

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2015), 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, State's Prehearing Conference Report, testimony of Robert J. Darrah, State Exhibits 1-19 and Respondent Exhibits A-H.

FINDINGS OF FACT

Professional Background

In the years prior to receiving his CPA certificate, Respondent served in the United States Marine Corps, and he was employed by the Iowa Highway Patrol for seventeen years. In 1975, the Respondent graduated from the University of Nebraska-Omaha and became employed by a CPA firm as an accountant. On August 4, 1980, the Respondent was issued Iowa CPA certificate number 3544. On August 27, 1980, the Respondent was issued an original permit to practice. (Respondent testimony; Respondent Exhibit B; State Exhibits 17, 19)

Respondent became the president and a shareholder in Darrah & Company, P.C., a certified public accounting firm. Respondent was the managing partner for Darrah & Company, P.C. Respondent had five partners, all of whom were CPAs. Respondent's public accounting practice included audits, financial advice, personal and corporate tax services, and compilations and reviews. Respondent estimates that Darrah & Company had 1400-1800 clients while he was its managing partner. (Respondent testimony; State Exhibit 17)

Federal Criminal Charges, Convictions, and Incarceration

In 1989, Respondent received a "target letter" from the Federal Bureau of Investigation (FBI). He reports that the FBI investigated his businesses "top to bottom" from 1989-1995. (Respondent testimony)

On November 14, 1995, Respondent was indicted on 18 counts in the United States

District Court for the Southern District of Iowa. On March 1, 1996, Respondent was found guilty of the following seven (7) felony counts following a jury trial. These convictions included:

- a. Four (4) counts of false statements to lending institutions whose funds were insured by the Federal Deposit Insurance Corporation (FDIC), for the purpose of influencing the actions of the lending institutions upon a commitment, loan and change and extension thereof, by deferment of action or otherwise, in violation of 18 U.S.C. 1014. These counts had alleged that Respondent submitted and caused to be submitted a false and fictitious copy of the Federal Income Tax Return for himself and his spouse for the calendar year 1989 to three different banks and a false and fictitious copy of the Federal Income Tax Return for himself and his spouse for the calendar year 1992 to another bank.
- b. One (1) count of misapplication of funds, in violation of 18 U.S.C. 656. This count had alleged that Respondent knowingly and willfully misapplied the sum of approximately \$300,000.00 of the monies, funds, and assets entrusted to the care and custody of Peoples National Bank by transferring and causing to be transferred \$300,000.00 from an IRA account held in the name of [DS] to issue a cashier's check payable to Missouri Valley Financial Services, Inc. without the knowledge and consent of the account holder, [DS].
- c. One (1) count of misapplication of bank funds, in violation of 18 U.S.C. 1957. This count alleged that Respondent caused to be issued, transferred, exchanged and deposited, a check in the amount of \$255,579.28, made payable to "Northwest Bank D.M." and issued on an account held in the name of Missouri Valley Financial Services, Inc., for payment of interest and principal on the Missouri Valley Financial Services, Inc., bank stock loan at Norwest Bank Iowa, N.A., such check having been derived from a specified unlawful activity, i.e. the willful misapplication of bank funds.
- d. One (1) count of false material statement, in violation of 18 U.S.C. 1001. This count alleged that Respondent knowingly and willfully made and caused to be made a false, fraudulent and material statement to the Federal Reserve Bank (FRB) when he did sign and cause to be submitted to the FRB a FR Y-6 Annual Report for Missouri Valley Financial Services, Inc., as of December 31, 1991, which he knew to be false in that it listed \$300,000.00 of capital contributed

by shareholders as an addition to the additional paid in capital account, which related to a transaction occurring in 1990, which in truth and in fact represented debt of Missouri Valley Financial Services, Inc. which was not disclosed on said annual report.

