

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

KAREN L. HAWKINS,	)	
DIRECTOR,	)	
OFFICE OF PROFESSIONAL	)	Complaint Number: 2013-00004
RESPONSIBILITY,	)	Docket Number: 13-IRS-0001
INTERNAL REVENUE SERVICE,	)	
Complainant,	)	INITIAL DECISION and ORDER
	)	
v.	)	
	)	HON. WALTER J. BRUDZINSKI
CHARLES M. EDGAR,	)	Chief Administrative Law Judge
Respondent.	)	

SUMMARY

Complainant initiated this action to disbar Respondent from practice before the Internal Revenue Service (IRS) alleging three counts of incompetence and disreputable conduct. In summary adjudication, the undersigned found no genuine issues of material fact regarding one count and found it proved by clear and convincing evidence. After an in-person hearing the undersigned found the remaining counts proved by clear and convincing evidence. Respondent's pattern of incompetence and disreputable conduct warrants **DISBARMENT** from practice before the IRS.

STATEMENT OF THE CASE

Pleadings

Complainant originally initiated this action pursuant to the rules and regulations for Expedited Suspension found in 31 C.F.R. § 10.82. In accordance with those regulations, Respondent requested IRS issue a Complaint pursuant to 31 C.F.R. § 10.60 which Complainant did on February 21, 2013. The Complaint contained three (3) counts alleging as follows:

1) in December 2010, Respondent's license to practice as a CPA was revoked by the Massachusetts Board of Registration in Public Accountancy, constituting incompetence and disreputable conduct in violation of 31 C.F.R. §10.51(a)(10) (Rev. 4-2008);

2) in or around May 2011, Respondent knowingly submitted a false Power of Attorney and Declaration of Representative ("Form 2848") to the IRS on behalf of Taxpayer 1, constituting incompetence and disreputable conduct in violation of 31 C.F.R. § 10.51(a)(4) (Rev. 4-2008);¹

3) in or around May 2011, Respondent knowing submitted a false Form 2848 to the IRS on behalf of Taxpayer 2, constituting incompetence and disreputable conduct in violation of 31 C.F.R. § 10.51(a)(4) (Rev. 4-2008).
See Complaint at 19-26.

Complainant sought Respondent's disbarment from practice before the IRS as sanction for his alleged conduct. On February 27, 2013, the Acting Chief Administrative Law Judge for the U.S. Coast Guard assigned this case to the undersigned for adjudication.²

On March 18, 2013, Respondent timely answered the Complaint and on April 2, 2013 the undersigned subsequently held a pre-hearing teleconference to set due dates for discovery as well as the time and place of hearing. The parties then engaged in discovery and extensive motion practice.

Pre-Hearing Motions

Complainant filed several motions, including a Motion for Summary Adjudication and a Motion for Decision by Default. Respondent also filed several motions, including his own Motion for Summary Adjudication and a Motion to Dismiss. In an Order dated July 8, 2013, the undersigned: 1) denied Complainant's Motion for Decision by Default; 2) denied Respondent's Motion to Dismiss; 3) denied Respondent's Motion for Summary Adjudication; and, 4) granted Complainant's Motion for Summary Adjudication as to Count 1. Concerning Count 1, there was

¹ For the purpose of protecting the privacy of the individual tax payers, they shall be referred to individually in this decision as "Taxpayer 1" or "Taxpayer 2" or collectively as "Taxpayers 1 and 2."

² Pursuant to Memoranda of Agreement dated June 6, 2011 and January 15, 2013, the U.S. Coast Guard Office of Administrative Law Judge is authorized to hear cases pending before the United States Department of the Treasury.

no genuine issue of material fact that Respondent was a certified public accountant (CPA) authorized to practice before the IRS prior to December 23, 2010. There was also no genuine issue of material fact that Massachusetts revoked Respondent's CPA license on December 23, 2010. Finally, there was no dispute that under 31 C.F.R. § 10.51(a)(10), a CPA license revocation constitutes disreputable conduct.³ For summary adjudication, I admitted Complainant's Exhibits 1, 2 and 3 (OPR Exs. 1, 2, and 3) into the record and reserved rulings on Counts 2 and 3 as well as the sanction until after the in-person hearing.

In-Person Hearing

On July 18, 2013, the undersigned convened a hearing pursuant to 31 C.F.R. §§ 10.60 and 10.72 in Boston, Massachusetts. Heather A. Southwell, Esquire represented Complainant. Respondent appeared with counsel, John T. Gaffney, Esq.⁴ Ms. Southwell introduced the testimony of two (2) witnesses: 1) Adrienne Howley, Revenue Agent for the IRS stationed in Boston, Massachusetts; and, 2) Karen Hawkins, Complainant and Director of the Office of Professional Responsibility (OPR). Ms. Southwell also introduced seven (7) exhibits.⁵ Respondent did not call any witnesses but testified on his own behalf and introduced two (2) exhibits. A complete list of all witnesses and exhibits is contained at **Attachment A**.

Respondent further offered an affidavit purportedly written and signed by Taxpayer 1. Although Taxpayer 1 was listed as one of Respondent's witnesses, he did not appear at the hearing to testify. Therefore, the affidavit and the statements made therein could not be authenticated and the affiant was not subject to cross examination. The unauthenticated affidavit is hearsay and carries no probative value in the absence of other indicia of reliability. While the

³ For a detailed analysis on the undersigned's rulings on the parties' various motions, see Order dated July 8, 2013.

