

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF)	CASE NUMBER: 95-07
)	
BRENDA K. WESTVOLD)	DIA NUMBER: 96DOCAB-2
)	
CERTIFICATE NO. R2931)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On January 16, 1996, the Iowa Accountancy Examining Board (Board) filed a Complaint against Brenda K. Westvold (Respondent) charging her with four counts. The first count alleged that the Respondent had violated Iowa Code sections 542C.21(4) and 542C.21(10) (1995) and 193A IAC 11.5(2) and 11.6(1) when she failed to return four former clients' records and or tax records. The second count alleged that the Respondent violated Iowa Code sections 542C.21(2), (4), (6), and (10) (1995) and 193A IAC 11.2(1), (3), 11.4(1), 11.5(2), and 11.6(1) when she provided the Board with copies of letters which she stated she had sent to her former partner and clients, but which had not been sent. The third count alleged that the Respondent had violated 193A IAC 6.3(2) when she failed to notify the Board of an address change and the change of her business connection. The fourth count alleged that the Respondent had violated 193A IAC 11.6(7) when she failed to respond to a Board certified letter within 30 days of receipt.

An Order and Notice of Hearing set a hearing date of March 16, 1996.

The hearing was held on Saturday, March 16, 1996 at 11:00 a.m., 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; Thomas Erpelding, CPA; Paul S. Stave, CPA; Dorothy L. Votroubek, AP; and Dorothy Dunphy, Public Member. The Respondent appeared and was not represented by counsel. The state was represented by Heather Adams, 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 an open 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) (1995), 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 Complaint, Order and Notice of Hearing, the testimony of the witnesses, and the following exhibits:

- State Exhibit A: Complaint and Accompanying Documentation
- State Exhibit B: Letter dated 3/9/95 (Schroeder to Respondent)
- State Exhibit C: Letter dated 4/28/95 (Schroeder to Respondent)
- State Exhibit D: Letter dated 6/30/95 (Schroeder to Respondent)
- State Exhibit E: Letter and accompanying documents, received 8/3/95 (Respondent to Schroeder)
- State Exhibit F: Letter dated 10/24/95 (Mathias to Board)
- State Exhibit G: Letter dated 11/8/95 (Osborn to Board)
- State Exhibit H: Letter dated 11/19/95 (Respondent to Radiology Associates)
- State Exhibit I: Letter dated 11/19/95 (Respondent to Traxler)
- State Exhibit J: Letter dated 11/19/95 (Respondent to Person)
- State Exhibit K: Letter dated 11/20/95 (Respondent to Meyer)

FINDINGS OF FACT

1. On August 10, 1993, the Respondent was issued Iowa CPA certificate number R2931 by the Board. CPA certificate number R2931 is currently in good standing. (Board file)

2. The Respondent was a partner in a professional corporation in Ottumwa, Iowa until December 1993. In January 1994 she left the professional corporation and began working as a sole practitioner. She continued as a sole practitioner in Ottumwa until September or October 1994, when she accepted a position with another certified public accounting firm in West Des Moines, Iowa. The Respondent commuted to West Des Moines until March 1995, when she sold her house in Ottumwa and moved. (Testimony of Respondent)

3. On March 8, 1995 the Board received a written complaint and accompanying documentation from former clients of the Respondent in Ottumwa, Iowa. The complaint stated that the Respondent had stopped providing services to the clients in October 1994, without notice. After several attempts to obtain their files, including a registered letter which was sent to the Respondent by the clients' new CPA, the clients received some files in February 1995. The Respondent told the clients that her former partner had the other files. The clients contacted the former partner who told them that the files were missing, and he did not have them. As of March 1995, the Respondent continued to hold the client's files for the latter part of 1991 and all of 1992. The client called and wrote her at both her office in West Des Moines and her home and told her that they would file a complaint with the Board if she did not provide their records. The Respondent did not reply. (Testimony of Roger Murphy; State Exhibit A)

4. On March 9, 1995 the Board sent a certified letter to the Respondent, informing her of the clients' complaint. The letter warned the Respondent that failure to comply with a client or former client's request for copies of records is a violation of Board rule. The Board requested an explanation from the Respondent within ten days. A second certified letter was sent on March 29, 1995. The Respondent did not reply to either letter. (Testimony of Roger Murphy; State Exhibits B, C)

