

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

KAREN L. HAWKINS, DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY

Complainant

vs.

(b)(3)/26 USC 6103

Respondent

Complaint Number: 2013-00008

Docket Number: 13-IRS-0002

HON. MICHAEL J. DEVINE

Administrative Law Judge

DEFAULT DECISION AND ORDER

I. STATEMENT OF THE CASE

On May 9, 2013, the Director, Office of Professional Responsibility (OPR) of the Internal Revenue Service (Complainant or IRS) filed its Complaint pursuant to 31 C.F.R. §§ 10.60 and 10.91 and 31 U.S.C. § 330 and served it on (b)(3)/26 USC 6103 (Respondent). Respondent is an enrolled agent who practiced before the IRS. The Complaint alleges Respondent committed nine (9) disreputable conduct violations under the regulations: 1) (b)(3)/26 USC 6103
; 2) (b)(3)/26 USC 6103
and 3) for failing to respond to lawful requests for information sent by the IRS Office of Professional Responsibility on June 2, 2011 and August 20, 2012. The Complaint alleges that the violations by Respondent were

willful and constitute conduct sufficient to support the sanction of disbarment. This matter was assigned to the undersigned Administrative Law Judge on May 14, 2013.¹

On June 17, 2013, IRS filed a Motion for Decision by Default (Motion), seeking a ruling to deem the allegations of the Complaint admitted because of Respondent's failure to answer and to render a Decision by Default for disbarment of the Respondent from practice before the IRS. Respondent has not submitted an Answer to the Complaint and has not submitted any response in opposition to the IRS Motion.

II. ISSUES

IRS contends Respondent's failure to answer the Complaint requires finding the allegations of the Complaint deemed admitted. IRS also contends the allegations once deemed admitted provide sufficient facts to prove the charged violations, so that IRS is entitled to a decision as a matter of law. Finally, IRS contends that the proposed sanction of disbarment before the IRS is supported by the record and should be imposed by the Court.

The issues are:

1. Has IRS demonstrated sufficient facts to deem that allegations of the Complaint are admitted pursuant to 31 C.F.R. § 10.64(d) and § 10.76?
2. If the allegations of the Complaint are deemed admitted as facts, are those facts sufficient for the IRS to meet its burden to demonstrate that no genuine issue of material fact is present and is entitled to a favorable decision as a matter of law?
3. Was (b)(3)/26 USC 6103
? ?
4. Was (b)(3)/26 USC 6103
? ?

¹ The United States Coast Guard, pursuant to an Interagency Agreement with the Internal Revenue Service is providing administrative law judge services to the extent required under the regulations in connection with this matter.

5. Was Respondent's failure to respond to the June 2, 2011 and August 2012 letters from IRS a violation of the provisions of 31 C.F.R. § 10.20 and if so, were they willful violations so as to constitute disreputable conduct?
6. Based on review of the facts presented in the record as a whole, is the IRS proposed penalty of disbarment an appropriate sanction?

III. FINDINGS OF FACT

Based on review of the record the Court finds the allegations in the Complaint deemed admitted and the following facts proven by clear and convincing evidence:

1. Respondent, (b)(3)/26 USC 6103, has engaged in practice as an enrolled agent before the Internal Revenue Service as defined by 31 C.F.R. § 10.2(a)(4).
2. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility.
3. Respondent's last known address of record with the Internal Revenue Service is [Redacted], (b)(3)/26 USC 6103, [Redacted].
4. Respondent (b)(3)/26 USC 6103 .
5. Respondent (b)(3)/26 USC 6103 .
6. (b)(3)/26 USC 6103 .
7. The allegations in the Complaint are deemed fact that Respondent (b)(3)/26 USC 6103 .
8. On June 2, 2011, the Office of Professional Responsibility mailed a letter to Respondent's last known address of record requesting information regarding (b)(3)/26 USC 6103 .
9. Respondent has not submitted any reply or response regarding the June 2, 2011 letter from the Office of Professional Responsibility.

10. On August 20, 2012, the Office of Professional Responsibility mailed a letter to Respondent's last known address of record requesting information regarding (b)(3)/26 USC 6103 and his failure to respond to the June 2, 2011 letter from the Office of Professional Responsibility.
11. Respondent has not submitted any reply or response regarding the August 20, 2012 letter from the IRS Office of Professional Responsibility up to and including the date of this Order.

IV. ANALYSIS

IRS asserts that Respondent neither filed an answer to the Complaint nor has shown good cause as to why no answer has been filed, as required within the thirty (30) day period pursuant to 31 C.F.R. § 10.64. These regulations provide, “[t]he 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.”² 31 C.F.R. § 10.64(a). The regulations also provide that “[e]very 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.” 31 C.F.R. § 10.64(c).

To date, Respondent has failed to respond to IRS pleadings. First, on May 9, 2013, the IRS sent its Complaint with instructions on how to file an answer to Respondent via certified mail. On May 17, 2013, the IRS also sent a letter via certified mail to Respondent enclosing copies of evidence in support of the Complaint submitted on May 9, 2013. The IRS sent these documents to Respondent’s last known address of record and it is the address on the certified mail receipt signed by Respondent and attached to the May 17, 2013 certificate of service submitted by IRS. The Complaint specifically provides that pursuant to 31 C.F.R. § 10.62,

² As noted above, the complaint demanded an answer not later than 30 days after service of the Complaint.

