

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

COPY

IN THE MATTER OF:)	CASE NO. 92-4
)	DIA NO. 92DOCAB-3
KENNETH M. ANDREWS)	
)	
CERTIFICATE NO. 1188,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	AND ORDER

A Complaint was filed by William M. Schroeder, Executive Secretary of the Iowa Accountancy Examining Board (hereinafter the Board), and Daryl K. Henze, Board Chair, on May 19, 1992, alleging that Kenneth M. Andrews (hereinafter the Respondent) had violated Iowa Code Sections 116.21(10), as defined by 193A IAC 11.6(1) and 12.4(1)(b), 116.21(5) and 116.21(7) (1991) when he pled guilty to the embezzlement or misapplication of monies belonging to a federally insured savings and loan association.

An Order and Notice of Hearing was issued on July 13, 1992, setting the hearing for this case for August 10, 1992, at 4:00 p.m.

The hearing on the above Complaint was held on August 10, 1992, beginning at 4:35 p.m. in the conference room, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Present were the following members of the Board: Daryl Henze, C.P.A., Board Chair; Paul S. Stave, C.P.A.; John C. Cain, C.P.A.; Dorothy L. Votroubek, A.P.; Donna Brodahl; and Jean E. Kruse. Theresa O'Connell Weeg, Assistant Attorney General, appeared for the State. The Respondent, Kenneth M. Andrews, was present and was represented by his attorney, John D. Hudson. Present also were members of the Board staff, Mrs. Janice Andrews, and a court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was open to the public.

After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code section 21.5(1) "f" to discuss the decision to be rendered in a contested case. The Board directed the administrative law judge to prepare this Decision and Order.

THE RECORD

The record includes the Complaint, the Order and Notice of Hearing, the recorded testimony of the witnesses, and the following exhibits:

State's Exhibit 1: Information, No. CR 91-3014, United States District Court, Northern District of Iowa, Central Division.

State's Exhibit 2: Judgment, No. CR 91-3014

State's Exhibit 3: Letter from Respondent and Attachments

Respondent's Exhibit A: Letter dated August 8, 1992 (Judith Whetstine to Daryl K. Henze)

Respondent's Exhibit B: Presentence Investigation Report, Docket No. CR-91-3014

Respondent's Exhibit C: Letters of Recommendation.

FINDINGS OF FACT

1. On February 3, 1972, the Respondent was issued Iowa CPA certificate number 1188 by the Board.
2. The Respondent was formerly an officer, agent, and employee of Home Federal Savings and Loan of Algona, Iowa. (Testimony of Respondent; Exhibits 1-3, A-C)
3. On June 18, 1991, Respondent was charged with one count of the embezzlement or misapplication of monies belonging to a federally-insured savings and loan association pursuant to Title 18 United States Code, section 657. (Exhibit 1)
4. On March 23, 1992, Respondent pled guilty before the United States District Court for the Northern District of Iowa to the embezzlement or misapplication of moneys belonging to a federally insured savings and loan association. (Exhibit 2)
5. The Respondent cooperated fully with the federal government in their investigation of him and his employers at the Home Federal Savings and Loan. The Respondent admitted his own culpability, which included his personal benefit of \$19,355.00, which he received in the form of debt forgiveness on his personal loans, that had not been approved by the board of directors. The Respondent also supplied key information leading to the guilty pleas of his former employers. As a result of this cooperation, the Assistant United States Attorney requested that the trial court depart below the federal sentencing guideline range which would have required him to serve prison time. This was the only time that the Assistant United States Attorney had ever made such a request. (Testimony of Respondent; Exhibits A and B)
6. On March 30, 1992, Respondent was sentenced by the United States District Court judge to probation for five years, to pay a fine of \$4,000.00 and to make restitution of \$19,355.00. The Respondent made full restitution prior to the date of imposition of the sentence. (Testimony of Respondent; Exhibits 2 and 3)

7. The Respondent continues to receive considerable support from his former employees and co-workers at the Home Federal Savings and Loan and from his community. (Testimony of Respondent; Exhibit C)

CONCLUSIONS OF LAW

1. Iowa Code section 116.21 (1991) provides in relevant part:

116.21 Causes for revocation, suspension, or refusal to renew.

After notice and hearing as provided in section 116.23, the board may revoke or may suspend for a period not to exceed two years, any certificate issued under section 116.5, or any registration granted under section 116.6, or any license issued under section 116.7 or 116.8, or may revoke, suspend, or refuse to renew any permit issued under section 116.20, or may censure the holder of any such permit, for any one or any combination of the following causes:

• • •

5. Conviction of a felony under the laws of any state or of the United States.

• • •

7. Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

• • •

10. Conduct discreditable to the public accounting profession.

2. 193A IAC 11.6(1) provides:

11.6(1) *Acts discreditable*. A CPA or AP shall not commit any act that reflects adversely on their fitness to engage in the practice of public accountancy.

3. 193A IAC 12.4(1) "b" provides:

b. When considering alleged violations of Iowa Code section 116.21(11), the phrase "conduct discreditable to the public accounting profession" shall be construed in light of the following:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional

competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA or AP engaged in such practice certain obligations both to their clients and the public. These obligations include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe, where applicable, generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

Habitual intoxication or addiction to the use of drugs will be considered as not maintaining a high standard of personal or professional conduct.

4. The Respondent was convicted in federal district court of embezzlement or misapplication of monies belonging to a federally-insured savings and loan association, in violation of 18 USC §657, a felony. This constitutes a violation of Iowa Code sections 116.21(5)(7) and (10). Dishonesty is an element of this crime. In addition, conviction of a crime of this nature constitutes conduct discreditable to the public accounting profession, as defined by 193A IAC 11.6(1) and 12.4(1)"b".

ORDER

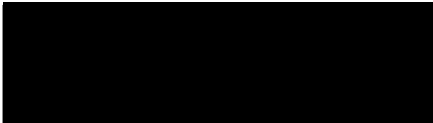
The Board has fully considered the significant mitigating circumstances presented by the Respondent. The Respondent has requested that his certificate be suspended, rather than revoked. The Board would have been willing to consider this, were it not for Iowa Code section 116.21 which limits their authority to suspend to a period of two years. It is not appropriate for a person to hold a valid certificate as a certified public accountant while they remain on federal probation for a felony of this nature. Since the Respondent will remain on probation for a period exceeding two years, the Board is compelled to revoke his certificate. However, the Board does not object to the reinstatement of the Respondent's certificate, following the successful completion of his federal probation.

IT IS HEREBY THE ORDER of the Accountancy Examining Board of the State of Iowa that the certificate of certified public accountant, number 1188, issued to Kenneth M. Andrews, is hereby REVOKED. The Board will not consider an application for issuance of a new certificate until the Respondent has successfully completed his federal probation.

DIA No. 92DOCAB-3

Page 5

Dated this 23 day of September , 1992



Daryl K. Henze, Chairperson
Iowa Accountancy Examining Board

ML/jmm

cc: Theresa O'Connell Weeg
John D. Hudson

In accordance with Iowa Code Section 116.23(10)(1991) anyone adversely affected by an order of the board may obtain a review of that order by filing a written petition for review with the district court within thirty (30) days after entry of the order.