⁴ John T. Gaffney submitted a "Notice of Appearance" to sit at counsel table with Respondent. During the course of the hearing, both Mr. Gaffney and Respondent were permitted to examine Complainant's witnesses.

⁵ The undersigned previously admitted OPR Exhibits 1, 2 and 3 for purposes of Summary Adjudication. At the hearing, Complainant introduced seven (7) additional exhibits marked as OPR Exhibits 4 through 10.

rules of evidence are relaxed in these administrative proceedings, the undersigned maintains discretion to exclude irrelevant evidence. See 31 C.F.R. § 10.73.

Respondent submitted the affidavit to show Taxpayer 1 signed and submitted the Forms 2848 at issue. Taxpayer 1's statements in the affidavit are equivocal. He does not state clearly that he signed and submitted the Forms 2848; rather, he states "I went on the Internet and produced authorization forms for myself and my brother and sent them to the auditor." From the statement, the undersigned would be required to infer Taxpayer 1 signed Respondent's name (and Taxpayer 2's name) to the Form 2848. Respondent is therefore attempting an "empty chair" defense, using unauthenticated and equivocal statements from an affidavit as support. Because of its unreliability and lack of probative value the affidavit does not help the undersigned in making a decision one way or another; it is therefore irrelevant and the undersigned excluded it from evidence. However, the affidavit in question is part of the administrative file as it is attached to *Respondent's Motion for Summary Judgment*, dated May 25, 2013.

PRINCIPLES OF LAW

OPR's Ability to Discipline IRS Practitioners

The Secretary of the Treasury has authority to "regulate the practice of representatives of persons before the Department of the Treasury." 31 U.S.C. § 330(a). The Secretary has the explicit power to suspend or disbar an individual from practice for a number of reasons as long as the individual is first provided "notice and opportunity" for hearing before an Administrative Law Judge. 31 U.S.C. § 330(b).

Circular 230 and Delegation Order No. 25-16 (2012) grant the OPR Director authority to bring proceedings to suspend or disbar practitioners before the IRS. See 31 C.F.R. § 10.50(a).

Pursuant to 31 C.F.R. § 10.50(e), any sanctions imposed “shall take into account all relevant facts and circumstances.” Further, the purpose of the disciplinary proceeding is to have the Judge or Agency determine the sanction, not OPR. In re: (b)(3)/26 USC 6103, (Complaint No. 2010-08), Appeal Decision at 4 (06/02/2011). In rendering a decision, the assigned Judge must include “a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.” 31 C.F.R. § 10.76(a).

Incompetence and Disreputable Conduct under Sections 10.51(a)(4) and (10).

A practitioner may be sanctioned if that person gives “false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading.” 31 C.F.R. §10.51(a)(4). That regulation further defines “information” as “[f]acts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral.” *Id.* A practitioner may also be sanctioned if that person has been disbarred or suspended “from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.” 31 C.F.R. § 10.51(a)(10).

Evidentiary Standard and Standard of Proof

The applicable evidentiary standard states the rules of evidence prevailing in a court of law and equity are not controlling but the Judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. See 31 C.F.R. §10.73(a). Strict, formal rules of evidence thus do not apply.

The standard of proof differs depending on the nature of the sanction. See 31 C.F.R. § 10.76(b). Because Complainant sought Respondent's disbarment, the applicable standard is clear and convincing evidence. Id. The clear and convincing evidence standard has been defined "as evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable." Jimenez v. Daimler Chrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also, Addington v. Texas, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

Following disbarment, a respondent will not be permitted to practice before the IRS until authorized to do so pursuant to 31 C.F.R. § 10.81. Five years following disbarment, a former practitioner may apply to the IRS for reinstatement. Id.

Findings of Fact

Facts Concerning Jurisdiction and Respondent's CPA License Revocation

1. Prior to December 23, 2010, Respondent was a certified public accountant (CPA) authorized to practice in the Commonwealth of Massachusetts. See OPR Exs. 1 and 2.⁶
2. Prior to December 23, 2010, Respondent had engaged in practice and had represented taxpayers before the IRS as a CPA. See OPR Ex. 1.
3. On December 23, 2010, the Massachusetts Board of Registration in Public Accountancy revoked Respondent's license to practice as a CPA for a minimum period of five (5) years. See OPR Ex. 2.
4. Respondent's CPA license revocation was based, in part, on his 1995 felony conviction in the U.S. District Court for the District of Massachusetts for knowingly making false statements to the government in violation of 18 U.S.C. § 1001 and mail fraud in violation of 18 U.S.C. § 1341. See OPR Ex. 2 at 8.
5. From December 23, 2010 to date, Respondent has not possessed a valid license to practice as a CPA in the Commonwealth of Massachusetts. See OPR Ex. 2 at 17.