Respondent's Answer to the Complaint must be filed at the ALJ Docketing Center, Room 412, 40 S. Gay Street, Baltimore Maryland 21202-4022 with a copy served on the IRS Attorney within thirty (30) calendar days of service. See Complaint pages 1 and 2. To date, Respondent has not filed an Answer to the Complaint nor has he provided any response to the IRS' Motion for a Default Decision. "If a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer . . . the nonmoving party is deemed not to oppose the motion." See 31 C.F.R. § 10.68(b).

In accordance with 31 C.F.R. § 10.64(d) and § 10.76, the Court finds the allegations of the Complaint are deemed **ADMITTED**. The IRS Motion for Default may also be considered a motion for summary adjudication under 31 C.F.R. § 10.68(a)(2). The Court also finds that because the facts alleged in the Complaint are admitted, IRS has met its burden to demonstrate that no genuine issue of material fact is present and is entitled to a decision as a matter of law with regard to all charges. See 31 C.F.R. § 10.64(d) and § 10.76; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

V. CONCLUSIONS OF LAW

IRS has demonstrated sufficient facts to deem that allegations of the Complaint admitted pursuant to 31 C.F.R. § 10.64(d) and § 10.76. The Court finds the allegations of the Complaint are deemed ADMITTED.

1. The IRS has met its burden to demonstrate that no genuine issue of material fact is present and is entitled to a favorable decision as a matter of law.
2. In view of Respondent's knowledge of IRS law and procedures and deemed admission that (b)(3)/26 USC 6103

3. Respondent's actions in regard to (b)(3)/26 USC 6103 .
4. Respondent's failure to respond to the June 2, 2011 and August 20, 2012 letters from IRS are violations of 31 C.F.R. § 10.20.

IV. SANCTION

Pursuant to 31 C.F.R. § 10.52(a) a practitioner may be censured, suspended or disbarred from practicing before the IRS for willfully violating any of the provisions set forth in Circular 230. 31 C.F.R. § 10.51 provides these sanction may be imposed on a practitioner who engages in disreputable conduct, and (b)(3)/26 USC 6103

The evidence shows that Respondent's actions in Charges 1 through 9 are admitted facts that satisfy proof by clear and convincing evidence under 31 C.F.R. § 10.76(b). Respondent's conduct (b)(3)/26 USC 6103 reflects adversely on Respondent's fitness to practice and cannot be because (b)(3)/26 USC 6103. "Willful" has been held to mean the "voluntary, intentional violation of a known legal duty." United States v. Pomponio, 429 U.S. 10, 12 (1976); Thibodeau v. United States, 828 F.2d 1499, 1505 (11th Cir. 1987). Upon review of the facts presented in the record as a whole, the Court finds IRS' proposed penalty of disbarment is appropriate where Respondent's (b)(3)/26 USC 6103 impacts directly on whether he has the qualifications required under the regulations for representing people in practicing on tax matters before the IRS. Regulations regarding Effect of Disbarment and petitions for reinstatement are contained in 31 C.F.R. §§ 10.79 – 10.81.

WHEREFORE,

V. ORDER

IT IS HEREBY ORDERED that because Respondent has failed to answer the Complaint the Allegations of the Complaint are deemed **ADMITTED**.

IT IS HEREBY FURTHER ORDERED that Complainant's Motion for Default Decision is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent, (b)(3)/26 USC 6103, is **DISBARRED** from practice before the Internal Revenue Service.

PLEASE TAKE NOTICE: (1) This Default Order constitutes a Decision as provided in 31 C.F.R. § 10.64 (d). Pursuant to 31 C.F.R. § 10.76 (d) and without further proceedings, a decision by an Administrative Law Judge becomes the decision of the Department of the Treasury thirty (30) days after the date of the Administrative Law Judge's Decision unless a party files a timely appeal.

(2) Pursuant to 31 C.F.R. § 10.77 (Appendix A), 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, [Redacted], Washington D.C. [Redacted], and shall include a brief stating the party's exceptions to this Decision and supporting reasons for any exceptions.

/s/ MICHAEL J. DEVINE

MICHAEL J. DEVINE
Administrative Law Judge
U.S. Coast Guard

Done and dated July 18, 2013
Baltimore, MD

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing DEFAULT DECISION AND ORDER as indicated below:

ALJ Docketing Center
United States Coast Guard
[Redacted]
Baltimore, Maryland [Redacted]
Telephone: [Redacted]
Facsimile: [Redacted]
Sent by Hand-carry

Ms. Karen Hawkins, Director
Office of Professional Responsibility
[Redacted]
[Redacted]
Washington, DC [Redacted]
Sent by First Class Mail

Allison K. Sablick, Attorney
Office of Chief Counsel (IRS)
[Redacted]
New York, NY [Redacted]
**Sent via Facsimile and
by First Class Mail**

(b)(3)/26 USC 6103
[Redacted]
(b)(3)/26 USC 6103 [Redacted]
**Sent by FedEx and
by First Class Mail**

JENNY L. COLLINS
Paralegal Specialist to the
Administrative Law Judge

Done and dated July 18, 2013
Baltimore, MD

Appendix A

Title 31: Money and Finance: Treasury

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Subpart D—Rules Applicable to Disciplinary Proceedings

§ 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 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.