United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v. Complaint No. 2013-00002

[redacted],
Respondent-Appellant

Decision on Appeal

Pursuant to General Counsel Order No. 9 (January 19, 2001) and Office of Chief Counsel Notice CC-2011-007 (March 2, 2011), I decide disciplinary appeals to the Secretary of the Treasury filed under 31 C.F.R. Part 10 (Practice Before the Internal Revenue Service (IRS), hereinafter referred to as Circular 230 - all references are to Circular 230 as in effect for the periods at issue). This is such an appeal from a Decision by Default and Order (Default Order) entered into this proceeding by Administrative Law Judge Harvey C. Sweitzer (the ALJ) on August 16, 2013.

Procedural History

This proceeding was commenced on February 13, 2013, when the Complainant-Appellee, Director of the Office of Professional Responsibility (OPR) filed a Complaint against Respondent-Appellant, [redacted] ("[redacted]").

The Complaint alleges that [redacted] has engaged in practice before the IRS, as defined by §10.2 of Circular 230, as a certified public accountant. Counts 6, 12, and 17 allege that [redacted] Counts 1, 5, 10, 15 and 24 allege that he [redacted]; Counts 4, 11, 16, and 23 allege that he [redacted] and Counts 2, 3, 7, 8, 9, 14, 19, 20, 21, and 22 allege that he [redacted] ten[1] [redacted]. The above [redacted] are alleged to be in violation of §10.51 of Circular 230.

---

[1] Count 14 refers to [redacted] already charged in Count 3.

The Complaint contains three additional counts. Counts 18 and 25 allege that on October 13, 2010, and April 3, 2012, OPR wrote [redacted] requesting information concerning his violations of Circular 230, that he willfully failed to respond to OPR, and that his failure to respond constitutes a willful violation of §10.20(b) of Circular 230, which requires practitioners to provide responsive information concerning OPR inquiries. Lastly, Count 26 alleges that §10.51(a)(17) of Circular 230 required [redacted] to use a Preparer Tax Identification Number (PTIN) on returns and claims for refund during 2012, and that notwithstanding that [redacted] did not have a PTIN, he prepared well in excess of 400 returns during this period, in willful violation of §10.51(a)(17).

The Complaint additionally provides as aggravating factors reflecting on [redacted] 's fitness to practice that he [redacted], that [redacted] and that [redacted] resulted in the IRS spending additional resources [redacted].

The Complaint states that the actions set forth in Counts 1-26 above constitute disreputable conduct within the meaning of §§10.20, and 10.51 that reflect adversely on his present fitness to practice and warrant the disbarment of [redacted] from practice before the IRS. OPR expressly considered [redacted] 's [redacted] as aggravating factors. The Complaint requests that [redacted] be disbarred from practice before the IRS pursuant to §§10.20 and 10.51.

[redacted] did not file an Answer to the Complaint and on April 17, 2013, OPR filed a motion for default seeking to disbar [redacted]. The ALJ gave [redacted] until May 22, 2013 to respond to the motion, stating that if he did not do so he would be deemed not to oppose the motion per 10.68(b) of Circular 230. [redacted] did not respond. In entering the Default Order, the ALJ made findings of fact sustaining OPR on all 26 of the above Counts and the aggravating factors reflecting on [redacted]'s fitness to practice. The ALJ reached conclusions of law that Counts 1-17 and 19-24 were sustained as a willful violation and constituted incompetence and disreputable conduct under the appropriate sections of Circular 230; that Counts 18 and 25 were sustained as willful and constituting disreputable conduct; and that Count 26 was sustained as a willful violation of Circular 230. Further, the ALJ concluded that each of the aggravating factors was deemed admitted and considered proved as a matter of law. Finally, the ALJ found that, in light of the above findings and the absence of any mitigating circumstances, disbarment was the appropriate remedy.

[redacted] filed an appeal of the above decision stating that he is currently [redacted], and that he had deaths in the family and had been emotionally unable to comply with the requirements. He did not contest the factual allegations as to any of the 26 Counts or the assertions made as to the aggravating factors. OPR responded that [redacted]'s appeal was invalid under §10.77 of Circular 230 as it does not state exceptions to the decision of the ALJ and supporting reasons for the exceptions, and in any event the appeal should be denied because [redacted] failed to demonstrate that the ALJ's decision was clearly erroneous in light of the record and applicable law.

Decision on Appeal of Default Order

I concur with the decision of the ALJ to enter a Default Order because all of the allegations in the Complaint were properly deemed admitted, and constituted willful violations of Circular 230 as found. I also concur that a sanction of disbarment is appropriate having given due consideration to the number and type of violations, their duration and gravity, the aggravating factors, and [redacted]'s statement as to mitigating factors.

I have considered all of the arguments made by OPR and [redacted] and to the extent not mentioned herein, I find them to be irrelevant or without merit.

Conclusion

For the reasons stated, [redacted]'s appeal is denied and he is disbarred from practice before the IRS with reinstatement thereafter conditioned on [redacted] and not having violated any other provision contained in Circular 230. This constitutes FINAL AGENCY ACTION in this proceeding.

/s/
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel, IRS
December 18, 2013
Lanham, MD

CERTIFICATE OF SERVICE

I hereby certify that the Decision on Appeal dated December 18, 2013 in Complaint No. 2013-00002 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:

[redacted]
[*Redacted*]
[redacted] [*Redacted*]

First Class U.S. Mail:

Honorable Harvey C. Sweitzer
Administrative Law Judge
U.S. Department of the Interior
Office of Hearings and Appeals
[*Redacted*]
Salt Lake City, UT [*Redacted*]

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

Heather A. Southwell, Attorney
Internal Revenue Service
Office of Chief Counsel, General Legal Services
[*Redacted*]
New York, NY [*Redacted*]

/s/
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
December 18, 2013
Lanham, MD