

United States
Department of the Treasury

Director, Office of Professional
Responsibility, Complainant-Appellee

v.

Complaint No. 2006-2

(b)(3)/26 USC 6103, CPA
Respondent-Appellant

Decision on Appeal

Under the authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in him as Assistant General Counsel of the Treasury who was the Chief Counsel for the Internal Revenue Service, on September 12, 2006, Donald L. Korb delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury in this matter filed under Part 10 of Title 31, Code of Federal Regulations (Rev. 7-2002) ("Practice Before the Internal Revenue Service," sometimes known and hereafter referred to as "Treasury Circular 230"). This is such an appeal by (b)(3)/26 USC 6103, CPA, filed pursuant to Section 10.77 of Treasury Circular 230, challenging a Decision By Default in this matter by Robert A. Giannasi, the Chief Administrative Law Judge of the National Labor Relations Board ("NLRB") sitting under an inter-agency agreement between the Department of the Treasury and the NLRB (the "ALJ") entered on May 8, 2006.

The procedural history of this matter, up to and including the date on which the entry of the Decision By Default by the ALJ on May 8, 2006, is set forth at page 1 of the ALJ's Decision By Default.¹ The ALJ's Findings of Fact and Conclusions of Law are set forth at pages 2 and 3 of the ALJ's Decision By Default. Based on his Findings and Conclusions, the ALJ sustained the charges brought against Respondent-Appellant by the Complainant-Appellee in his Complaint and Amended Complaint and, as Complainant-Appellee requested, suspended Respondent-Appellant from practice before the Internal Revenue Service for a period of three (3) years.

My functions as the Appellate Authority in these proceedings are described in Section 10.78 of Treasury Circular 230. I generally am not to reverse the decision of the ALJ unless the Respondent-Appellant establishes that the decision of the

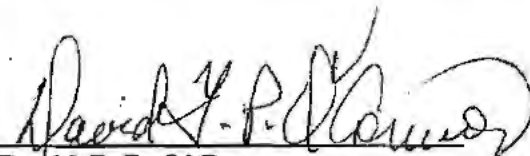
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¹ The ALJ's Decision By Default appears as Attachment A to this Decision on Appeal and is incorporated herein in its entirety. OFFICE OF PROF. RESP.

is clearly erroneous in light of the evidence in the record and applicable law. An exception to this general rule applies when an issue is exclusively a matter of law, where I review such matters *de novo*. I am also authorized, but am not required, to remand this matter to the ALJ if I find unresolved issues raised by the record where I find additional testimony or evidence may be required to resolve that issue. I find no such issues in this matter. Under these standards of review, I AFFIRM each of the ALJ's Findings of Fact and Conclusions of Law. I also AFFIRM the ALJ's Order that Respondent-Appellant be suspended from practice before the Internal Revenue Service for a period of three (3) years after the date of the entry of this Decision on Appeal.²

This Decision on Appeal constitutes FINAL AGENCY ACTION in this matter.


David F. P. O'Connor
Special Counselor to the Senior
Counsel
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Internal Revenue Service
(As Authorized Delegate of
Henry Paulson, Secretary of the
Treasury)

October 19, 2007

Certificate of Service

I hereby certify that the Decision on Appeal in Complaint No. 2006-2 was sent this day by Certified Mail/Return Receipt and by First Class United States Mail to the Addressees listed on the following page:

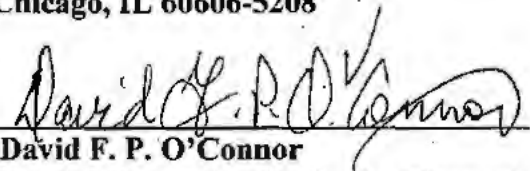
² Respondent-Appellant timely filed his Appeal in this matter. As a consequence, the Decision by Default entered by the ALJ did not become the decision of the agency under Section 10.76(b) of Treasury Circular 230. In the event of a timely appeal of an ALJ's Decision, the agency action only becomes final upon the entry of a Decision on Appeal by the Appellate Authority under Section 10.78 of Treasury Circular 230 (Rev. 7-2002).

The Honorable Robert A. Giannasi
National Labor Relations Board
Division of Judges
Suite 5400, East Wing
1099 – 14th Street, N.W., Washington, D.C.

(b)(3)/26 USC 6103, CPA
Respondent-Appellant
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