

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

| | | |
|-----------------------|---|------------------------|
| IN THE MATTER OF: |) | CASE NUMBER: 99-04 |
| |) | DIA NUMBER: 03DOCAB002 |
| RUSSELL J. SCHOENAUER |) | |
| |) | RULING ON RESPONDENT'S |
| RESPONDENT |) | MOTION TO VACATE |
| |) | |
| |) | |

On February 27, 2004, the Accountancy Examining Board for the State of Iowa (Board) issued Findings of Fact, Conclusions of Law, Decision and Order [Default] against Russell J. Schoenauer (Respondent). On March 19, 2004, the Respondent filed a Motion to Vacate. The State filed a Resistance on March 24, 2004, and the Respondent filed a Reply on April 2, 2004. On April 21, 2004, the Board met to consider the pending motion.

A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in a contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. 193 IAC 7.27(3).

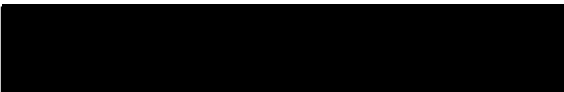
The disciplinary hearing was held on January 30, 2004. The Respondent, who is currently incarcerated in a federal penitentiary, was served with the Statement of Charges and Notice of Hearing on December 23, 2003. He was later served with the state's prehearing conference report on January 16, 2004. The Respondent did not reply to the Notice of Hearing, did not request a continuance, and did not appear for the hearing. Arrangements could have been made for the Respondent to appear by telephone if he had made the appropriate request to prison officials.

In his Motion to Vacate and his Reply, the Respondent asserts that his wife attempted, unsuccessfully, to contact an attorney following receipt of the Notice of Hearing. He concedes that he corresponded with the Assistant Attorney General concerning a proposed consent order prior to the hearing. The Respondent further asserts that the only time he previously tried to "make a telephone call" through his case manager he was told it would

) take a considerable time to investigate and recommended that he find an "alternative way." The Respondent does not state that he ever asked his case manager to facilitate his participation in the Board's hearing by telephone. Moreover, the Respondent never contacted the Board by mail to ask for a continuance or to explain any barriers to his participation in the hearing.

The Respondent has failed to establish that he had good cause for his failure to appear for his hearing. The Board believes that the Respondent could have arranged to participate by telephone and certainly could have asked the Board for a postponement of the hearing to allow arrangements to be made for his participation. He did neither. The Respondent's Motion to Vacate is hereby DENIED.

Dated this 21st day of April, 2004.


Linda Crim Hopkins, CPA
Chairperson
Iowa Accountancy Examining Board

) cc: Russell J. Schoenaur
Prisoner ID 06293-030
c/o Springfield USMCFP
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) Judicial review of the board's action may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.

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| |) | DIA NUMBER: 03DOCAB002 |
| RUSSELL J. SCHOENAUER |) | |
| |) | FINDINGS OF FACT, |
| RESPONDENT |) | CONCLUSIONS OF LAW, |
| |) | DECISION AND ORDER |
| |) | [DEFAULT] |

On December 15, 2003, the Accountancy Examining Board for the State of Iowa (Board) filed a Statement of Charges against Russell J. Schoenauer (Respondent) charging him with conviction of a felony and conduct discreditable to the public accounting profession, in violation of Iowa Code sections 542.10(1)(e) and (i).

The hearing was held on January 30, 2004 at 9:00 a.m. The Respondent did not appear for the hearing and was not represented by counsel. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members served as the presiding officers for the hearing: Linda Crim Hopkins, CPA, Chairperson; Wesley Stille, CPA; Ted Lodden, CPA; Tom Engelman, CPA; Susan Loy, LPA; and Susan Boe, Public Member. Margaret LaMarche, 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.

The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2003). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2003) to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of the witness and State Exhibits 1-3.

