procedural rights in OPR proceedings.

The ALJ's findings of fact are well supported by the record and are not clearly erroneous. (b)(3)/26 USC 6103 establishes that he engaged in disreputable conduct within the meaning of §10.51 of Circular 230.

Sanction

The ALJ determined that the appropriate sanction was disbarment of (b)(3)/26 USC 6103 from practice before the IRS. In doing so the ALJ found disbarment was appropriate because (a) (b)(3)/26 USC 6103, as per Counts 7, 9, 11, and 13 of the Complaint; (b) (b)(3)/26 USC 6103 was previously suspended from practice for the period of January 1993 to December 1997 (b)(3)/26 USC 6103; and (c) (b)(3)/26 USC 6103. I agree that the appropriate sanction for (b)(3)/26 USC 6103 supports his disbarment, especially given that (b)(3)/26 USC 6103 was previously suspended from practice. Because the violations of Counts 7, 9, 11 and 13 were proven and provided clear and convincing support for this summary adjudication and (b)(3)/26 USC 6103 disbarment, I have not considered or addressed the validity of the other Counts or whether they were appropriate for summary adjudication.

I have considered all of the arguments made by OPR and (b)(3)/26 USC 6103, and to the extent not mentioned herein, I find them to be irrelevant or without merit.

Conclusion

For the reasons stated, I hereby determine that (b)(3)/26 USC 6103 is disbarred from practice before the IRS. This constitutes FINAL AGENCY ACTION in this proceeding.

/s/ _____
 Bernard H. Weberman
 Appellate Authority
 Office of Chief Counsel
 Internal Revenue Service
 (As Authorized Delegate of the
 Secretary of the Treasury)

April 22, 2011
 Lanham, MD