

FILED April 23 2013 (Date)

A. Acemba ex. Board
Board / Commission

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

Signature, Executive Officer

IN THE MATTER OF:)	Case No. 11-006
)	
Leon Jessen, CPA)	
CPA #R02082)	NOTICE OF HEARING IN A
)	DISCIPLINARY CASE
Respondent)	

The Iowa Real Estate Appraiser Examining Board ("Board") issues this Notice of Hearing pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 542.11. Respondent Leon Jessen is a certified public accountant in Iowa. He was issued Iowa CPA certificate number R02082 on January 22, 1976. His certificate is active and will next expire June 30, 2013. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 542.

**A. TIME, PLACE AND NATURE OF HEARING,
AND HEARING PROCEDURES**

- Hearing.** A disciplinary contested case hearing will be held before the Board on the **11th day of June, 2013 at 10:30 o'clock, a.m.**, at 1920 SE Hulsizer Road, Ankeny, Iowa.
- Answer.** Within 20 days of the date you are served with this Notice you must file an answer to the charges as provided in 193 Iowa Administrative Code 7.9.
- Prehearing Conference.** A prehearing conference will be held by telephone on **May 31, 2013, at 1:30 o'clock, p.m.**, before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Board office of the telephone number at which you or your counsel can be reached. Board rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.
- Presiding Officer.** The full Board shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(1). The Board

may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

5. **Hearing Procedures.** Board rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7, and 193A Iowa Administrative Code chapter 16. You have the right to respond to the charges, produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. **Default.** If you fail to appear at hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

7. **Prosecution.** Licensee disciplinary cases are prosecuted by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Board, with copies mailed to: Assistant Attorney General Pamela Griebel, Iowa Department of Justice, Hoover Building, 2nd Fl., and Des Moines, Iowa, 50319. Phone: 515-281-6403; Fax: 515-281-7551; E-mail: pgriebe@ag.state.ia.us.

8. **Respondent's Counsel.** Copies of all pleadings filed with the Board shall be provided to: Jeffrey A. Boehlert, Patterson Law Firm, LLP, 505 – 5th Avenue, Suite 729, Des Moines, IA 50309 Email: jboehlert@pattersonfirm.com

9. **Settlement.** The procedural rules governing the Board's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General Pamela Griebel.

10. **Communications.** You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Assistant Attorney

General Pamela Griebel, or Toni Bright, the Board's Executive Officer, at 515-281-7468.

B. STATEMENT OF CHARGES AND CIRCUMSTANCES

11. The Board found probable cause to file charges on December 10, 2012.

12. Respondent is a partner in the CPA firm King, Reinsch, Prosser & Co., L.L.P. He was a partner in the CPA firm at all times relevant to this case, including in 2009 and 2010.

13. Respondent is a trustee of the ERISA covered pension plan called "King, Reinsch, Prosser & Co. L.L.P. Roth 401(k) Plan." He was a trustee of this plan during the period between October 2009 and February 2010.

14. In October 2009, one of the employees of the CPA firm who is also a covered member of the pension plan was charged with theft from the firm. In December 2009, the CPA firm sued the former employee in a civil action. The termination of the employee's employment with the CPA firm in August 2009 made her eligible for a plan distribution, either to her or in a rollover to a different plan.

15. Respondent would have been aware when the criminal charges were filed and the civil lawsuit was filed that restitution would be owed to the CPA firm if the employee was convicted of a crime and/or a judgment was entered in the civil lawsuit. Respondent faced a conflict of interest between his fiduciary duties as an ERISA plan trustee and his partnership role in the firm to whom the plan participant likely owed money. Minimally, the dual interests raised the perception of a conflict of interest and lack of objectivity whether or not anyone was damaged by Respondent's actions.

16. The former employee requested a distribution on January 23, 2010. The distribution check was mailed to the firm on January 29, 2010. On or about February 8, 2010, the CPA firm secured an order of attachment and on February 9, 2010, the sheriff acquired the plan distribution check from Respondent to hold until the CPA firm's civil case was concluded.

17. In February 2011, the former employee filed a complaint with the Board alleging

that Respondent had a duty to remove himself as trustee as soon as the conflict became apparent. The Board retained a peer reviewer to secure an expert opinion on the allegations. The peer reviewer concluded, among other things, that Respondent had an improper conflict of interest.

18. The Board charges Respondent with failing to take steps to avoid a conflict of interest between his professional duties as an ERISA plan fiduciary and his actual or apparent self-interest as a partner in the CPA firm to whom the plan participant owed money, in violation of Iowa Code sections 272C.10(3) and 542.10(1)(d), and (j); and 193A Iowa Administrative Code 13.2(3) and 13.3(2)

This Notice of Hearing and Statement of Charges is filed and issued

on the 22nd day of April, 2013.