On July 30, 1996, the United States District Court entered a corrected sentencing order, which required Respondent to serve a 46 month prison sentence and 3 years of supervised release. Respondent was also required to pay a fine of \$10,000. No restitution was ordered by the court. DS retained an attorney and had recovered the \$300,000 from her IRA account plus ten percent interest. Respondent appealed his convictions to the United States Court of Appeals for the Eighth Circuit. (State Exhibits 13, 14, 16, 17, 19)

Respondent was incarcerated at the federal penitentiary in Yankton, South Dakota from October 1, 1996 until August 6, 1999, when he was released to a halfway house in Council Bluffs, Iowa. On November 4, 1999, Respondent was released from the halfway house to home confinement. On February 1, 2000, Respondent was released from the Bureau of Prisons and commenced a three year period of supervised release. On September 20, 2004, Governor Vilsack restored Respondent's Rights of Citizenship, including voting and qualification to hold public office. The restoration did not include rights with respect to firearms. (Respondent testimony; Respondent Exhibits A, D; State Exhibits 17, 19)

Revocation of Respondent's CPA Certificate

On August 4, 1996, the Board filed a Complaint charging Respondent with being convicted of a crime involving dishonesty, in violation of Iowa Code section 542C.21(5) and (7)(1995). In September 1996, the Board and Respondent entered into a Consent Order. Pursuant to its terms, Respondent agreed to voluntarily surrender his CPA certificate and further agreed that his CPA certificate would be revoked if the Eighth Circuit Court of Appeals affirmed one or more of his convictions. (State Exhibit 15)

On July 14, 1997, the Eighth Circuit affirmed the district court judgment in its entirety in *United States v. Darrah*, 119 F.3rd 1322 (8th Cir. 1997). The Eighth Circuit concluded that there was sufficient evidence to support all seven convictions. After the Eighth Circuit affirmed the convictions, Respondent's CPA certificate was revoked, pursuant to the express terms of the Consent Order. (State Exhibits 15, 16, 17, 19)

At the time of the voluntary surrender of Respondent's CPA certificate and at the time of its revocation, Board rules required any licensee whose license had been voluntarily surrendered or revoked to provide written notification to all clients within 15 days of receipt of the Board's final order. The licensee was required to file copies of these notices with the Board within 30 days of the receipt of the Board's final order. (State Exhibits 11, 12)

Respondent has never submitted copies of any written notification that was sent to his clients notifying them of the voluntary surrender and/or revocation of his CPA certificate. At hearing, Respondent testified that his clients were informed of the actions taken against his CPA certificate. Respondent testified that his cases were well publicized. Respondent further testified that 2-3 weeks after he surrendered his CPA certificate, he and his partners invited all of the firm's clients and their spouses to a dinner. Respondent testified that the dinner was videotaped and his testimony implied that the surrender of his CPA certificate was addressed in statements that he and his partners made at the meeting. Respondent did not submit the videotape as evidence at hearing but testified that he could make the videotape available to the Board. Respondent testified that any written correspondence to the clients was kept by his former partners and he thought that his former partners "probably got rid of" the correspondence. (Respondent testimony)

Respondent's Employment/Activities Following Incarceration

Respondent resumed his accounting practice with Darrah and Company following his release from prison in 1999. Respondent reports that he currently has approximately 1100 clients, including 200-300 corporations. Respondent's accounting services for his clients include "in-house" compilations and personal, corporate, partnership, and LLC tax returns. Respondent employs two other accountants, but he does not have any CPAs on his staff. (Respondent testimony; Respondent Exhibit B)

Respondent's compilation practice was previously addressed during the January 20, 2011 hearing on his second application for reinstatement and in the Board's March 1, 2011 decision denying that application. At that time, Respondent reported that his company was preparing about 100 compilations monthly for internal use and approximately 15 per year for external financial institutions. The Board expressed concern at that time about Respondent's compilation practice and about Respondent's

admission that he did not know that Iowa law prohibits compilation practice by anyone other than a CPA or an LPA.¹ The Board also had concerns about whether Respondent was being candid about his compilation practice. (State Exhibit 19)