Facts Concerning Respondent's Knowing Submission of Forms 2848 Containing False or Misleading Information to the IRS

6. Adrienne Howley is employed as an Internal Revenue Agent with the IRS, with a post of duty in Boston, Massachusetts. Tr. at 17:24-5; 18:1-4.
7. Revenue Agent Howley's duties include conducting examinations of individuals and small businesses to determine their federal tax liabilities. Tr. at 18:19-20.
8. On or about May 10, 2011, Revenue Agent Howley contacted Respondent by telephone concerning (b)(3)/26 USC 6103 for which Respondent previously had been designated as the representative. Tr. at 22:12-14; 23:18-24.
9. (b)(3)/26 USC 6103 Taxpayers 1 and 2.
10. The purpose of Revenue Agent Howley's call was to determine whether Respondent planned to represent Taxpayers 1 and 2 (b)(3)/26 USC 6103
(b)(3)/26 USC 6103 See OPR Exs. 4 and 5; Tr. at 23:15-24.

⁶ References to the hearing transcript and exhibits are as follows: the hearing transcript shall be cited as "Tr." followed by the page number (e.g. Tr. at ____); Complainant's Exhibits shall be cited as "OPR Ex." followed by the exhibit number (e.g. OPR Ex. 1); Respondent's Exhibits shall be cited as "Resp. Ex." followed by the exhibit letter (e.g. Resp. Ex. A).

11. During the May 10, 2011 telephone conversation, Respondent told Revenue Agent Howley he would be representing Taxpayers 1 and 2 [REDACTED] (b)(3)/26 USC 6103. Tr. at 23:18-25.

12. Revenue Agent Howley advised Respondent that to represent Taxpayers 1 and 2 [REDACTED] (b)(3)/26 USC 6103, he must submit a separate Form 2848 for each taxpayer. Tr. at 23:18-24.

13. Respondent told Revenue Agent Howley he would provide her with the necessary Forms 2848. Tr. at 23:24-25; 67:4-5.

14. Form 2848 allows a taxpayer to designate a representative to speak directly to the IRS, advocate to the IRS on the taxpayer's behalf, and sign documents on a taxpayer's behalf. See OPR Exs. 4 and 5; Tr. at 20:10-19; 20:23-25; and, 21:1-5.

15. Form 2848 also provides the IRS verification that the taxpayer has consented to the IRS's disclosure of confidential tax information to the named representative. See Tr. at 21:6-13.

16. Form 2848 is signed under penalties of perjury by the representative, to attest to certain representations made on the form. See OPR Exs. 4 and 5; Tr. at 100:10-16.

17. Revenue Agent Howley was required to obtain properly executed Forms 2848 to be able to communicate with Respondent regarding Taxpayers 1 and 2 [REDACTED] (b)(3)/26 USC 6103. See Tr. at 79:6-13; 21:6-20.

18. On or about May 31, 2011, Revenue Agent Howley received two (2) 2848 forms upon which Respondent was listed as the designated representative for Taxpayers 1 and 2 [REDACTED] (b)(3)/26 USC 6103. See OPR Exs. 4 and 5; Tr. at 27:1-4; 28:8-13.

19. Both 2848 forms bore Respondent's signature and were dated May 20, 2011, approximately 10 days after the date of the telephone conversation described at Findings of Fact 10 through 13. See OPR Exs. 4 and 5; Tr. at 24:2-5.

20. The designation on the 2848 forms indicated Respondent was a CPA duly qualified to practice in the Commonwealth of Massachusetts. See OPR Exs. 4 and 5; Tr. at 24:2-5.

21. Respondent was not duly qualified to practice as a CPA in the Commonwealth of Massachusetts in May 2011. See OPR Ex. 2.

22. After Revenue Agent Howley received the 2848 forms bearing Respondent's signature, she conducted an online search of the Massachusetts Office of Consumer Affairs and Business Regulation, Division of Professional Licensure, consistent with her practice, to determine whether Respondent held a valid CPA license. See OPR Ex. 3; Tr. at 29:1-7.

23. Revenue Agent Howley's search of the Massachusetts Division of Professional Licensure revealed that Respondent's CPA license had been revoked on December 23, 2010. See OPR Ex. 3; Tr. at 29:1-7.

24. On or about July 1, 2011, Revenue Agent Howley advised Respondent via telephone that she received the 2848 forms bearing his signature and inquired if he knew his CPA license was revoked. See Tr. at 35:23-25; 36:1, 10-12; and, 67:16-23.

25. During the conversation, Respondent acknowledged to Revenue Agent Howley that his CPA license was revoked. See Tr. at 36:10-12.

26. During the July 1, 2011 telephone conversation Respondent did not tell Revenue Agent Howley that Taxpayer 1 or any other person signed and submitted the Forms 2848; however, he claimed during the hearing that Taxpayer 1 signed and submitted the forms. See Tr. at 39:2-15; 149:2-14.

27. During the July 1, 2011 telephone conversation Respondent never denied sending Revenue Agent Howley the 2848 forms; he did not ask to see the forms; and, he did not express surprise that she had received the forms designating him as a duly qualified CPA representing Taxpayers 1 and 2. See Tr. at 39:2-15.

28. Respondent stated that representing Taxpayers 1 and 2 should not present a problem because he was a CPA (b)(3)/26 USC 6103, prior to his Massachusetts CPA license revocation. See Tr. at 36:3-9.

29. Respondent also stated he could represent Taxpayers 1 and 2 as an unenrolled return preparer. See Tr. at 36:23 – 37:8.

30. Revenue Agent Howley advised Respondent that because (b)(3)/26 USC 6103 (b)(3)/26 USC 6103 he could not represent them as an unenrolled return preparer. See Tr. at 37:6-9; 38:1-5.

