BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF THE
REINSTATEMENT APPLICATION OF:

ROBERT DARRAH

Certificate No. 003544 (Revoked)

Respondent

CASE NUMBER: [illegible]
DIA NUMBER: 10DOCAB003

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On August 6, 1996, the Board filed charges against Robert Darrah based on his conviction in the United States District Court for the Southern District of Iowa of seven felony counts. In September 1996, the parties entered into a Consent Order by which Darrah voluntarily surrendered his CPA certificate. Darrah further agreed, as a part of the Consent Order, that should the Eighth Circuit Court of Appeals affirm one or more of the counts under which he was convicted his CPA certificate would be revoked. On July 14, 1997, the Eighth District Court of Appeals issued its decision affirming Darrah's convictions on all seven counts and his certificate was revoked pursuant to the terms of the Consent Order.

On December 27, 1999, Darrah filed his first Application for Reinstatement. After hearing, the Board issued an order dated June 6, 2000 denying that application. Darrah sought judicial review of the Board's decision and, on May 23, 2001, the Polk County District Court entered a ruling upholding the Board's decision.

Darrah filed a second Application for Reinstatement on September 20, 2010. On October 14, 2010, the Board notified Darrah his application was denied and that he had the right to request a contested case hearing. Darrah contested the denial and, by letter dated October 19, 2010, requested a hearing.

The reinstatement hearing was held on January 20, 2011 in the Board conference room at 1920 S.E. Hulsizer, Ankeny, Iowa. Respondent appeared and was represented by attorney Deborah L. Petersen. The state of Iowa was represented by Assistant Attorney General Pamela Griebel. The following Board members served as the presiding officers for the hearing: Telford A. Lodden, CPA, Chairperson; Carol A. Schuster, CPA; Tommy Thompson, CPA; Donald Timmins, CPA; Marianne Mickelson and Evelyn Rank, Public Members. Kerry Anderson, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings. Respondent elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1). At the close of the hearing, the Board

convened in closed executive session to deliberate pursuant to Iowa Code section 21.5(f).

On February 1, 2011, the parties agreed to supplement the hearing record to add the professional statement of Darrah's attorney, Deborah Petersen, regarding Darrah's preparation of compilations and the State's response thereto. Ms. Petersen's professional statement has been marked as Licensee Exhibit 5. The State's response has been marked as State's Exhibit, pp. 79-80. On February 16, 2011, the Board met again in closed executive session to address the issue of the supplemental evidence and to redeliberate. Thereafter, the Board directed the Administrative Law Judge to prepare this Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the testimony of Respondent, State's Exhibits, pp. 1-78, and Licensee's Exhibits 1-4. Additionally, the Board admitted into the record the parties evidence submitted post-hearing: State's Exhibits, pp. 79-80 and Licensee's Exhibit 5.

FINDINGS OF FACT

1. On August 4, 1980, Robert Darrah was issued Iowa CPA certificate number 3544. On August 27, 1980 Darrah was issued an original permit to practice. (State's Exhibit pp. 62).

2. On March 1, 1996, following a jury trial, Darrah was found guilty in the United States District Court for the Southern District of Iowa of seven felony counts, including four counts of making false statements to a lending institution whose funds were insured by the FDIC, two counts of misapplication of funds and one count of making a false material statement. On July 30, 1996, an amended judgment was entered sentencing Darrah, in part, to forty-six (46) months in prison. (State's Exhibit, pp. 40-46; 60-68).

2. On August 6, 1996, the Board filed a Complaint against Darrah on the basis of the foregoing convictions. Hearing on the Complaint was set for September 17, 1996. (State's Exhibit pp. 48-52).

3. Prior to hearing, Darrah and the Board entered into a Consent Order in which Darrah agreed to voluntarily surrender his CPA certificate. Darrah further agreed that should his conviction on any one of the seven counts be affirmed on appeal, his certificate would be revoked. (State's Exhibit 50-52).

4. On July 14, 1997, the Eighth Circuit Court of Appeals issued its decision affirming Darrah's convictions on all seven counts and his CPA certificate was therefore revoked. (State's Exhibit pp. 53-59).

5. Darrah filed his first Application for Reinstatement on December 27, 1999. Hearing on the application was held on April 25, 2000. On June 6, 2000, the Board issued its Findings of Fact, Conclusions of Law, Decision and Order denying the Application for Reinstatement. In its decision the Board noted:

a. Darrah's convictions involved dishonesty with a client, dishonesty with lending institutions and dishonesty with governmental bodies. The convictions involved activities central to the practice of public accounting such as preparation of tax returns, providing investment advice, handling client funds and submissions to financial institutions and governmental bodies.

b. Darrah was released from federal custody less than three months before the reinstatement hearing and he was subject to federally-supervised release for the next three years during which he was required to comply with numerous personal restrictions.

(State's Exhibit pp. 60-68).