FINDINGS OF FACT

1. The Respondent holds an expired certificate as a certified public accountant in the state of Iowa. An expired certificate is subject to reinstatement upon payment of a reinstatement fee and verification of completion of the required continuing education. (Testimony of Glenda Loving)

2. On December 19, 2001, the Respondent was indicted on a wide range of felony counts in the U.S. District Court, Southern District of Iowa, Criminal No. 01-65. The events underlying the criminal charges occurred between January 1999 and April 2001. Following a jury trial, the Respondent was found guilty of the following felonies:

a) One count of conspiracy to knowingly and intentionally distribute controlled substances;

b) Two counts of distributing a mixture or substance containing methamphetamine;

c) Three counts of possessing a firearm by a prohibited person.

(Testimony of Glenda Loving; State Exhibit 2)

3. Judgment was entered on August 26, 2002. The Respondent was sentenced to 210 months in the federal penitentiary and ordered to pay a fine of \$200,000. He is currently incarcerated at a federal penitentiary in Springfield, Missouri, with a release date of March 22, 2017. The Respondent must serve four years of supervised release after leaving the penitentiary. (Testimony of Glenda Loving; State Exhibit 2)

4. The Statement of Charges and Notice of Hearing were personally served on the Respondent by the sheriff on December 23, 2003. The Respondent could have made arrangements with his caseworker at the penitentiary to participate in the hearing by telephone but failed to do so. (Testimony of Glenda Loving; State Exhibit 1)

CONCLUSIONS OF LAW

Failure To Appear

The notice of hearing to commence a contested case may be served by personal service as in civil actions not less than thirty

days prior to the date of the hearing. Iowa Code section 542.11; 193 IAC 7.6(2).

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of a party. 193 IAC 7.27(1).

The Respondent was properly served with the Statement of Charges and Notice of Hearing on December 23, 2003 but failed to appear for hearing or to make arrangements for a telephone appearance. The Board was authorized to proceed with the hearing in his absence.

The Violations

Iowa Code section 542.10 provides, in relevant part:

542.10 Enforcement against a holder of a certificate, permit, or license.

1. After notice and hearing pursuant to section 542.11, the board may revoke, suspend for a period of time not to exceed two years, or refuse to renew a license; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative penalty not to exceed one thousand dollars per violation; or place any licensee on probation; all with or without terms, conditions, and in combination of remedies, for any one or more of the following reasons:

...

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

...

i. Conduct discreditable to the public accounting profession.

193A IAC 13.6(1) provides:

13.6(1) Acts discreditable. A CPA or LPA shall not commit any act that reflects adversely on the CPA's or LPA's fitness to engage in the practice of public accountancy. The board may consider discipline by any other agency or jurisdiction when determining probable cause to take action against a CPA or LPA for acts discreditable.

193A IAC 13.2(1) provides, in relevant part:

13.2(1) The rules of professional conduct which follow rest upon the premise that 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 inherent in the authorized use of a legally restricted title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional conduct are intended to enforce when necessary, include the obligation...to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

The preponderance of the evidence established that the Respondent has violated both Iowa Code section 542.10(e) and (i) when he was convicted of multiple federal drug and gun related felonies. At a minimum, the public expects CPAs to be law abiding and to show respect for the law. The Respondent's felony convictions and his participation in a lengthy conspiracy with Sons of Silence gang members to distribute drugs reflects adversely on his fitness to engage in the practice of public accounting and constitutes acts discreditable to the profession.

DECISION AND ORDER

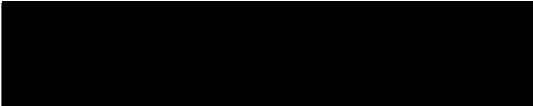
IT IS THEREFORE ORDERED that the certificate as a certified public accountant issued to Russell J. Schoenauer is hereby REVOKED. The Respondent is required to comply with the requirements of 193 IAC 7.30(3) and 193A IAC 5.6.

IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty of one thousand dollars (\$1,000), within thirty (30) days of the issuance of this decision of the Board.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41(1), that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. In addition, the Respondent shall pay all applicable costs of the transcript, if one is ordered, the costs of the court reporter, and any witness fees or expenses incurred by the state of Iowa. An itemization

) of these costs has been attached to this Decision and Order and are also payable within thirty (30) days.

Dated this 27th day of February, 2004.


Linda Crim Hopkins, CPA
Chairperson
Iowa Accountancy Examining Board

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) 193 IAC 7.27(3) provides that default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 7.32 (17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in a contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

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