31. Respondent indicated on the 2848 forms he was a duly authorized CPA in Massachusetts, not that he was seeking to represent Taxpayers 1 and 2 as an unenrolled return preparer. See OPR Exs. 4 and 5; Tr. at 37:9-24.

32. Respondent testified he did not sign the 2848 forms but rather Taxpayer 1 signed his name and submitted the forms. See Tr. at 148:25-149:8; 154:9-10.

33. Respondent had no specific recollection regarding the phone conversations with Revenue Agent Howley. See Tr. at 164:14-166:3.

34. Respondent was not honest and forthcoming with Taxpayers 1 and 2 concerning his CPA license revocation in connection with submitting the 2848 forms on their behalf. See Tr. at 162:18-163:23.

Facts Concerning OPR's Role in Reviewing and Investigating Reports of Practitioner Misconduct and Pursuing Disciplinary Sanctions

35. Karen L. Hawkins has been employed as the Director of OPR for approximately four and a half years at the time of the hearing. See Tr. at 86:11-12.

36. OPR has an independent function within the IRS not directly connected to IRS's tax enforcement functions under Title 26 of the United States Code (also known as the Internal Revenue Code). See Tr. at 82:23-5; 83:1-6.

37. OPR regulates the practice of tax professionals who practice before the IRS by making determinations concerning the integrity, character, reputation, qualifications, and competence of those individuals. See Tr. at 83:6-15; 101:8-11.

38. Director Hawkins considers those qualities when determining whether a tax practitioner is fit to practice before the IRS. See Tr. at 83:6-15; 101:8-11.

39. When Director Hawkins determines a tax practitioner is unfit to practice, OPR is responsible for proposing a disciplinary sanction based on the discipline imposed in previous cases and the seriousness of the practitioner's misconduct. See Tr. at 84:6-13.

40. Under Circular 230, OPR's available sanctions include private reprimand, public censure, suspension, and disbarment. See Tr. at 85:11-20.⁷

41. Disbarment is a minimum five-year removal from practice before the IRS after which period a practitioner may petition the Director of OPR to be reinstated. See Tr. at 110:2-14.

CREDIBILITY DETERMINATIONS

Complainant's witnesses testified credibly. Revenue Agent Howley testified concerning the facts and circumstances surrounding the Forms 2848 at issue. Further, Revenue Agent Howley had specific recollection of the telephone conversations between her and Respondent concerning the 2848 forms and her testimony is supported by documentary evidence. See OPR Exs. 4 and 5. Revenue Agent Howley also testified consistently with her previously submitted affidavit with which Respondent attempted to impeach her. See Resp. Exs. A and B.

⁷ Director Hawkins' testimony concerned the sanctions available to her as Director of OPR. The undersigned is governed by the sanctions available in 31 C.F.R. § 10.50(a), namely, censure, suspension or disbarment. See 31 C.F.R. § 10.50(a).

Respondent testified with various explanations regarding the 2848 forms and did not have any recollection of his conversations with Revenue Agent Howley. Further, he has no corroborating evidence to support his self-serving claim that Taxpayer 1 signed and submitted both 2848 forms to the IRS. Also, in his Answer, Respondent denied the revocation of his CPA license; however, during his testimony he admitted to that fact. Respondent's testimony is therefore less credible and carries less weight.

ANALYSIS

Complainant provided evidence and testimony showing that in May 2011, the IRS received two 2848 forms designating Respondent to represent Taxpayers 1 and 2 as a duly authorized CPA in the state of Massachusetts. See OPR Exs. 4 and 5. At the time these forms were submitted, Respondent's CPA license had been revoked. Revenue Agent Howley requested the 2848 forms from Respondent and he agreed to forward them. Two weeks later, Revenue Agent Howley received the forms. There is no testimony or evidence showing Revenue Agent Howley requested these forms from anyone other than Respondent.

During her phone conversations with Respondent concerning the forms, Respondent did not express surprise over the IRS receiving the forms nor did he claim that he did not send them. Revenue Agent Howley testified with specific recollection about the phone conversations with Respondent concerning the facts and circumstances surrounding the 2848 forms. She recalls Respondent claimed his CPA license had not been revoked (b)(3)/26 USC 6103 and that therefore he could represent Taxpayers 1 and 2 as an enrolled tax return preparer.⁸ Neither of these arguments justified the misrepresentation on the 2848 forms.

⁸ Revenue Agent Howley informed Respondent at the time that he could not represent Taxpayers 1 and 2 as an enrolled tax return preparer because (b)(3)/26 USC 6103. Further, the 2848 forms designated Respondent as a Massachusetts CPA not an enrolled tax return preparer. See OPR Exs. 4 and 5; Tr. at 22 – 27.

At the hearing Respondent claimed he did not sign or submit the 2848 forms but rather Taxpayer 1 did so. There is no evidence to support this claim. Taxpayers 1 and 2 were listed as testifying witnesses but neither appeared nor testified at the hearing. Further, Respondent's testimony does not support this argument. He has no specific recollection of what he told Revenue Agent Howley. When directly asked if he told Revenue Agent Howley that he did submit the 2848 forms, Respondent said "I believe I might have." See Tr. at 165:19-24. Revenue Agent Howley is certain that he did not. See Tr. at 39:2-5.