6. Darrah appealed, and the Board's decision denying reinstatement was affirmed by the Polk County District Court. (State's Exhibit, pp. 69-78).

7. On September 20, 2010, Darrah filed a second Application for Reinstatement. On October 14, 2010 the Board issued a letter denying the application and informing Darrah of his right to contest the denial. Darrah filed a letter contesting the decision and requesting a contested case hearing on October 19, 2010. Hearing was held on January 20, 2011. (Licensee's Exh. 2).

8. At hearing Darrah testified that he was sentenced to federal prison for forty-six (46) months. During his incarceration, he assisted inmates with financial problems, gave financial advice to inmates and guards and prepared their tax returns. He also attended law school by correspondence course and was permitted to sit for the California bar exam but did not pass. Darrah was released from prison on August 6, 1999 to a half-way house where he spent an additional six months. On February 1, 2000 Darrah was released from the Bureau of Prisons and commenced what was to be a three year period of supervised release. Darrah was released from supervision two years later on February 20, 2002. (Darrah testimony; Licensee's Exhibit 3; State's Exhibit pp. 64).

9. Darrah also received a fine of $10,000 as part of his sentence, an assessment of $350 for each of the seven counts of which he was convicted and was required to pay $195 each month while under federally supervised release. The fine, assessments and supervised release costs have all been paid. (Darrah testimony; State's Exhibit 40-47).

10. In 2000 Darrah returned to accounting work at Darrah and Company. Along with Darrah, the company presently employs two other accountants (neither of

whom is a certified or licensed public accountant) and six clerical and paraprofessional staff. Darrah reestablished the business by sending letters to former clients. He has not engaged in advertising. Approximately 80% of Darrah and Company's clients were clients prior to Darrah's convictions. The remaining 20% are referrals. The business presently has 770 clients in 30 states. (Darrah testimony).

11. Darrah and Company provides individual and business tax preparation. Additionally, Darrah testified at hearing that the business maintains a "compilation section". According to Darrah's hearing testimony, that section prepares approximately 100 compilations each month for internal use by business and approximately 15 per year that are presented to financial institutions. Those compilations are accompanied by a letter containing a caveat that the information provided has not been independently audited or reviewed. Darrah testified that occasionally he will receive a telephone call from a financial institution to which such a compilation was presented asking for the same to be signed off on by a CPA. Darrah cited this as an inconvenience to his clients which would be avoided by reinstatement of his certificate. (Darrah testimony; Licensee's Exhibit 4).

12. Iowa law prohibits anyone other than a CPA or LPA to render compilation services although a nonlicensee may prepare financial statements and issue nonattest transmittals which do not purport to be in compliance with the statements on standards for accounting and review services.[1] Darrah testified on cross-examination that he was unaware of this provision and that, while most of the compilations he did were for Nebraska clients, he would cease doing any illegal compilations. (Darrah testimony).

13. Subsequent to hearing, Darrah's attorney offered a professional statement that, after reviewing his files, Darrah "has determined he has not prepared any compilations for Iowa matters and has prepared one for a Nebraska client" in the past ten years. (Licensee's Exhibit 5).

14. In 2004, Darrah's citizenship rights were restored. (Licensee's Exhibit 1).

15. When Darrah applied for reinstatement he stated on the application form that his certificate had not been revoked. When asked about this answer, Darrah maintained that he voluntarily surrendered his license. He stated that he has not looked at the Consent Order since signing it and that he considers the terms of the agreement to be legalese. (Licensee's Exhibit 2; Darrah testimony).

16. Darrah testified the decision whether to reinstate his certificate will have no affect on his income. He stated he is not seeking reinstatement for the money. Rather, Darrah testified he seeks reinstatement because it would benefit his clients;

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[1] Iowa Code section 542.13

they would save time and money if they were no longer required to attend IRS audits with him and if he no longer had to have CPAs sign off on his work when an outside financial institution asked for a CPA's review. (Darrah's testimony).

CONCLUSIONS OF LAW

The Iowa Accountancy Examining Board has been created as an entity within the professional licensing and regulation bureau of the banking division of the department of commerce. The Board is charged with administering and enforcing the provisions of Iowa Code chapter 542.[2] Iowa law authorizes the Board to take specific enforcement actions against licensees, including revocation, for, among other reasons, the conviction of a felony.[3] After revocation, the Board may, upon written application, reissue a certificate with or without conditions.[4] The legislature has further authorized the Board to adopt rules providing for the process for filing applications for reinstatement and the grounds upon which they are to be decided.[5]

The Board has promulgated rules which provide, in part, that reinstatement proceedings are subject to the procedures set forth in rules adopted by the professional licensing and regulation bureau.[6] The Bureau's rules require that:

> An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation ... of the respondent's license no longer exists and that is will be in the public interest for the license to be reinstated.... The burden of proof to establish such facts shall be on the respondent.[7]

