



UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

August 25, 2022

PRESS RELEASE

The Chief Judge of the United States Tax Court announced today that the following practitioner has been disciplined by the United States Tax Court for reasons explained in the attached order.

1. Robert C. Barrett, Jr.



United States Tax Court

Washington, DC 20217

In the Matter of

Robert C. Barrett, Jr.,

ORDER OF REPRIMAND

On December 21, 2021, the Court issued an Order to Show Cause to Mr. Barrett affording him the opportunity to show cause, if any, why he should not be suspended or disbarred from practice before this Court, or otherwise disciplined, and to appear at a hearing concerning his proposed discipline if he provided, on or before January 21, 2022, extended by Order to March 7, 2022, written notice by email of his intention to appear at a hearing.

The Court's Order was based upon the following information: while representing the petitioners in *Anselmo v. Commissioner*, Docket No. 13955-20L, Mr. Barrett repeatedly failed to communicate with the Commissioner's counsel, including failing to participate in a scheduled Branerton telephone conference. Mr. Barrett furthermore failed to respond to the Court's orders twice: the first being the Court's September 20, 2021, order for petitioners to file a response to the Commissioner's Motion to Dismiss for Lack of Prosecution, and the second being the Court's October 28, 2021, order for the parties to file a stipulation of facts and proposed trial exhibits. The Commissioner's motion was granted after both Mr. Barrett and the petitioners failed to appear at a hearing scheduled December 6, 2021.¹ Mr. Barrett's failure to appear at the hearing was his third violation of the Court's orders in *Anselmo*.

Following the issuance of the Order to Show Cause, on March 7, 2022, the Court received Mr. Barrett's response. He stated, in writing, his intent to appear at a hearing; requested an additional thirty (30) days to further respond to the Order to Show Cause; and submitted several preliminary documents. Among the submitted documents was a copy of a letter, dated November 1, 2021, and addressed from Mr. Barrett to Commissioner's counsel in *Anselmo*, stating that his clients had decided not to pursue their Tax Court case. The letter shows the proper email address for

¹ This is at least the second instance in which Mr. Barrett's failure to communicate with Commissioner's counsel or respond to the Court's orders led to a dismissal of a petitioner's case. In *Flow v. Commissioner*, Docket No. 15074-16L, Mr. Barrett similarly failed to communicate with Commissioner's counsel, and to respond to the Court's order to file an objection, if any, to the Commissioner's Motion to Dismiss on Grounds of Mootness. Without any response, the Court entered an Order of Dismissal, granting the Commissioner's motion.

Served 8/25/22

Commissioner's counsel, but not the proper mailing address. There was no proof of delivery attached, and Commissioner's counsel represented to the Court at the December 6, 2021, *Anselmo* hearing that Mr. Barrett's last communication was a voicemail left on October 15, 2021.

On March 18, 2022, the Court issued a Supplemental Order to Show Cause giving Mr. Barrett the thirty (30) days he requested to further respond, and scheduling a hearing before the Court on June 15, 2022. Although he confirmed receipt of the Supplemental Order, Mr. Barrett did not submit any further response, failed to appear at the hearing, and as of this date has not contacted the Court.

On further review, this is not the first time Mr. Barrett has faced discipline for his failure to communicate and respond. The Louisiana State Board of CPAs revoked Mr. Barrett's CPA license following a finding that he had violated its Rules of Professional Conduct and the Louisiana Accountancy Act on eleven counts due to his unresponsiveness and failure to cooperate. *Barrett & Barrett, CPAs, APC v. State Bd. Of Certified Public Accts. Of Louisiana*, 2019-CA-0402, 2019 WL 6357895 (La. App. 4 Cir. 11/27/19). The disciplinary sanctions imposed by the Board were upheld in district court and on appeal. In *Wingo, et al., Petitioners v. Dep't of Revenue, Respondent*, 10458C, 2020 WL 772189, at *2 n.1 (La.Bd.Tax.App.), the Board of Tax Appeals of the State of Louisiana addressed in detail Mr. Barrett's pattern of failing to respond and cooperate. In particular, the Board of Tax Appeals (1) found not "credible" Mr. Barrett's claims that he had cooperated with the Louisiana Department of Revenue in the *Wingo* case, *id.* at *3, (2) observed that Mr. Barrett "has had a longstanding practice in many cases [before the Board of Tax Appeals] of missing deadlines and seeking continuances," *id.*, and (3) took judicial notice of Mr. Barrett's unresponsiveness and failure to cooperate that gave rise to the disciplinary sanctions imposed by the Louisiana State Board of CPAs. *Id.* at *2 n. 1.

Mr. Barrett's failure to appear at the June 15, 2022, hearing, or to provide any retraction of his intention to appear at the hearing, represents the most recent instance of a failure to communicate and respond. We find that Mr. Barrett's conduct in the *Anselmo* case violated Rule 3.2: Expediting Litigation of the Model Rules of Professional Conduct of the American Bar Association. See Rule 202(a), Tax Court Rules of Practice and Procedure. In imposing a sanction after a finding of lawyer misconduct, a court should consider (a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. See Rule 201(a), Tax Court Rules of Practice and Procedure; ABA Standards for Imposing Lawyer Sanctions (ABA Standards).

Under the facts of the *Anselmo* case and the instant disciplinary action, the duty violated by Mr. Barrett is his duty to the legal system. Mr. Barrett failed to appear at two hearings and to satisfy his responsibilities under orders of this Court. We do not have direct evidence of Mr. Barrett's mental state, as he failed to appear

at the disciplinary hearing, but the evidence before us does not support finding that he intentionally or knowingly failed to respond to the Court's orders in *Anselmo*. While Mr. Barrett did not apparently cause injury to his clients, who chose to concede their case, he did cause injury to opposing counsel. Mr. Barrett's failure to use the correct address in the November 1, 2021, letter, or to confirm its receipt, led opposing counsel to prepare for a trial which never occurred. Mr. Barrett furthermore caused injury to the Court by taking time and resources for hearings which he failed to attend. We therefore find that a reprimand is appropriate because Mr. Barrett negligently failed to comply with the Court's orders in *Anselmo* and caused injury to opposing counsel. See ABA Standards 6.23. While Mr. Barrett's failure to appear at his disciplinary hearing after confirming receipt of the March 18, 2022, Supplemental Order to Show Cause is an aggravating factor, we do not find that it merits increasing the sanction to a suspension at this time.

Mr. Barret is put on notice, however, that if the Court were to find in the future that his conduct violated one or more of the Model Rules of Professional Conduct of the American Bar Association, the Court's Rules of Practice and Procedure, or otherwise was unacceptable conduct, such conduct would result in a more serious sanction. Upon careful consideration of Mr. Barrett's conduct, response, and lack thereof, it is

ORDERED that the Court's Order to Show Cause issued December 21, 2021, is made absolute in that, under the provisions of Rule 202, Tax Court Rules of Practice and Procedure, Robert C. Barrett, Jr., is hereby reprimanded for his above-described misconduct. This Order, a copy of which will be placed in Mr. Barrett's file at the Court and will be available to the public, shall serve as that reprimand.

By the Court:

Kathleen Kerrigan

Kathleen Kerrigan
Chief Judge