When Revenue Agent Howley confronted Respondent with the 2848 forms he did not act in the manner of someone who did not submit them. Complainant also submitted various documents containing Respondent's signature. See OPR Exs. 8, 9, and 10. Respondent admits those exhibits contain his signature. See Tr. at 155 – 158. While there was no expert testimony regarding the signatures, the undersigned is able to compare them and finds by clear and convincing evidence the signatures on the 2848 forms are Respondent's.

Respondent further argues that the 2848 forms are "not his software" and that he would not list the taxpayers' phone numbers on them. See Tr. at 160-161. However, Respondent provides no evidence of what "his software" would look like. Further, he provides no evidence to show that CPAs in general or that he in particular do not list the taxpayers' phone numbers on a 2848 form. Indeed, Respondent testified that filing Form 2848 is "not a common occurrence for most CPAs" and he has had to do it "surprisingly very few" times. See Tr. at 152:5-16. Without supporting evidence, Respondent's statements carry little weight.

Taking into account all the relevant facts and circumstances, the undersigned finds Complainant proved Respondent submitted the 2848 forms to IRS claiming he was a duly authorized CPA in Massachusetts when, in fact, he was not. Title 31 C.F.R. § 10.51(a)(4)

provides “[g]iving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading.” By submitting both 2848 forms to the IRS knowing his CPA license had been revoked, Respondent violated 31 C.F.R. § 10.51(a)(4). The undersigned therefore finds Counts 2 and 3 of the Complaint proved by clear and convincing evidence.

SANCTION

Pursuant to 31 C.F.R. § 10.50(a), “The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51)... .” OPR argues the appropriate sanction in this case is disbarment. The undersigned agrees.

The record demonstrates a pattern of conduct and occurrences that demonstrate Respondent is not fit to practice before the IRS. In 1995, he was convicted of making false statements and mail fraud. See OPR Exs. 2, 6, and 7. As a result, the Massachusetts Bar suspended Respondent’s license to practice law in 1998 for a period of four (4) years.⁹ See OPR Exs. 6 and 7. In 2001, the state denied his request to reinstate his law license because he “has not demonstrated rehabilitation” and has shown a “historically reckless disregard for the truth.” See OPR Ex. 7 at page 7. Subsequently in 2010, the Commonwealth of Massachusetts revoked Respondent’s CPA license.¹⁰ See OPR Exs. 2 and 3. Finally in 2011, Respondent’s filed two

⁹ The effective date of Respondent’s law license suspension was January 20, 1995, the date of his temporary suspension from the practice of law.

¹⁰ While the Board’s Final Decision and Order was not issued until 2010, the Board opened its complaint against Respondent in 2006. See OPR Ex. 2 at 10.

2848 forms claiming to be a duly authorized Massachusetts CPA when in fact he was not. See OPR Exs. 4 and 5.

Respondent's lack of truthfulness is troubling and bears directly on his fitness to represent taxpayers before the IRS. This finding is not exclusive to the undersigned. In his law license reinstatement proceeding, the tribunal found Respondent's "answers to be evasive" and his "lack of candor pervasive." See OPR Ex. 7 at 7. Similarly in this case, Respondent failed to provide clear answers to direct questions. For example, when asked if his signature is on one of the 2848 forms he replied "No, it is not. I believe it is not." See Tr. at 154:8-18 (see also Tr. at 162:8-166:3 for additional examples of Respondent's equivocal and unclear testimony). In his Answer, Respondent denied his CPA license was revoked even though it is well documented and part of the public record. See Complaint at ¶7; Answer at ¶ 7; OPR Exs. 2 and 3. Further, and most alarmingly, Respondent testified that when Taxpayers 1 and 2 asked him to submit the 2848 forms so he could represent him, he failed to disclose his CPA license was revoked. See Tr. at 162:18-163:23.

In view of the foregoing, Respondent's conduct demonstrates he does not have the integrity or character to be trusted representing taxpayers before the IRS. The only appropriate sanction therefore is disbarment.

CONCLUSIONS OF LAW

1. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) when, on December 23, 2010, the Commonwealth of Massachusetts revoked for cause his license to practice as a CPA.
2. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(4) when, in or around May 2011, he knowingly submitted two 2848 forms containing false and misleading information to the IRS.
3. The proper sanction for Respondent's incompetent and disreputable conduct is disbarment.

ORDER

IT IS HEREBY ORDERED THAT Respondent Charles M. Edgar is **DISBARRED** from practice before the IRS effective as of the date of this Order.

Done and dated: New York, New York
November 8, 2013

/s/ Walter J. Brudzinski
WALTER J. BRUDZINSKI
CHIEF ADMINISTRATIVE LAW JUDGE

Pursuant to 31 C.F.R. § 10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days from the date of service. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

ATTACHMENT A

Witness and Exhibit List

Complainant's Witnesses:

1. Adrienne Howley, IRS Revenue Agent
2. Karen Hawkins, OPR Director, Complainant

Respondent's Witnesses:

1. Charles M. Edgar, Respondent

Complainant's Exhibits:

