

FILED 5/17/12 (Date)
IA Accountancy Ex Board
[Redacted]
Signature, Executive Officer

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:) Case No. 12-08
)
John L. Henss) ORDER GRANTING HENSS'S
) APPLICATION TO REINSTATE
) REVOKED CPA CERTIFICATE
) WITH CONDITIONS

At its meeting on May 15, 2012, the Board voted to grant John L. Henss's Application to Reinstatement with conditions, as follows:

1. John L. Henss was issued an Iowa CPA Certificate on February 2, 1960.
2. On June 10, 1994, the Board revoked Henss's CPA Certificate by order entered following a contested case proceeding. Mr. Henss sought judicial review in district court. The district court affirmed the Board's revocation order. Mr. Henss withdrew his appeal to the Iowa Supreme Court.
3. This is Mr. Henss's fourth application to reinstate. His three prior applications in 1996, 2003, and 2009 were denied by Board orders following contested case proceedings. The first two orders were upheld by the district court and appellate courts. Mr. Henss did not challenge the last order denying his third application to reinstate.
4. Mr. Henss filed his fourth application to reinstate in February 2012.
5. Many of the allegations in Mr. Henss's application are not germane to the issue before the Board because (a) the time period to challenge the original revocation order has passed as a matter of law, as confirmed by multiple court orders, and (b) Mr. Henss's prior timely challenge to the Board's revocation order was denied by court order. See, *Henss v. Iowa Accountancy Examining Board*, No. 04-1714, 2005 WL 1522016 (Iowa App. 2005), cert. denied, 547 U.S. 109 (2006); *Henss v. Iowa Accountancy Examining Board*, No. 04-1551, 2005 WL 1521918 (Iowa App. 2005), cert. denied, 547 U.S. 1069 (2006); *Henss v. Iowa Accountancy Examining Board*, No. 07-1638, 2008 WL 3368387 (Iowa App. 2008).
6. Additionally, the Board lacks the authority claimed by Mr. Henss to revisit the final order of the Eighth Circuit Court of Appeals in *Martin v. Feilen*, 965 F.2d 660 (8th Cir. 1992), cert. denied, *Henss v. Martin*, 506 U.S. 1054 (1993). Mr. Henss may not collaterally attack this opinion in proceedings before the Board.
7. The only issue before the Board is whether Mr. Henss has demonstrated that it would be in the public interest to grant him a CPA certificate and whether the basis for the revocation order no longer exists. Iowa Code § 542.12(2).

8. In Mr. Henss's prior requests for reinstatement, the Board was unconvinced that he accepted the regulatory authority of the Board, in part because he consistently failed to comply with all terms of the Board's revocation order.

9. Mr. Henss was entitled to challenge the Board's revocation order when entered in 1994. He did timely challenge the order while represented by counsel and the order was upheld in all respects. Mr. Henss is free to believe the Board should not have revoked him. He is not, however, free to disregard the Board's order or the Board's authority under state law and rules.

10. Mr. Henss now asserts that he will comply with the laws and rules governing the practice of public accounting by certified public accountants. After years of delay, he paid the \$1,000 civil penalty in May 2010. The Board has not been provided information for many years that Mr. Henss has used the CPA title following the revocation of his certificate. Mr. Henss has testified and consistently assured the Board he would not engage in any attest services given the length of time he has focused his practice only on those forms of accounting services which may be provided by persons who are not certified or licensed by the Board. Mr. Henss also assures the Board he will comply with the opinion of the Eighth Circuit Court of Appeals, whether or not he agrees with the factual or legal conclusions included in the opinion. Finally, Mr. Henss has identified recent changes in tax preparation laws and regulations that provide additional motivation for him to comply with the Board's order and the laws and rules governing a CPA's tax practice.

11. The Board has considered the factors described in paragraph 10 and has concluded that the public's interest could be served by affording Mr. Henss the opportunity to reinstate his revoked CPA certificate. In addition to the assurances described above, the Board's regulatory authority will apply to Mr. Henss's tax practice if reinstated in ways that are not present when he operates under a power of attorney process.

12. In order to reinstate, Mr. Henss will need to submit the same administrative application that applies to all certificate holders reinstating to active status. He will accordingly need to pay the renewal fee, answer the questions about his criminal and disciplinary history, as applicable, and verify completion of 120 hours of qualifying continuing education in the three year period prior to the date of the application, including the mandatory 4 hours of ethics education. *See*, 193A IAC 10.7(1).

13. Board laws and rules have changed significantly since Mr. Henss last practiced as a certified public accountant. He should carefully review Iowa Code chapter 542 and Board rules. In particular, he will need to familiarize himself with 193A IAC Chapter 13 on Rules of Professional Ethics and Conduct as they apply to all CPAs and specifically to CPAs engaging in a tax practice. He will also need to assure he does not engage in attest services. If he wishes to perform compilations, he will need to secure peer review within 18 months and complete the 8 hours of mandatory education on financial statement presentation. *See*, 193A IAC 6.4, 10.7(1), and 11.3.

IT IS ORDERED:

A. Board staff shall issue Mr. Henss a new certificate as a certified public accountant as soon as he submits a completed application to reinstate to active status which includes verification of qualifying continuing education, payment of the annual fee, and responses that would not otherwise provide a ground to deny the application.

B. Mr. Henss shall not engage in attest services. Once issued a new CPA certificate, he shall comply with all laws and rules applicable to a CPA's practice of public accounting in Iowa.

Issued this 17th day of May, 2012.



Carol A. Schuster, Chair