

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LAWRENCE R. OSIWALA &)	
LORRAINE OSIWALA,)	
)	
Petitioners,)	
)	
v.)	Docket No. 12194-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND ORDER OF DISMISSAL AND DECISION

On May 23, 2016, petitioners Lawrence R. Osiwala and Loraine Osiwala filed a timely petition in this Court challenging the IRS’s notice of deficiency as to tax year 2013. The petition was signed by petitioners’ counsel, Scott W. Gross. On July 13, 2016, the IRS filed its answer to the petition.

By notice served April 27, 2017, this case was scheduled to be tried at the Court’s session beginning September 18, 2017, in Detroit, Michigan, and the parties were to exchange exhibits and pretrial memoranda by September 1, 2017. However, on August 15, 2017, the IRS filed a motion to dismiss this case for failure to properly prosecute, alleging that Mr. Gross has been unresponsive and uncooperative in pretrial preparation. The Court immediately attempted to schedule a pretrial telephone conference with the parties, but Mr. Gross did not respond to voice-mail messages.

By order served August 22, 2017, the Court ordered Mr. Gross to immediately telephone the Chambers of the undersigned judge (at 202-521-0850) for the purpose of scheduling a prompt telephone conference. Our August 21 order also directed the Osiwalas to file with the Court and serve on the IRS a response to the IRS’s motion to dismiss, no later than September 5, 2017. The August 21 order were served on Mr. Gross and the Osiwalas. Mr. Gross and the Osiwalas have filed no response.

SERVED Oct 23 2017

On September 7, 2017, the Court issued its order to show cause ordering Mr. Gross to appear at the calendar call on September 18, 2017, in Detroit, Michigan, and show cause why sanctions should not be entered under section 6672(a)(2) and why counsel should not be referred to the Court's Committee on Admissions, Ethics, and Discipline. The Court's September 7 order to show cause also advised the Osiwalas to appear at the trial if they wished to continue to prosecute the case.

On September 18, 2017, this case was called from the calendar at the Court's Detroit, Michigan, trial session. There was no appearance by the Osiwalas or Mr. Gross, at the calendar call--or at any point during the trial session. The IRS appeared and was heard. The Court took under advisement the IRS's motion to dismiss for failure to properly prosecute. As of this date the Court has received no response from Mr. Gross, and the Osiwalas have been nonresponsive despite our orders of August 21, 2017 (requiring them to file a response), and our order September 7, 2017 (advising them to appear at the trial session on September 18, 2017).

The Court has an obligation to conduct its proceedings in a manner that secures the "just, speedy, inexpensive determination of every case." Rule 1(d). A practitioner before this Court is required to carry out his or her practice in accordance with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association. Rule 201(a), Tax Court Rules of Practice and Procedure. Tax Court Rule 202(a)(3) specifically identifies as a ground for discipline any conduct that violates the letter and spirit of the Model Rules. For example, Model Rule 1.1 requires a lawyer to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Model Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Model Rule 3.4(c) prohibits a lawyer from knowingly disobeying court rules and orders.

Mr. Gross's failure to return the Court's phone calls, noncompliance with the Court's orders and rules, and his failure to appear when this case was called from the calendar at the trial session on September 18, 2017, are inconsistent with the obligations imposed upon him pursuant to the Court's Rules of Practice and Procedure and the Model Rules of Professional Conduct of the American Bar association. We shall discharge so much of our order to show cause with respect to sanctions under section 6672(a)(2) and make absolute so much of our order to show cause with respect to referring Mr. Gross to the Court's Committee on Admissions, Ethics, and Discipline.

In view of the foregoing, it is

ORDERED that so much of the Court's order to show cause why sanctions should not be entered under section 6672(a)(2), dated September 7, 2017, is hereby discharged. It is further

ORDERED that so much of the Court's order to show cause why counsel should not be referred to the Court's Committee on Admissions, Ethics, and Discipline, dated September 7, 2017, is hereby made absolute. It is further

ORDERED that the IRS's motion to dismiss for failure to properly prosecute is granted, and this case is dismissed for petitioners' failure to properly prosecute this case. It is further

ORDERED that in addition to regular service, the Clerk of the Court shall serve a copy of this Order and Order of Dismissal and Decision on the Osiwalas at the address as set forth in the Court's order of September 7, 2017. It is further

ORDERED AND DECIDED that there is a deficiency in income tax, an addition to tax, and penalty due from petitioners Lawrence R. Osiwala and Lorraine Osiwala, as set forth in the notice of deficiency dated February 16, 2016, as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Addition to Tax/Penalty</u> <u>Pursuant to I.R.C.</u>	
		<u>§6651(a)(1)</u>	<u>§6651(a)</u>
2013	\$12,769.00	\$2,554.00	\$3,192.00

(Signed) David Gustafson
Judge

ENTERED: **OCT 23 2017**