- Exhibit 1: Report from IRS's Centralized Authorization File (CAF) (2 pages) (located in the record as "Exhibit 1" to *Complainant's Motion for Summary Adjudication*).
- Exhibit 2: "Board's Final Decision and Order" from Commonwealth of Massachusetts, Suffolk County, Board of Registration in Public Accountancy dated December 23, 2010 (18 pages) (located in the record as "Exhibit 2" to *Complainant's Motion for Summary Adjudication* and pages 30-48 of "Exhibit 2" to *Complainant's Motion for a Decision by Default*).
- Exhibit 3: Copy of Commonwealth of Massachusetts, Office of Consumer Affairs & Business Regulations Official Website, Division of Professional Licensure, license search for Charles M. Edgar (2 pages) (located in the record as "Exhibit 3" to *Complainant's Motion for Summary Adjudication*).
- Exhibit 4: Form 2848, Power of Attorney and Declaration of Representative for Taxpayer 1 (2 pages).
- Exhibit 5: Form 2848, Power of Attorney and Declaration of Representative for Taxpayer 2 (2 pages).
- Exhibit 6: Massachusetts Board of Bar Overseers "Attorney Status Report" website printout demonstrating Respondent's suspension (2 pages).
- Exhibit 7: "Hearing Panel Report" from Mass.gov website containing the Order denying Respondent's reinstatement as an attorney, entered by Justice Cordy on October 12, 2001 (9 pages).
- Exhibit 8: Notice of Appearance for Respondent cover sheet containing Respondent's signature (for comparison with signatures on the Forms 2848) (1 page).

- Exhibit 9: Respondent's Motion for Summary Judgment cover sheet containing Respondent's signature (for comparison with signatures on the Forms 2848) (1 page).
- Exhibit 10: Respondent's Omnibus Opposition to Complainant's Motion for a Decision by Default and Edgar's Counter-Motion to Dismiss for Lack of Jurisdiction Over the Person, cover sheet containing Respondent's signature (for comparison with signatures on the Forms 2848) (1 page).

Respondent's Exhibits:

- Exhibit A: Declaration of Adrienne Howley, dated May 10, 2013 (5 pages).
- Exhibit B: (b)(3)/26 USC 6103 (1 page).

ATTACHMENT B

Rulings on Proposed Findings of Fact and Conclusions of Law

In her post-hearing brief, Complainant submitted forty-seven (47) proposed findings of fact and four (4) proposed conclusions of law. Respondent did not submit a post-hearing brief or any proposed findings of fact or conclusions of law.

A. Procedural History

1. On February 23, 2013, pursuant to 31 C.F.R. § 10.60, Complainant filed the Complaint in this matter to initiate a formal disciplinary proceeding under Circular 230. See Complaint.
ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

2. The Complaint set forth three Counts, alleging that: (1) in December 2010, Respondent's license to practice as a CPA was revoked by the Massachusetts Board of Registration in Public Accountancy, constituting incompetence and disreputable conduct in violation of 31 C.F.R. § 10.51(a)(10) (Rev. 4-2008); (2) in or around May 2011, Respondent knowingly submitted a false Power of Attorney and Declaration of Representative ("Form 2848") to the IRS on behalf of Taxpayer 1 constituting incompetence and disreputable conduct in violation of 31 C.F.R. § 10.51(a)(4) (Rev. 4-2008); and (3) in or around May 2011, Respondent knowingly submitted a false Form 2848 to the IRS on behalf of Taxpayer 2 constituting incompetence and disreputable conduct in violation of 31 C.F.R. § 10.51(a)(4) (Rev. 4-2008). See Complaint, ¶¶ 19-26.
ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

3. On or about March 18, 2013, Respondent filed a response to the Complaint. See Respondent's Answer to the Complaint, dated March 18, 2013.
ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

4. On May 10, 2013, Complainant filed a Motion for Summary Adjudication pursuant to 31 C.F.R. § 10.68(a)(2) with respect to all three counts of the Complaint. See Complainant's Motion for Summary Adjudication dated May 10, 2013.
ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

5. By Order dated July 8, 2013, the Honorable Walter J. Brudzinski granted Complainant's Motion for Summary Adjudication with respect to Count 1 of the Complaint, finding that (1) Respondent was a CPA authorized to practice before the IRS; (2) Respondent's license to practice as a CPA was revoked on December 23, 2010; and (3) Respondent's CPA license revocation constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51(a)(10) (Rev. 4-2008). See Order dated July 8, 2013, pp. 8-9.
ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

6. Complainant's Motion for Summary Adjudication was denied with respect to Counts 2 and 3 of the Complaint (concerning Respondent's knowing submission of false Forms 2848 to the IRS), and a decision on those counts, and the issue of appropriate sanction, was reserved for the hearing. Id., pp. 10-11.

ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

7. On July 18, 2013, a hearing in this matter was held pursuant to 31 C.F.R. §§ 10.60 and 10.72, in Boston, Massachusetts. See Tr. at 1-2.

ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

8. At the hearing, Respondent appeared with counsel, John T. Gaffney, Esq., and Complainant was represented by Heather A. Southwell, Esq. Id.

ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

9. In the course of the hearing, OPR called two witnesses: (1) Internal Revenue Agent Adrienne Howley to testify as to the factual basis for Counts 2 and 3 of the Complaint, and (2) Karen L. Hawkins, OPR's Director, to testify in support of OPR's requested sanction of disbarment. See Tr. at 3.

ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

10. Respondent testified on his own behalf at the hearing. Id.

ACCEPTED AND INCORPORATED in the decision but not as a separate Finding of Fact.

B. Respondent's CPA License Revocation and Knowing Submission of Forms 2848 Containing False or Misleading Information to the IRS

11. Prior to December 23, 2010, Respondent was a certified public accountant ("CPA") authorized to practice in the Commonwealth of Massachusetts. See Complainant's Exhibit 1; Complainant's Exhibit 2.

