

**THE DEPARTMENT OF THE TREASURY
OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.**

**DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant**

v.

(b)(3)/26 USC 6103

Respondent.

**Complaint Number: 2012-0004
Docket Number: 12-IRS-0001**

**HON. PARLEN L. McKENNA
Acting Chief Administrative Law
Judge**

ORDER GRANTING MOTION FOR DECISION BY DEFAULT

Introduction

On August 17, 2012, Complainant IRS filed a Motion for Decision by Default because (b)(3)/26 USC 6103 (Respondent) had not filed an Answer to the Complaint nor asked for an extension of time to file an answer. Respondent has not replied to Complainant's Motion for Decision by Default and the time period for such a response has lapsed. For the reasons given herein, Complainant's Motion for Decision by Default is **GRANTED**.

The Complaint

On July 12, 2012, the Department of the Treasury, Office of Professional Responsibility, Internal Revenue Service (Complainant or IRS) filed its Complaint and served it on Respondent at Respondent's last known address of record with the IRS. See Motion for Decision at Exh. 1. The signed Return Receipt for delivery of the Complaint

sent to Respondent's last known address was returned to the IRS on or about August 14, 2012. Motion for Decision at Exh. 2.¹

The Complaint alleged Respondent has engaged in practice before the IRS, as defined by 31 C.F.R. § 10.2(a)(2), as a certified public accountant, and is thereby subject to the disciplinary authority of the Office of Professional Responsibility under 5 U.S.C. 500 and 31 U.S.C. § 330. The Complaint also alleged that Respondent committed five violations constituting disreputable conduct under the applicable IRS regulations by

(b)(3)/26 USC 6103

Complaint at Counts 1-5.

(b)(3)/26 USC 6103

. The Complaint maintained that

(b)(3)/26 USC 6103

and constituted disreputable conduct under 31 C.F.R. § 10.51. The IRS alleged that such disreputable conduct warranted Respondent's disbarment from practice before the IRS.

The Complaint specifically stated on the first and second pages that pursuant to 31 C.F.R. § 10.64, Respondent's Answer to the Complaint must be filed at the ALJ Docketing Center, Room 412, 40 S. Gay Street, Baltimore Maryland 21202 with a copy served on the IRS Attorney within thirty (30) calendar days of service and that the failure to file an Answer may result in a Default. Respondent failed to file an answer in response to the Complaint.

¹ Under 31 C.F.R. § 10.6(c), Respondent is obligated to inform the Office of Professional Responsibility about any change of address. The address on record with the IRS is thus the appropriate location at which to serve Respondent any pleadings in this matter.

Law and Procedure

Service of both the Complaint and the Motion for Decision by Default were proper under the service rules found at 31 C.F.R. § 10.63. To date, Respondent has not filed an answer to the Complaint, nor has he replied to the Motion for Decision by Default. IRS regulations at 31 C.F.R. § 10.64(d) provide that:

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.

The undersigned never extended the time for Respondent to file an Answer and so the provisions of Section 10.64(d) apply. Respondent has therefore admitted the allegations in the Complaint by Default and waived a hearing by the failure to file an Answer to a properly served Complaint.

Decision

Title 31 C.F.R. § 10.68(b) prescribes “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.” Therefore, in accordance with 31 C.F.R. §§ 10.64(d) and § 10.76, the allegations in the Complaint are hereby deemed **ADMITTED**. The 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.

Respondent’s actions as set forth in the Complaint (the allegations of which are now deemed admitted by default) constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on Respondent’s fitness to practice before the IRS. Upon

review of the facts presented in the record as a whole, the undersigned finds

Complainant's proposed penalty of disbarment is appropriate. (b)(3)/26 USC 6103

[REDACTED]. Such (b)(3)/26 USC 6103 impacts directly on his fitness to practice before the Internal Revenue Service and advise others on their compliance with IRS laws and regulations.

WHEREFORE:

ORDER

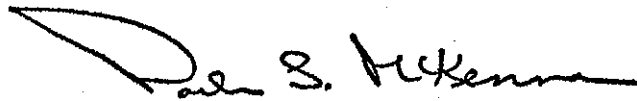
IT IS HEREBY ORDERED that Complainant's Motion for Decision by Default is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent, (b)(3)/26 USC 6103, is **DISBARRED** from practice before the Internal Revenue Service pursuant to 31 C.F.R. §§ 10.50 and 10.70 and the procedures provided at 31 C.F.R. Part 10, Subpart D. Reinstatement, if any, thereafter shall be at the sole discretion of the Office of Professional Responsibility, and conditioned upon Respondent (b)(3)/26 USC 6103

[REDACTED] (with no violations of any other provisions in 31 C.F.R. § 10.0 et seq. in the period before reinstatement).

PLEASE TAKE NOTICE that Attachment A provides Respondent's appeal rights.

Done and dated September 25, 2012 at
Alameda, California.



HON. PARLEN L. McKENNA
Acting Chief Administrative Law Judge
U.S. Coast Guard

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing ***Order Granting Motion for Decision by Default*** (12-IRS-0001) upon the following parties and entities in this proceeding as indicated at the addresses below:

ALJ Docketing Center
United States Coast Guard
40 South Gay Street, Suite 412
Baltimore, Maryland 21202-4022
Telephone: (410) 962-5100
Facsimile: (410) 962-1746
(Via Facsimile)

Jill S. Lebeau, Senior Attorney
Office of Chief Counsel (IRS)
General Legal Services
100 First Street, 18th Floor
San Francisco, CA 94105
Telephone: (415) 547-3851
Fax: (415) 281-9506
(Via FedEx)

Karen L. Hawkins, Director
Office of Professional Responsibility
Internal Revenue Service, Room 7238/IR
1111 Constitution Avenue, NW
Washington, DC 20224
Telephone: (202) 927-3397
(Via FedEx)

Pamela Brown
Internal Revenue Service, Room 7238/IR
1111 Constitution Avenue, NW
Washington, DC 20224
(Via FedEx)

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

(Certified Mail, Return Receipt Requested)

Done and dated September 25, 2012 at
Alameda, California.


Cindy J. Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna

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 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.