

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF	)	
JAMES M. SIMMONS	)	SETTLEMENT AGREEMENT
CERTIFICATE NO. 7488	)	AND ORDER
RESPONDENT	)	CASE NO. 93-37

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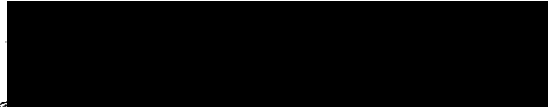
COMES NOW the Iowa Accountancy Examining Board (Board) and James M. Simmons (Respondent), pursuant to Iowa Code section 272C.3(4)(1993), and hereby stipulate as follows:

1. Respondent was issued Iowa CPA certificate number 7488 on February 1, 1991.
2. The Board filed a complaint against the Respondent on even day herewith.
3. In order to resolve this matter without proceeding to hearing, Respondent agrees to voluntarily surrender Iowa CPA certificate number 7488. That certificate is attached hereto.
4. In the event the Respondent applies for reinstatement of his CPA certificate, a personal appearance before the Board on that application will be required. Respondent may apply for reinstatement pursuant to 193A-IAC §12.16.
5. The Board retains complete discretion in ruling on any application for reinstatement. The Board may deny the application and specify a date before which a new reinstatement application may not be filed, grant the application, or grant the application with restrictions on the nature or scope of practice. The Board shall comply with 193A-IAC § 12.16 in the event an application for reinstatement is filed.
6. The Board's acceptance of Respondent's voluntary surrender of his CPA certificate constitutes disciplinary action.

12/14/94  
DATE

  
James M. Simmons  
Respondent

1/21/95  
DATE

  
John C. Cain, Chair  
Iowa Accountancy Examining Board

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NUMBER: 93-37
	)	DIA NUMBER: 97DOCAB-3
	)	
JAMES M. SIMMONS	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
CERTIFICATE NO. 7488	)	DECISION AND ORDER
RESPONDENT	)	

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On January 21, 1995, the Iowa Accountancy Examining Board (Board) accepted the voluntary surrender of certificate of certified public accountant, certificate number 7488, issued to James M. Simmons (Respondent). The Respondent filed an Application for Reinstatement on September 24, 1997, and a hearing was scheduled for December 4, 1997.

The hearing on reinstatement was held on December 4, 1997 at 10:00 a.m. in the Board conference room at 1918 S.E. Hulsizer, Ankeny, Iowa. The following members of the Board were present for the hearing: David A. Vaudt, CPA, Chairperson; John M. Sklenar, CPA; Linda Crim Hopkins, CPA; Ronald E. Neilsen, CPA; Dorothy L. Votroubek, AP; Dorothy R. Dunphy and Mary Ackerman, Public Members. The Respondent appeared and was not represented by counsel. The state was represented by Pamela Griebel, Assistant Attorney General. Margaret LaMarche, Administrative Law Judge from the Department of Inspections and Appeals, presided. The hearing was recorded by a certified court reporter. The Respondent elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(1997), to deliberate its decision. The Board directed the Administrative Law Judge to prepare this Decision and Order, in accordance with their deliberations.

THE RECORD

The record includes the Notice of Hearing, the testimony of the witness, and the following exhibits:

- State Exhibit A: Application for Reinstatement with attached Renewal Form
- State Exhibit B: Notice of Hearing
- State Exhibit C: Restricted, certified return receipt

State Exhibit D: Settlement Agreement and Order (accepted 1/21/95) with attached charges

State Exhibit E: Trial Information (5/12/93)