ACCEPTED AND INCORPORATED.

12. Prior to December 23, 2010, Respondent had engaged in practice and had represented taxpayers before the IRS as a CPA. See Complainant's Exhibit 1.

ACCEPTED AND INCORPORATED.

13. On December 23, 2010, the Massachusetts Board of Registration in Public Accountancy revoked Respondent's license to practice as a CPA for a minimum period of five years. See Complainant's Exhibit 2.

ACCEPTED AND INCORPORATED.

14. Respondent's CPA license revocation was based on his 1995 felony conviction in the U.S. District Court for the District of Massachusetts for knowingly making false statements to the government in violation of 18 U.S.C. §1001 and mail fraud in violation of 18 U.S.C. § 1341. See id., p.8.

ACCEPTED AND INCORPORATED.

15. From December 23, 2010 to date, Respondent has not possessed a valid license to practice as a CPA in the Commonwealth of Massachusetts. See Complainant's Exhibit 2, p. 17.

ACCEPTED AND INCORPORATED.

16. Adrienne Howley is employed as an Internal Revenue Agent with the IRS, with a post of duty in Boston, Massachusetts. Tr. at 17:24-25; 18:1-4.

ACCEPTED AND INCORPORATED.

17. Ms. Howley's duties include conducting examinations of individuals and small businesses to determine their federal tax liabilities. Tr. at 18:19-20.

ACCEPTED AND INCORPORATED.

18. On or about May 10, 2011, Ms. Howley contacted Respondent by telephone concerning (b)(3)/26 USC 6103 for which Respondent previously had been designated as the representative. Tr. at 22:12-15; 23:18-24.

ACCEPTED AND INCORPORATED.

19. The purpose of Ms. Howley's call was to determine whether Respondent planned to represent [Taxpayer 1] and [Taxpayer 2], (b)(3)/26 USC 6103

See Tr. at 23:15-24; Complainant's Exhibits 4 and 5.

ACCEPTED AND INCORPORATED.

20. During the May 10, 2011, telephone conversation with Ms. Howley, Respondent stated that he would be representing [Taxpayers 1 and 2] (b)(3)/26 USC 6103. Tr. at 23:18-25.

ACCEPTED AND INCORPORATED.

21. Ms. Howley advised Respondent that if he wanted to represent the [Taxpayers 1 and 2] before the IRS (b)(3)/26 USC 6103, he would need to submit a separate Form 2848 for each taxpayer. See Tr. at 23:18-24.

ACCEPTED AND INCORPORATED.

22. Respondent advised Ms. Howley that he would provide her with the necessary Forms 2848. Tr. at 23:24-25; 67:4-5.

ACCEPTED AND INCORPORATED.

23. A Form 2848 allows a taxpayer to designate a representative to speak directly to and advocate to the IRS on the taxpayer's behalf, and also authorizes a representative to sign documents on a taxpayer's behalf. Tr. at 20:10-19; 20:23-25; 21:1-5; see Complainant's Exhibits 4 and 5.

ACCEPTED AND INCORPORATED.

24. Additionally, a Form 2848 provides verification to the IRS that the taxpayer has consented to the IRS's disclosure of confidential tax information to the named representative. See Tr. at 21:6-13.

ACCEPTED AND INCORPORATED.

25. A Form 2848 is signed under the penalties of perjury by the representative, to attest to certain representations made on the form. See Tr. at 100:10-16; Complainant's Exhibits 4 and 5.

ACCEPTED AND INCORPORATED.

26. Revenue Agent Howley was required to obtain properly-executed Forms 2848 in order to be able to communicate with Respondent concerning [Taxpayers 1 and 2 (b)(3)/26 USC 6103].

Tr. at 79:6-13; see also Tr. 21:6-20.

ACCEPTED AND INCORPORATED.

27. On or about May 31, 2011, Ms. Howley received two Forms 2848 in the mail from Respondent on which he was listed as the designated representative for Taxpayers 1 and 2 (b)(3)/26 USC 6103. See Complainant's Exhibits 4 and 5; Tr. at

27:1-4; 28:8-13.

ACCEPTED AND INCORPORATED.

28. The Forms 2848 bore Respondent's signature and were dated May 20, 2011, approximately 10 days after the date of the telephone conversation described at paragraphs 21 and 22, *infra*.

See Exhibits 4 and 5; Tr. at 24:2-5.

ACCEPTED AND INCORPORATED.

29. The designation on the Forms 2848 Respondent submitted indicated that Respondent was a CPA duly qualified to practice in the Commonwealth of Massachusetts. See Exhibits 4 and 5; Tr. at 24:2-5.

ACCEPTED AND INCORPORATED.

30. At the time Respondent signed and sent the Forms 2848 to Ms. Howley, he was not duly qualified to practice as a CPA in the Commonwealth of Massachusetts. See Complainant's Exhibit 2.

ACCEPTED AND INCORPORATED to the extent that Respondent was not a duly qualified CPA on May 20, 2011.

31. After Ms. Howley received the Forms 2848 from Respondent, she conducted an online search of the Massachusetts Office of Consumer Affairs and Business Regulation, Division of Professional Licensure, consistent with her practice, to determine whether Respondent's CPA license remained valid. See Complainant's Exhibit 3; Tr. at 29:1-7.