Toni Bright, Executive Officer
Iowa Accountancy Examining Board
1920 SE Hulsizer Road
Ankeny, Iowa 50021
Phone: 515-281-7468
Fax: 515-281-7411
Toni.Bright@iowa.gov

Copies to:

Assistant Attorney General Pamela Griebel
Respondent
Respondent's counsel
Department of Inspections and Appeals, assigned Administrative Law Judge

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:) Case No. 11-006
)
Leon Jessen, CPA)
CPA #R02082) STATE'S MOTION TO CONTINUE
)
Respondent)

The State moves the Board to continue the prehearing conference set for May 31 and the hearing set for June 11, 2013, as follows:

1. The State has a Signed Consent order that, if acceptable to the Board, will fully resolve all issues in this case.
2. The State recommends the Board agree to the Consent Order.
3. Continuing the prehearing conference and hearing to give the Board the opportunity to consider the Consent Order is in the interests of administrative justice.
4. Respondent's counsel concurs with this request.

WHEREFORE, the State requests that the prehearing conference and hearing be continued until further order of the Board.

Respectfully submitted,
THOMAS J. MILLER
Attorney General of Iowa



PAMELA GRIEBEL
Assistant Attorney General
Administrative Law Division
Hoover Building, 2nd Fl.
Des Moines, Iowa 50319
Telephone: (515) 281-6403
Facsimile: (515) 281-7551
pgriebe@ag.state.ia.us

Copies by email to:
Administrative Law Judge Robert Wheeler: Robert.Wheeler@dia.iowa.gov
Jeffrey Boehlert: jboehlert@pattersonfirm.com

BEFORE THE ACCOUNTANCY EXAMINING BOARD Signature, Executive Officer
OF THE STATE OF IOWA

IN THE MATTER OF:) Case No. 11-006
)
Leon Jessen, CPA)
CPA #R02082,)
)
Respondent.) CONSENT ORDER

The Iowa Accountancy Examining Board (Board) and Leon Jessen, CPA (Respondent) enter into this Consent Order (Order), pursuant to Iowa Code section 17A.10 (2013) and 193 Iowa Administrative Code 7.42:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 542, and 272C (2013).
2. Respondent was issued Iowa CPA certificate number R02082 on January 22, 1976. His certificate is active and will next expire June 30, 2013.
3. The Board charged Respondent with failing to take steps to avoid a conflict of interest between his professional duties as an ERISA plan fiduciary and his actual or apparent self-interest as a partner in the CPA firm to whom the plan participant owed money, in violation of Iowa Code sections 272C.10(3) and 542.10(1)(d), and (j); and 193A Iowa Administrative Code 13.2(3) and 13.3(2).
4. Hearing is set for June 11, 2013.
5. Respondent denies the charges. He specifically denies he breached any fiduciary duties as a trustee or accountant. Respondent asserts he followed the advice of counsel and court orders regarding a distribution request from a former employee who was later convicted of embezzlement from the accounting firm. Rather than proceed to hearing on a disputed matter, the parties agree to this Consent Order.
6. Respondent acknowledges he has a right to a hearing on the charges, but waives his right to hearing and all attendant rights, including judicial review, by freely and voluntarily entering into this Order. Respondent acknowledges he had the opportunity to consult with counsel before agreeing to this Consent Order. This Order is the final agency order in the contested case.
7. Respondent agrees the State's counsel may present this Order to the Board and may have ex parte communications with the Board while presenting it.

8. This Order shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

9. This Order is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (2013).

10. Failure to comply with the provisions of this Order shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2013). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

11. This Order is subject to approval of the Board: (a) If the Board fails to approve this Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter; and (b) If the Board approves this Order, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. The Board reprimands Respondent for failing to take steps to avoid an impermissible conflict of interest.

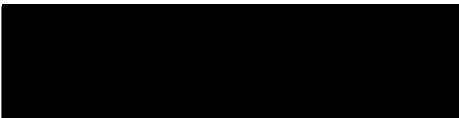
B. Respondent shall pay a civil penalty of \$500 within thirty (30) days of the date this Consent Order is signed by all parties.

C. Respondent shall complete at least 8 hours of continuing education on ethical standard applicable to a CPA's professional services. The education shall be pre-approved by the Board and shall not be used by Respondent in satisfying continuing education requirements for renewal, including the mandatory education in ethics. Respondent shall verify completion of the education no later than November 1, 2013.

AGREED AND ACCEPTED:

The Respondent

The Iowa Accountancy Examining Board


Leon Jessen, CPA


By: Tomroy Thompson, CPA, Chair

Date

5/10/2013

Date

5/14/13

FILED 10/31/13 (Date)
IA Accountancy Ex. Board

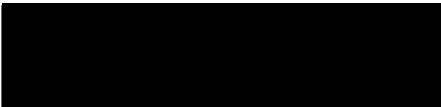
BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

Signature, Executive Officer

IN THE MATTER OF:) Case No. 11-06
)
Leon Jessen, CPA)
CPA #R02082) RELEASE FROM CONSENT ORDER

The Iowa Accountancy Examining Board, having reviewed the records in the above captioned files, finds that Respondent has complied with terms of the consent order and should be released. The Board voted unanimously to release Respondent from Case No. 11-06 on October 30, 2013.

It is therefore ordered that the Respondent is **RELEASED**.



Toni Bright, Executive Officer
Iowa Accountancy Examining Board
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