United States Department of the Treasury

Director, Office of Professional Responsibility, Complainant-Appellant

٧.

Complaint No. 2010-19

(b)(3)/26 USC 6103

Respondent-Appellee

Decision on Appeal

Authority

Under the authority of General Counsel Order No. 9 (January 19, 2001) and a delegation order dated March 2, 2011, I have been delegated 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 (IRS), 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 a Decision and Order on Default (Default Order) entered into this proceeding by Chief Administrative Law Judge Susan L. Biro (the ALJ) on February 4, 2011.

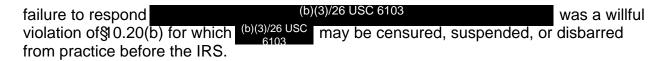
Procedural History

and that

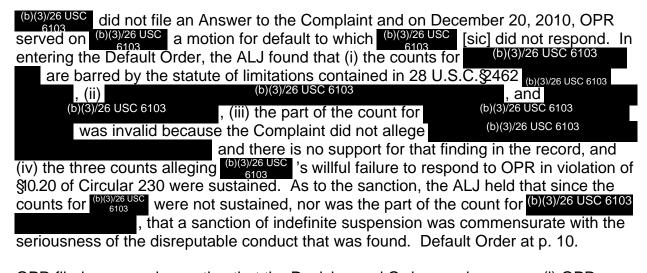
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For counts 1-3, (b)(3)/26 USC 6103 . For counts 1-4, the Complaint			
For counts 1-3, states that	(b)(3)/26 USC 6103	. For counts 1-4, tr	0(3)/26 USC 6103
(b)(3)/26 USC 6103 Circular 230, which require OPR inquiries. ² Count 9 of again wrote (b)(3)/26 USC this	PR wrote (b)(3)/26 USC (allered to respond). The Complaint alleges the stime alleging that storespond. The Complaint alleges the Complaint alleges the Complaint alleges that constitutes the Complaint alleges that cond. The Complaint alleges that cond. The Complaint states	ging that aint states that his failu a willful violation of §10 responsive information at on about August 30 (b)(3)/26 USC 6103 aint states that his failu a willful violation of §10 at on about January 5, 2 (b)(3)/26 USC 6103	re to respond .20(b) of n concerning , 2009, OPR re to respond .20(b) of 2010, OPR
The Complaint states that Circular 230 for which (b)(3)/2 practice before the IRS. T	_{6 USC 6103} may be censured		
no bearing on the result herein. The file indicates that OPR ser informing him that if he did not re	(b)(3)/26 USC 6103 nt (b)(3)/26 USC a letter about (b)(3)/26 USC a letter about (c)(4) a letter about (c)(5) a letter about (c)(6)	o)(3)/26 USC 6103 dated Feb	which have ruary 7, 2007, ary proceeding

The file indicates that OPR sent (b)(3)/26 USC a letter about (b)(3)/26 USC 6103 dated February 7, 2007, informing him that if he did not respond within 30 days that OPR would initiate a disciplinary proceeding against him under Circular 230. I did not see anything in the file indicating that (b)(3)/26 USC responded to any of OPR's correspondence nor did he answer the November 10, 2010 Complaint in this case or participate in any way in this proceeding.



The Complaint requests that (b)(3)/26 USC be disbarred from practice before the IRS pursuant to§10.20, 10.50, 10.51, 10.52 and 10.70 of Circular 230.



OPR filed an appeal asserting that the Decision and Order was in error as (i) OPR properly charged with (b)(3)/26 USC 6103 and that his failure to answer the Complaint constituted an admission of same, (ii)§2462 does not apply to in OPR practitioner proceedings as the proposed discipline is remedial, and (iii) the sanction should be modified to disbar (b)(3)/26 USC 6103 are rather than subject him to an indefinite suspension. On July 20, 2011, I issued an Order asking OPR to address two issues: why it took OPR so long from the time it identified (b)(3)/26 USC 6103 are underlying conduct could be considered for any purpose. OPR responded but (b)(3)/26 USC 6103 are did not respond to OPR's brief in support of its appeal or its supplemental brief.