ACCEPTED AND INCORPORATED.

32. Ms. Howley's search of the Massachusetts Division of Professional Licensure revealed that Respondent's CPA license had been revoked on December 23, 2010. See Complainant's Exhibit 3; Tr. at 29:1-7.

ACCEPTED AND INCORPORATED.

33. On or about July 1, 2011, Ms. Howley spoke with Respondent via telephone, advised him that she had received the Forms 2848 that he had sent to her, and asked whether he knew that his CPA license had been revoked. Tr. at 36:10-12.

ACCEPTED AND INCORPORATED.

34. During the conversation with Ms. Howley, Respondent acknowledged knowing that his CPA license had been revoked. Tr. at 36:10-12.

ACCEPTED AND INCORPORATED.

35. Respondent stated that he was a CPA (b)(3)/26 USC 6103, prior to the time his Massachusetts CPA license was revoked, and that, as such, his representation of Taxpayers 1 and 2 should not present a problem. See Tr. at 36:3-5.

ACCEPTED AND INCORPORATED.

36. He also stated that he could represent the [Taxpayers 1 and 2] as an unenrolled return preparer because (b)(3)/26 USC 6103. Tr. at 37:1-5.

ACCEPTED AND INCORPORATED to the extent that Respondent told Revenue Agent Howley that he could represent Taxpayers 1 and 2 as a return preparer.

37. Ms. Howley advised Respondent that (b)(3)/26 USC 6103, and, therefore, he could not represent the [Taxpayers 1 and 2] as an unenrolled return preparer. See Tr. at 37:6-7; 38:1-5.

ACCEPTED AND INCORPORATED.

38. Respondent had not indicated on the Forms 2848 that he was seeking to represent the taxpayers as an unenrolled return preparer. See Tr. at 37:9-24; Complainant's Exhibits 4 and 5.

ACCEPTED AND INCORPORATED.

39. Respondent had indicated on the Forms 2848 that he was seeking to represent the taxpayers as a duly-qualified CPA. See Tr. at 37:9-24; Complainant's Exhibits 4 and 5.

ACCEPTED AND INCORPORATED.

40. At no time during his July 1, 2011, telephone conversation with Ms. Howley did Respondent deny sending her the Forms 2848, ask to see the forms, or express surprise that someone other than he had submitted forms bearing his signature to the IRS. Tr. at 39:2-15.

ACCEPTED AND INCORPORATED.

C. OPR's Role in Reviewing and Investigating Reports of Practitioner Misconduct and Pursuing Disciplinary Sanctions

41. Karen L. Hawkins has been employed as the Director of OPR for approximately four and a half years at the time of the hearing. Tr. at 86:11-12.

ACCEPTED AND INCORPORATED.

42. OPR has an independent function within the IRS, which is not directly connected to the IRS's tax enforcement functions under Title 26 of the United States Code (also known as the Internal Revenue Code). Tr. at 82:23-25; 83:1-6.

ACCEPTED AND INCORPORATED.

43. OPR regulates the practice of tax professionals who practice before the IRS by making determinations as to the integrity, character, reputation, qualifications, and competence of those individuals. Tr. at 83:6-15; 101:8-11.

ACCEPTED AND INCORPORATED.

44. These qualities are considered when determining whether a tax practitioner is fit to practice before the IRS. Id.

ACCEPTED AND INCORPORATED.

45. Where Complainant has determined that a tax practitioner is unfit to practice, OPR is responsible for proposing a disciplinary sanction, based on the discipline imposed in previous cases, and the seriousness of the practitioner's misconduct. See Tr. at 84:6-13.

ACCEPTED AND INCORPORATED.

46. The sanctions available to OPR under Circular 230 include private reprimand, public censure, suspension, and disbarment. Tr. at 85:11-20.

ACCEPTED AND INCORPORATED to the extent that Director Hawkins testified as such. The only sanctions available to the undersigned per regulation are censure, suspension, or disbarment. See 31 C.F.R. § 10.50(a).

47. Disbarment is a minimum five-year removal from practice before the IRS, after which period a practitioner may petition the Director of OPR to be reinstated to practice. Tr. at 110:2-14.

ACCEPTED AND INCORPORATED.

Proposed Conclusions of Law

48. Complainant has proved each and every allegation set forth in the Complaint by clear and convincing evidence.

ACCEPTED AND INCORPORATED.

49. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(4) (Rev. 4-2008) when, in or around May of 2011, he knowingly submitted two Forms 2848 containing false and misleading information to the IRS.

ACCEPTED AND INCORPORATED.

50. Respondent engaged in incompetent and disreputable conduct within the meaning of 31 C.F.R. § 10.51(a)(10) (Rev. 4-2008) when, on December 23, 2010, his license to practice as a CPA in the Commonwealth of Massachusetts was revoked for cause. See Order dated July 8, 2013, pp. 8-9.

ACCEPTED AND INCORPORATED.

51. The proper sanction for Respondent's disreputable conduct, as set forth in Counts 1-3 of the Complaint, is disbarment.

ACCEPTED AND INCORPORATED.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Initial Decision and Order upon the following parties and/or entities in this proceeding by methods indicated at the addresses below:

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Done and dated November 8, 2013
New York, New York

/s/ Regina V. Maye
Regina V. Maye, Paralegal Specialist