Additionally, the Board's rules provide that no application for reinstatement will be granted when the initial revocation was based on a criminal conviction unless the applicant shows to the Board's satisfaction that:

> *a.* All terms of the sentencing or other criminal order have been fully satisfied;
> *b.* The applicant has been released from confinement and any applicable probation or parole; and

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[2] Iowa Code section 542.4 (1).
[3] Iowa Code section 542.10 (1) *e.*
[4] Iowa Code section 542.12(1).
[5] Iowa Code section 542.12(2).
[6] 193A IAC 16.5(2), (4).
[7] 193 IAC 7.38(5). *See, also,* Iowa Code section 542.12(2) requiring that the Board's rules provide, at a minimum, that the burden of proof rests with the licensee to produce evidence that the basis for revocation no longer exists and that it will be in the public interest to grant the application with or without conditions.

c. Restitution has been made or is reasonably in the process of being made to any victims of the crime.[8]

The record in this case is clear that Darrah has fully satisfied his sentencing order, has been released from confinement and probation and that no restitution was required of him. However, based on the record, the Board is unable to conclude, by a preponderance of the evidence, that the original basis for the revocation of Darrah's CPA certificate no longer exists or that it is in the public interest for his certificate to be reinstated.

First, the Board is concerned with Darrah's minimization of his crimes. While he testified that he regrets his past actions and has no quarrel with the courts' decisions in his case, he continues to stress that six of the seven counts on which he was convicted dealt with misrepresentations on his personal income tax returns and financial statements rather than on any impropriety in his CPA practice. Darrah implies that the misrepresentation of his personal income to financial institutions and governmental bodies is somehow less serious than dishonesty in his dealings with clients.

Darrah's attitude as to his conviction for misapplying funds belonging to a former client is more disturbing. After a criminal trial, an appeal to the Eighth Circuit, imprisonment and probation, Darrah continues to maintain that the client did, in fact, authorize him to use her money as he did. This amounts to a complete denial of responsibility for the crime for which he was convicted and for which he served time. In addition, Darrah continues to emphasize that the client did not lose money and therefore no restitution was ordered as a part of his criminal sentence.[9] Thus he suggests that even if he was convicted of a crime involving impropriety with a client's funds, it was not a serious matter.

As noted by the Board in its decision denying Darrah's first application for reinstatement, his "convictions involved activities which are central to the practice of public accounting: preparation of tax returns, providing investment advice, handling client funds, and submissions to financial institutions and governmental bodies." (State's Exh., p. 67). Acceptance of full responsibility for improprieties with respect to these functions would assist the Board in concluding that Darrah has been rehabilitated. However, Darrah's continued minimization of his actions and his lack of remorse prohibits the Board from finding that the reasons for the original revocation of his certificate no longer exist.

The Board is further troubled by Darrah's involvement in compilation practice. At hearing he testified his company prepared about 100 compilations monthly for

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[8] 193A IAC 16.5(6).

[9] The State pointed out at hearing that, while the client did receive her money back with interest, this did not occur until the client initiated litigation to recoup the funds. Darrah argues that he did not receive a request for reimbursement by the client until after she had hired an attorney.

internal use and approximately fifteen per year for use by external financial institutions. He admitted he was ignorant of the fact that Iowa law prohibits compilation practice by anyone other than a CPA or LPA. After being informed of Iowa law, Darrah stated that most of the compilations were prepared for Nebraska entities and that he would stop preparing compilations for Iowa clients. Subsequent to the hearing, Darrah's attorney submitted a professional statement that Darrah had reviewed his records for the past ten years and determined he has not prepared any compilations for Iowa matters and only one for a Nebraska client.

Based on the foregoing, the Board finds that Darrah is not properly versed in the law as it applies to his profession in Iowa. Additionally, while at best it must be found that Darrah was mistaken as to his company's involvement in the preparation of compilation statements, at worst it could be argued he was not candid either in his testimony before the Board at hearing or with his attorney after hearing.

Finally, the Board also finds problematic Darrah's insistence that he voluntarily surrendered his license. His continued assertions that he did so even to the Board that revoked his certificate reflects a lack of respect for the facts. Further, Darrah's continued references to the Consent Order he signed providing for revocation of his certificate as nothing but a legal formality reflects a lack of regard for the facts, the law, the profession of a CPA and the Board's authority.

Based on the foregoing, Darrah has failed to demonstrate either that the reasons for the original revocation of his certificate no longer exist or that reinstatement of his certificate is in the public interest. As such, his application must be denied.

ORDER

IT IS THEREFORE ORDERED that the application for reinstatement of a CPA certificate, filed by Robert J. Darrah, is hereby DENIED.

Dated this first day of March, 2011.

Telford A. Lodden, CPA
Chairperson
Iowa Board of Accountancy Examiners

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NOTICE

Judicial review of the board's action may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.