

BEFORE THE  
ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 89-5
	)	DIA NO. 89DOCPL-5
ROBERT F. POTTS,	)	
Certificate Number 2812,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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A complaint was filed by William M. Schroeder, Executive Director of the Iowa Accountancy Examining Board (hereinafter the Board), and Daryl Henze, Board Chair, on August 7, 1989, alleging that the respondent, Robert F. Potts, had violated Iowa Code and Iowa Administrative Code sections. An Order and Notice of Hearing was issued on August 7, 1989 setting the hearing for this case for September 20, 1989 at 9:00 a.m. at the Highlander Inn (Gold Room), Iowa City, Iowa.

The hearing on the above complaint was held on September 20, 1989 beginning at 9:15 a.m. in the Highlander Inn (Gold Room), Iowa City, Iowa. The following members of the Board were present: Daryl Henze, CPA, Dorothy Votroubek, Accounting Practitioner, Gaylen Halvorson, CPA, Judy Kappmeyer, public member, Julie Bulkeley, public member, John Cain, CPA, and Ken Putzier, CPA. Teresa O'Connell Weeg, Assistant Attorney General, was present and appeared on behalf of the State. The respondent, Robert F. Potts, was not present and was not represented by counsel. The respondent was personally served with the Order and Notice of Hearing and Complaint on August 21, 1989 at 3:11 p.m. by Lieutenant Thomas L. O'Brien, Deputy Sheriff, Bremer County, Iowa. He failed to appear at the hearing, and therefore, pursuant to Iowa Code section 17A.12(3) and 116.23, the hearing proceeded in his absence and the respondent is bound as if he had appeared. Present also were members of the staff of the Board and a court reporter. Amy Christensen Couch, 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 undersigned Administrative Law Judge was directed to prepare this Board's decision and order.

THE RECORD

The evidentiary record in this case includes the complaint, the order and notice of hearing, the return of service showing

service was accomplished on August 21, 1989, the recorded testimony of the witness, and the following exhibits:

- State's Exhibit 1: Note to the Board from Forrest Frost, received April 27, 1989.
- State's Exhibit 2: Certified letter dated April 28, 1989 from the Committee on Ethics and Enforcement to Robert F. Potts.
- State's Exhibit 3: Certified letter dated June 29, 1989 from the Committee on Ethics and Enforcement to Robert F. Potts.

#### FINDINGS OF FACT

1. Robert F. Potts, the respondent, was issued Iowa CPA Certificate Number 2812 by the Board on July 31, 1978. (Board records).

2. William Schroeder is the Executive Secretary of the Iowa Accountancy Examining Board. The Board received a complaint against the respondent, Robert F. Potts, from Forrest Frost. Mr. Frost complained that he wanted his personal tax records, and canceled checks, receipts and tax records concerning West Edge Auto Salvage. He had requested that Mr. Potts return his records to him, but Mr. Potts failed to return those records. (State's Exhibit 1; testimony of Mr. William Schroeder).

3. Mr. Frost sent his request to Mr. Potts for his records on April 4, 1989. A return receipt card shows that Robert F. Potts, CPA, received the formal request on April 4, 1989. State's Exhibit 1; testimony of Mr. Schroeder).

4. The Ethics and Enforcement Committee of the Iowa Accountancy Examining Board sent a letter to Robert F. Potts, the respondent, on April 28, 1989. The Committee stated that it had recently received the complaint from Mr. Frost, and that Mr. Frost had alleged that Mr. Potts had failed to return his personal tax records, and canceled checks, receipts and tax records for his business, West Edge Auto Salvage. The Ethics and Enforcement Committee instructed the respondent to respond in writing to the Committee regarding Mr. Frost's allegations within ten days of receipt of the letter. The return receipt card shows that Mr. Potts received this letter on May 12, 1989. Mr. Potts never responded to this letter from the Ethics and Enforcement Committee. (State's Exhibit 2; testimony of Mr. Schroeder).