Findings of Fact

The Appellate Authority reviews the ALJ's findings of fact under a clearly erroneous standard of review. Section 10.78 of Circular 230. The ALJ's findings of fact are well supported by the record and are not clearly erroneous. However, because of the ALJ's conclusion that the statute of limitations barred the bringing of counts (b)(3)/26 USC 6103, she did not make a finding as to whether

provides clear and convincing evidence that

(b)(3)/26 USC 6103

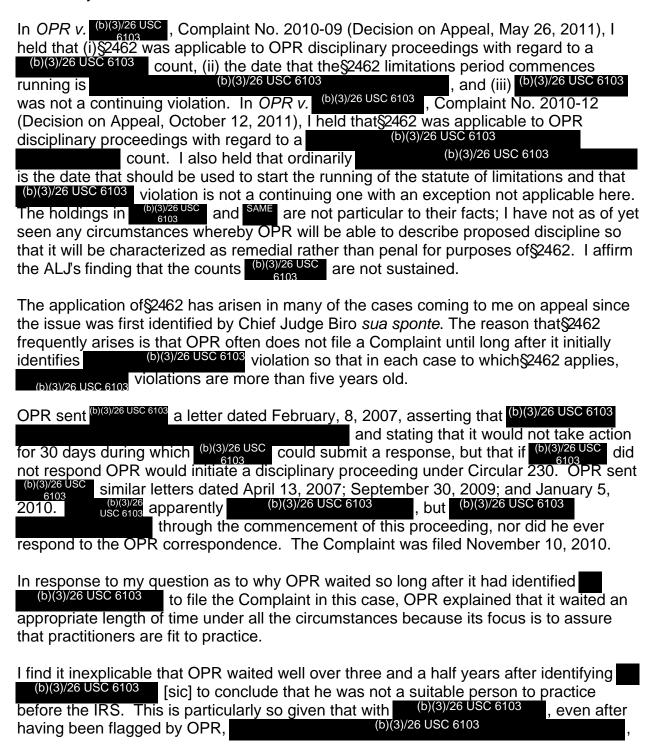
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these facts were pled by OPR and not denied by (b)(3)/26 USC 6103, they are deemed admitted. The record also provides clear and convincing evidence that (b)(3)/26 USC 6103

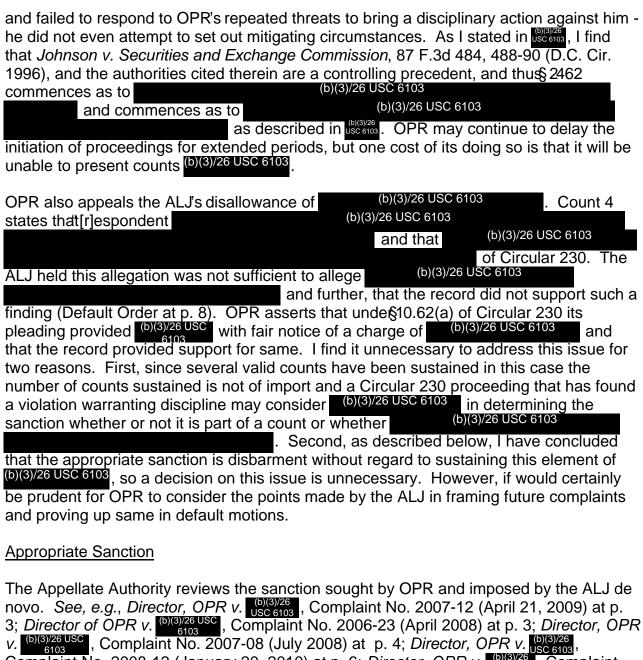
Pled by OPR and not denied by (b)(3)/26 USC 6103

it is deemed admitted.

<u>Analysis</u>

The Appellate Authority reviews the ALJ's findings as to issues that are exclusively matters of law de novo. Section 10.78 of Circular 230. The application of \$2462 is exclusively a matter of law.