5. An informal discussion was scheduled with the Ethics Committee of the Board for June 23, 1995. The Respondent was provided notice of the meeting and did attend. On June 30, 1995 the Ethics Committee sent a follow-up letter to the Respondent by certified mail. The Ethics Committee made several informal recommendations. Specifically, the Committee asked the Respondent to submit a letter listing her new employer and address and explaining her failure to notify the Board of the change or to respond to a Board communication. In addition, the Committee recommended that the Respondent obtain written confirmation from her clients and former partner that they have been provided all records and reports requested. The Respondent was asked to provide the Committee with a copy of each confirmation. (Testimony of Roger Murphy; State Exhibits C, D)

6. On August 3, 1995 the Board received a reply from the Respondent. The Respondent supplied the name of her new employer and her new address in West Des Moines, Iowa. She stated that her failure to notify the Board was an oversight on her part, for not being aware of the required notification. The Respondent further stated that she immediately contacted her former clients after receiving the Board's letter to assure them that she could provide the information they needed. The Respondent enclosed copies of letters she had mailed to the former clients and her former partner requesting confirmation that she had provided all of the records or

reports that she has. The Respondent further stated that when she received confirmation from them she would forward it to the Board. The Board has never received written confirmation from the Respondent. (Testimony of Roger Murphy; State Exhibit E)

7. On October 24, 1995, the Board received a letter from the Respondent's former partner in Ottumwa, stating that four clients had been harmed by the Respondent's actions. These clients were two couples and the businesses which they owned. The former partner listed numerous tax returns, records, and work papers that had been requested from the Respondent, but had not been received. On November 9, 1995 the Board received a letter conveying similar information from an attorney who had been retained by one of the couples. (Testimony of Roger Murphy; State Exhibits F, G)

8. The Board's investigator called the Respondent on November 14, 1995. He told her that the Ethics Committee would want some assurance before their next meeting, the following week, that she had returned all requested records and files. She said that she would take care of it that weekend. The investigator spoke to the Respondent the following Tuesday, and she said that she had obtained the information and had sent it, along with cover letters, to the clients. He asked her to fax him copies of her cover letters, and she did. (Testimony of Roger Murphy; State Exhibits H-K)

9. On December 15, 1995 the Board's investigator contacted the four clients to whom the cover letters were addressed to confirm that they had received all of the requested records and files. None of the four had ever received the cover letter or the documents. (Testimony of Roger Murphy)

10. At the hearing, the Respondent testified that she had the packets made up for each client with the requested records and the cover letter. She could not explain why the clients had not received them, unless she forgot to put them in the mail. The Respondent never found the packets after that date. The Board did not find the Respondent's explanation to be credible. The Respondent testified that when she was told that none of the clients had received the information or the cover letter, she made duplicates and mailed them to the clients. The Respondent did not provide copies of the letters or documents, nor did she provide any confirmation of receipt from the clients. (Testimony of Respondent)

CONCLUSIONS OF LAW

1. Iowa Code section 542C.21(2), (4), (6) and (10) (1995) provide:

After notice and hearing as provided in section 542C.23, the board may revoke or may suspend for a period not to

exceed two years, a certificate issued under section 542C.5 or a license issued under section 542C.7 or 542C.8, or may revoke, suspend or refuse to renew a permit issued under section 542C.20, or may censure the holder of a permit, for any one or any combination of the following causes:

...
2. Dishonesty, fraud, or gross negligence in the practice of public accounting.

...
4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter.

...
6. Engaging in any activity prohibited under section 542C.3 or permitting persons associated with the holder who are under the holder's supervision to do so.

...
10. Conduct discreditable to the public accounting profession.

2. Iowa Code section 542C.3(4)(b)(1995) authorizes the Board to adopt rules of professional conduct appropriate to establishing and maintaining high standards of integrity and dignity in the practice as a certified public accountant or accounting practitioner and relating to actions discreditable to the practice as a certified public accountant or accounting practitioner.

3. 193 IAC chapter 11 contains the rules of professional conduct which have been promulgated by the Board. They provide, in relevant part:

11.2(1) The rules of professional conduct which follow rest upon the premises 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 which inheres 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 where necessary, include the obligation to ...maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

...
11.2(3) The rules of professional conduct are intended to have application to all kinds of professional service performed in the practice of public accountancy, including tax and management advisory services, and to

apply to all CPA's and AP's, whether or not engaged in the practice of public accountancy except where the wording of a rule clearly indicates that the applicability is more limited.

...

11.4(1) Competence. A CPA or AP shall not undertake any engagement for the performance of professional service which the accountant or accountant's firm cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with subrules 11.4(2) and 11.4(3).

...