5. The Ethics and Enforcement Committee then scheduled an informal discussion with the respondent, Mr. Potts, for August 7, 1989 at 1:00 p.m. The Committee sent a respondent a letter on June 29, 1989 informing Mr. Potts of the informal discussion. The letter further instructed Mr. Potts to acknowledge receipt of

the letter within seven days of his receiving it, and instructed him to advise the Committee as to whether he would attend the informal discussion on August 7, 1989. The letter was sent to Mr. Potts by certified mail. However, this letter was never received by Mr. Potts for the reason that it was unclaimed. (State's Exhibit 3; testimony of Mr. Schroeder).

6. Mr. Potts did not attend the informal discussion as scheduled on August 7, 1989 at 1:00 p.m. As of the day before the hearing, September 19, 1989, Mr. Potts had not contacted the Board office. (Testimony of Mr. Schroeder).

7. Mr. Schroeder, in his capacity as executive secretary of the Board, talked with Mr. Frost after August 7th and before the September 20th hearing. As of the date that Mr. Schroeder talked with Mr. Frost, Mr. Frost had not received his records from Mr. Potts. As of September 20, 1989, Mr. Potts had given no response to the Board. (Testimony of Mr. Schroeder).

#### CONCLUSIONS OF LAW

1. Iowa Code Section 116.21 (1989) states the following: "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: 4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter."

2. 193A Iowa Administrative Code Section 11.5(2) states the following: "Records. A CPA, PA or AP shall furnish to a client or former client, upon request made within a reasonable time after original issuance of the document in question; a. a copy of a tax return of the client, and b. a copy of any report, or other document, issued by the CPA, PA or AP to or for such client, and c. any accounting or other records belonging to, or obtained from or on behalf of, the client which a CPA, PA or AP removed from the client's premises or received for the client's account, but the accountant may make and retain copies of such documents when they form the basis for work done by a CPA, PA or AP and d. a copy of the working papers of the CPA, PA or AP to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client."

3. 193A Iowa Administrative Code Section 11.6(7) provides the following: "Communications. A CPA, PA or AP shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by registered or certified mail."

4. The respondent, Mr. Potts, violated Iowa Code section 116.21 (1989), 193A Iowa Administrative Code sections 11.5(2) and 11.6(7) when he failed to return the personal and business records as requested by Mr. Forrest Frost and when he failed to respond to the Board's Committee on Ethics and Enforcement communications to him.

#### DECISION AND ORDER

The violations by this respondent are serious violations of Board rules and statutes. A failure to return client records as requested is a serious violation of the Board rules. A failure to respond to the Board's requests for information and for him to come to informal discussions are serious violations of Board rules. The respondent has completely ignored the Board's requests to him. A failure by a CPA to return client records is harmful to the public.

It is hereby the ORDER of the Accountancy Examining Board of the State of Iowa that: (1) the respondent is fined in the amount of \$500.00 to be paid to the Board within 30 days of receipt of this decision; (2) the respondent must return the personal and business records to Mr. Frost as requested; and (3) the respondent's CPA certificate number 2812 is hereby suspended until he presents himself to the Board or to the Ethics and Enforcement Committee of the Board to request that the Board lift his suspension. At that time Mr. Potts must provide evidence that he has paid the fine to the Board and that he has returned the records to the client.

Iowa Code Section 116.23(10) (1989) provides that "anyone adversely affected by an order of the Board may review of that order by filing a written petition for review with the district court within 30 days after the entry of the order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the Board be modified or set aside in whole or in part. A copy of the petition shall be immediately served upon any member of the Board and the Board shall then certify and file in the court a transcript of the record upon which the order complained of was entered."

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Dated this 3<sup>rd</sup> day of October, 1989

[REDACTED]

Daryl Henze  
Chairperson  
Iowa Accountancy Examining Board

[REDACTED]

Amy Christensen Couch  
Administrative Law Judge

ACC/jmm

Copies to:

Robert F. Potts  
Teresa O'Connell Weeg  
Iowa Accountancy Examining Board