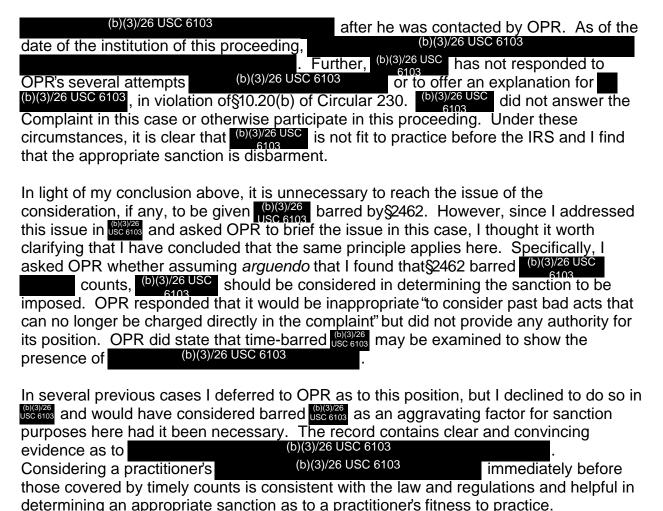


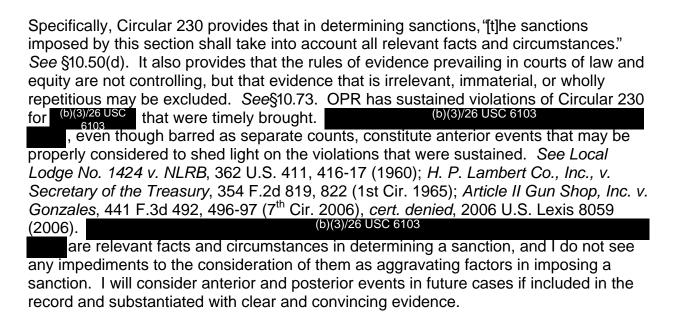
Complaint No. 2008-12 (January 20, 2010) at p. 6; *Director, OPR v.* USC 6103, Complaint No. 2008-19 (May 26, 2009) at p. 4. I modify the suspension imposed by the ALJ for the reasons stated below.

(b)(3)/26 USC 6103 The Complaint requests a sanction of disbarment, based on (b)(3)/26 USC 6103 and , but, as stated (b)(3)/26 USC 6103 above, because of §2462, only the violations and for (b)(3)/26 USC failure to respond to OPR in violation of §10.20 of Circular 230 were found to be a basis for liability by the ALJ. Because fewer counts than proposed were sustained, the Default Order imposes a different sanction - it provides for an indefinite suspension which allows OPR "sole discretion" to determine when

may be reinstated. Default Order at p. 10. OPR has appealed the indefinite suspension and asks for a sanction of disbarment.

Initially, a practitioner whose sanction is initiated through a disciplinary proceeding, as provided for in §10.60 *et seq.* of Circular 230, that is not resolved between the practitioner and OPR consensually as provided for in §10.61 of Circular 230, should have his case resolved by the ALJ as provided for in §10.76 of Circular 230, or by the agency on appeal as provided for in §10.78 of Circular 230. The purpose of the disciplinary proceeding is to have the sanction determined by the ALJ or the agency, not by OPR. Section 10.82 of Circular 230 provides for an expedited suspension for a duration within the control of OPR, but that section applies only under narrow and specifically defined circumstances and is an interim measure that provides the practitioner with the ability to obtain prompt resolution with a sanction determined by the ALJ or agency as described above in a proceeding administered per§10.60 of Circular 230. I conclude that practitioners and OPR are entitled to a determinate sanction by the ALJ under §0.76 of Circular 230 the application of which may be readily and unambiguously understood and complied with by the practitioner and OPR, subject to any specific conditions as provided in §10.79(d) of Circular 230.





I have considered all of the arguments made by OPR and (b)(3)/26 USC 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 practice before the IRS. This constitutes FINAL AGENCY ACTION in this proceeding.

Bernard H. Weberman Appellate Authority Office of Chief Counsel Internal Revenue Service (As Authorized Delegate of the Secretary of the Treasury) October 14, 2011 Lanham, MD

CERTIFICATE OF SERVICE

I hereby certify that the Decision on Appeal dated October 14, 2011 in Complaint No. 2010-19 was sent this day by UPS Next Day Air and by First Class U.S. Mail to the addresses listed below:

UPS Next Day Air:

(b)(3)/26 USC 6103

Redacted Redacted

(b)(3)/26 USC 6103

First Class U.S. Mail:

Honorable Susan L. Biro Chief Administrative Law Judge U.S. Environmental Protection Agency Office of Administrative Law Judges Redacted Redacted Washington, D.C. 20460

Karen L. Hawkins Director, Office of Professional Responsibility Internal Revenue Service Redacted Washington, DC 20224

Colleen A. Crane, Attorney Internal Revenue Service Office of Chief Counsel, General Legal Services Redacted Washington, DC 20224

Bernard H. Weberman

Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)
October 14, 2011
Lanham, MD