11.5(2) Records. A CPA 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 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 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 of work done by a CPA or AP, and
- d. A copy of the working papers of the CPA 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.

11.6(1) Acts discreditable. A CPA or AP shall not commit any act that reflects adversely on their fitness to engage in the practice of public accountancy.

...

11.6(7) Communications. A CPA 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. 193A IAC 6.3(2) requires all CPA's and AP's to notify the Board within 30 days of any change of address or business connection.

Count I

The preponderance of the evidence established that the Respondent failed to return records and tax records to at least four former

clients, in violation of Iowa Code section 542C.21(4) and (10) and 193A IAC 11.5(2) and 11.6(1).

The Respondent repeatedly failed to respond to requests from former clients, her former partner, and the Board to release records and tax records to the former clients. This failure directly violates 193A IAC 11.5(2) which requires her to provide such records within a reasonable time. Moreover, such failure to provide records constitutes conduct discreditable to the profession, in violation of Iowa Code section 542C.21(10) and 193A IAC 11.6(1). Given the time of year when these records were initially requested, and the clients' need to prepare tax returns, every effort should have been made to promptly comply with the records request to avoid any inconvenience or harm to the client. By her own admission, the Respondent did not fully comply with these requests until at least six months later, after many requests had been made by the clients, their representatives, and the Board. Indeed, the Respondent still has not provided documentation that the records have been provided to the former clients.

Count II

The preponderance of the evidence established that the Respondent provided the Board with copies of letters that she claimed to have sent to her former partner and clients, but which, in fact, she did not send. This misrepresentation to the Board violates Iowa Code section 542C.21(2), in that it constitutes dishonesty in the practice of public accounting. The Board did not believe the Respondent's explanation that she must have inadvertently forgotten to mail the cover letters and the requested records. She claims that she never found the packets which she had prepared to mail. This explanation is not credible when the Respondent had just been warned by the Board's investigator about the importance of her immediate compliance with the records request.

In addition, such dishonesty is also conduct discreditable to the accounting profession, in violation of Iowa Code section 542C.21(4), (6), and (10) and 193A IAC 11.6(1). This dishonesty also constitutes a failure to maintain high standards of personal conduct in all matters affecting the fitness to practice public accountancy, in violation of 193A IAC 11.2(1).

Count III

The preponderance of the evidence established that the Respondent failed to notify the Board of her address change and the change of her business connection, within 30 days, in violation of Iowa Code section 193A IAC 6.3(2). The Respondent admitted this violation.

Count IV

The preponderance of the evidence established that the Respondent failed to respond to a Board certified letter within 30 days of receipt, in violation of 193A IAC 11.6(7). The Board sent two certified letters, on March 9, 1995 and on March 29, 1995, but the Respondent did not respond to these letters.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the permit to practice as a certified public accountant, issued to Brenda Westvold, is hereby SUSPENDED, for a minimum period of one year. Pursuant to 193A IAC 12.12(3), the Respondent has an affirmative duty to provide written notification of this suspension to her clients within 15 days and to provide proof of such notification to the Board.

IT IS FURTHER ORDERED, that the Respondent shall pay a civil penalty of \$500.00, within thirty (30) days of receipt of this decision and order.

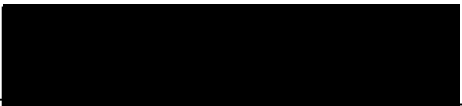
IT IS FURTHER ORDERED, that the Respondent shall provide proof (e.g. copy of business letterhead, business card, etc.) that she is not holding herself out to the public as a certified public accountant while her permit is suspended. Although the Board is not suspending the Respondent's certificate, in order to ensure that the Respondent does not use her certificate to hold herself out as a certified public accountant, the Respondent shall submit her certificate to the Board office for safekeeping during the period of her permit suspension. The Respondent will remain obligated to timely renew her certificate and pay her renewal fees.

IT IS FURTHER ORDERED, that an application for reinstatement of the permit may not be filed until:

- 1) One year has elapsed from the effective date of this order, and
- 2) The Respondent submits proof that she has taken a six hour continuing education course in ethics, in addition to any other continuing education she is required to obtain for renewal, and
- 3) The Respondent provides proof that she has returned all requested documents to all former clients who have complained or documentation of her attempts to obtain such proof.

In addition, the Respondent must comply with the procedure for reinstatement outlined at 193A IAC 12.16. If an application for reinstatement is granted, the Respondent will be required to submit proof of the required number of continuing education hours prior to reinstatement.

Dated this *29th* day of *March*, 1996.



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

cc: Heather Adams
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.