State Exhibit F: Order (5/3/94), with attached Plea Agreement

State Exhibit G: Judgment Entries-Counts I, IV, VI, and VII

State Exhibit H: Order Dismissing Counts II, III, and V

State Exhibit I: Letter from County Attorney, 4/4/94

#### FINDINGS OF FACT

1. On February 1, 1991 the Respondent was issued Iowa CPA certificate number 7488. (State Exhibit D)
2. On May 21, 1993 the Respondent was charged in a seven count trial information in Dickinson County District Court. The charges included Possession of a Schedule I Controlled Substance-Marijuana (serious misdemeanor); Possession of Marijuana without a Drug Tax Stamp (Class D Felony); Possession With Intent To Manufacture (Class D Felony); Assault With Intent To Inflict Serious Injury (Aggravated Misdemeanor); and Attempting to Elude a Pursuing Law Enforcement Officer (serious misdemeanor). (State Exhibit E)
3. The Respondent entered into a plea agreement. Pursuant to the terms of the plea agreement, the Respondent pled guilty to Possession of a Schedule I Controlled Substance-Marijuana (serious misdemeanor); an amended count of Assault Without Intent to Inflict Serious Injury (serious misdemeanor); and Attempting to Elude a Pursuing Law Enforcement Officer (serious misdemeanor). The remaining counts were dismissed. (State Exhibits F, H)
4. On February 11, 1994, judgment was entered on three counts. The Respondent was sentenced to a term of 180 days in jail, with all but 150 days suspended, and placed on probation for a period of one year or until he fully abided by all the terms of the Judgment Entry. He was fined \$250.00 and ordered to pay surcharges and court costs. The Respondent was also ordered to undergo a substance abuse evaluation at A.D.T.U. and follow the recommendations proposed. (Testimony of Respondent; State Exhibit G)
5. On January 21, 1995, the Board approved a Settlement Agreement with the Respondent which accepted the Respondent's voluntary surrender of his Iowa CPA certificate. The Settlement Agreement and Order stipulated that if the Respondent filed an application

for reinstatement, he would be required to personally appear before the Board, and the Board would retain complete discretion in ruling on the application. (State Exhibit D)

6. Since he surrendered his CPA certificate, the Respondent has been self employed, performing bookkeeping and tax preparation services for his clients. He wishes to become an enrolled agent with the Internal Revenue Service, but is unable to do so while his certificate is surrendered. The Respondent has never had a permit and does not intend to seek a permit to practice as a certified public accountant. The Respondent has voluntarily maintained his continuing education. (Testimony of Respondent; State Exhibit A)

7. The Respondent testified that he has paid the fines ordered by the court and has served the jail sentence. The Respondent underwent the substance abuse evaluation as required. The evaluator recommended that the Respondent complete ninety (90) days of inpatient chemical dependency treatment at a state facility. The Respondent did not comply with this recommendation because he would be unable to continue his business while in inpatient treatment. According to the Respondent, both he and his probation officer felt that his problem was not serious enough to require ninety days of inpatient treatment. The Respondent did not pursue any alternatives to inpatient treatment. According to the Respondent's testimony, he was discharged from probation in 1995. (Testimony of Respondent)

8. The Respondent testified that he has not used illegal substances since his guilty plea. The Respondent continues to use alcohol and describes his alcohol consumption as weekly. The Respondent has several clients who own bars. In the Respondent's opinion, his alcohol consumption does not impair his ability to practice accounting. (Testimony of Respondent)

#### CONCLUSIONS OF LAW

1. 193A IAC 12.16 provides, in relevant part:

**193A-12.16(272C,542C) Reinstatement.** Any person whose certificate,...has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation...

...  
**12.16(3)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it 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.

2. The Board agrees that the Respondent's simple misdemeanor convictions should not permanently disqualify him from holding an Iowa CPA certificate. However, the Board has two concerns which must be satisfactorily addressed by the Respondent before the Board can conclude that the reason for the surrender of his license no longer exists.

First, the sentencing court required the Respondent to follow the recommendations resulting from his chemical dependency evaluation. The evaluator recommended that the Respondent complete ninety (90) days of inpatient chemical dependency treatment, and the Respondent failed to do so. In addition, the Respondent did not pursue any alternative treatment, such as outpatient treatment and/or attendance at Alcoholics Anonymous (AA). The Respondent continues to use alcohol, but maintains that it does not impair his ability to practice his profession. Based on the record before it, the Board is unable to rely solely on the Respondent's verbal assurance that he does not have a chemical dependency.

Second, the Respondent testified that the requirement of treatment was waived by his probation officer and the court and that he was discharged from probation. However, the Respondent did not present the Board with any documentation of his discharge from probation.

The Board concludes that if the above listed concerns are adequately addressed by the Respondent, then it would be in the public interest for his license to be reinstated.

ORDER

IT IS THEREFORE ORDERED, that within thirty (30) days of receipt of the Board's final order, the Respondent shall:


- 1) Provide the Board with documentation that he has been discharged from his probation with the Dickinson County Court; and
- 2) Submit to a chemical dependency evaluation, at his own expense. If any treatment is recommended by the evaluator, the Respondent must comply with the recommendations for treatment made by the evaluator or must propose treatment alternatives which the evaluator agrees are acceptable. The Respondent must provide the Board with documentation of the evaluation and treatment, if any.

When the above conditions are met, the Respondent's Iowa CPA certificate, Certificate No. 7488, will be REINSTATED.

DIA No. 97DOCAB-3

Page 5

Dated this <sup>7A</sup>10<sup>th</sup> day of December, 1997.

  
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David A. Vaudt, CPA  
Chairperson  
Iowa Board of Accountancy Examiners

cc: Pamela Griebel  
Assistant Attorney General  
Hoover Building  
(LOCAL)

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