

**UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY**

DIRECTOR OF PROFESSIONAL)
RESPONSIBILITY,)
)
Complainant,)
)
v.)
)
JOSEPH R. BANISTER,)
)
Respondent.)
_____)

Complaint No. 2003-2

AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Joseph R. Banister, the respondent in the above-captioned matter (“Banister”), by and through counsel of record Robert E. Barnes, hereby answers the Complainant’s Amended Complaint, as follows:

1. Insofar as the Complainant has incorporated all charges set forth in the original complaint filed March 19, 2003, the Respondent, in like manner, denies he ever advised Coleman or Thompson to evade any tax liability, and incorporates all answers and affirmative defenses as set forth in his answer filed April 30, 2003.

2. Answering ¶ I, this answering Respondent admits the allegations contained therein.

3. Answering ¶ II, this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is required. To the extent a response is required, Respondent denies that he engaged in disreputable conduct punishable by disbarment or suspension under 31 C.F.R. § 10.51(f).

4. Answering ¶ II(A), this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is

required. To the extent a response is required, Respondent denies the alleged violation of 26 U.S.C. §§ 1, 6011(a), 6012(a), *et seq.*, 6013 and/or 6072(a).

5. Answering ¶ II(B), this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is required. To the extent a response is required, Respondent denies the alleged violation of 26 U.S.C. §§ 1, 6011(a), 6012(a), *et seq.*, 6013 and/or 6072(a).

6. Answering ¶ II(C), this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is required. To the extent a response is required, Respondent denies the alleged violation of 26 U.S.C. §§ 1, 6011(a), 6012(a), *et seq.*, 6013 and/or 6072(a).

7. Answering ¶ II(D), this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is required. To the extent a response is required, Respondent denies the alleged violation of 26 U.S.C. §§ 1, 6011(a), 6012(a), *et seq.*, 6013 and/or 6072(a).

AFFIRMATIVE AND SPECIAL DEFENSES

8. As and for affirmative and special defenses to the Complaint, this answering Respondent submits the following:

a. The Secretary of the Treasury is estopped from attempting to suspend or disbar the Respondent by the legal effect of his own acts and/or omissions, or the acts and/or omissions of officers, employees, or agents under his control;

b. Prosecution of the instant Amended Complaint violates both Respondent's right against self-incrimination and right to due process of law secured him by the Fifth Amendment to the Constitution of the United States;

c. Prosecution of the instant Amended Complaint violates rights secured to the Respondent by the First Amendment to the Constitution of the United States;

d. The Amended Complaint fails to state a claim upon which relief can be granted as against this answering Respondent;

e. The Amended Complaint and any prosecution of same is barred as impermissible retaliation; and

f. Prosecution of the Amended Complaint violates principles of sound public policy, fundamental fairness, and equity.

WHEREFORE, Respondent Joseph R. Banister respectfully prays for judgment as follows:

A. For a dismissal of the Complaint and Amended Complaint, with prejudice;

B. For his attorney's fees and costs and disbursements of this action; and

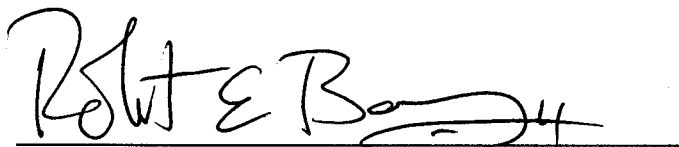
C. For such other and further relief as the Court deems just and equitable.

Respectfully submitted this 29th day of October, 2003.

THE LAW OFFICE OF ROBERT G. BERNHOFT
Attorneys for the Respondent

Note: The statements made in this answer are true and correct and knowing and willful false statement may be punishable under 18 U.S.C. § 1001.

By:



Robert E. Barnes

Wis. State Bar No. 1038252

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that true and correct copies of the foregoing "Amended Answer and Affirmative Defenses" and "Certificate of Service" were served on counsel for the Director of Professional Responsibility, by both courtesy facsimile transmission on this very date and by placing the same in the custody of the United States Postal Service for first class delivery, postage prepaid, on October 29, 2003, addressed as follows:

Jay J. Kessler, Esquire
333 Market Street
Suite 1200
San Francisco, California 94105
(415) 848-4829 facsimile



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