On June 7, 2011, the National Association of Tax Professionals (NATCP) certified that Respondent had completed the NATP's Instructor Certification Program. (Respondent Exhibit G) Respondent reports that he has taught ethics and other tax-related courses to accountants, lawyers and CPAs in Iowa, Nebraska, and Illinois. (State Exhibit 5; Respondent testimony)

On December 27, 2011, Respondent achieved a passing score on the Internal Revenue Service (IRS) Registered Tax Return Preparer competency test. (Respondent Exhibit E) On March 9, 2012, the IRS certified that Respondent had completed the requirements necessary to become an IRS Registered Tax Return Preparer. (Respondent Exhibit H)

The Board requires 120 hours of continuing professional education (CPE) within the three years immediately preceding an application to reinstate a CPA certificate, including at least 4 hours in ethics and 8 hours in financial statement presentation. Respondent provided the Board a list of the continuing education that he has completed since 2013. In 2013, Respondent completed 38 hours of tax-related continuing education and 2 hours of ethics. In 2014, Respondent completed 42 hours of tax-related continuing education and 4 hours of ethics. In 2015, Respondent completed 49 hours of tax-related continuing education. (Respondent testimony; Respondent Exhibit A)

Respondent testified that he believes that it is in the public interest for his CPA certificate to be reinstated because some of his clients incur added expenses when they require CPA services that he is unable to provide and because there is a shortage of CPAs in the Council Bluffs area. Respondent is seeking reinstatement of his CPA certificate so that he can (1) represent his clients before the IRS and (2) provide clients with "external" compilations. Respondent testified that he currently only provides "internal" compilations. When asked by the Board to elaborate on what he meant by "internal" compilations, Respondent stated that his clients bring in information monthly and they compile it for the client so that the information is available when they prepare the tax returns. Respondent testified that he is not preparing or issuing any financial statements for the clients. Respondent testified that he does not plan to

¹ See Iowa Code section 542.13(1)(2009, 2011, 2015); 193A IAC 13.7.

perform any audits if his certificate is reinstated. (Respondent testimony)

CONCLUSIONS OF LAW

Iowa Code section 542.12 provides, in relevant part:

542.12 Reinstatement.

1. In any case in which the board has suspended, revoked, or restricted a license, refused to renew a license, or accepted the voluntary surrender of a license to conclude a pending disciplinary investigation or action, the board may, upon written application, modify or terminate the suspension, reissue the license, or modify or remove the restriction with or without terms and conditions.

2. The board is vested with discretionary authority to specify by rule the manner in which such applications shall be made, the times within which they shall be made, the circumstances in which a hearing will be held, and the grounds upon which such applications will be decided. The rules shall provide at a minimum that the burden is on the licensee to produce evidence that the basis for revocation, suspension, restriction, refusal to renew, or voluntary surrender no longer exists and that it will be in the public interest for the board to grant the application on such terms and conditions as the board deems desirable.

193A IAC 16.5 provides, in relevant part:

193A-16.5(272C,542) Reinstatement.

16.5(1) The term "reinstatement" as used in this rule and in rule 193-7.38(17A,272C) shall include...the issuance of a new license following the revocation or voluntary surrender of a license.

...

16.5(3) If the applicable order did not establish terms upon which the licensee may apply for reinstatement, an initial application for reinstatement may not be made until one year has elapsed from the date of the order which revoked,... or accepted a voluntary surrender.

16.5(4) All proceedings for reinstatement shall be initiated by the respondent and shall be subject to the procedures set forth in 193-7.38(17A,272C). In addition, the board may grant an applicant's request to

appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

16.5(5) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193A-16.3 (272C,542).

16.5(6) The board shall not grant an application for reinstatement when the initial order which revoked...or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

a. All terms of the sentencing or other criminal order have been fully satisfied.

b. The applicant has been released from confinement and any applicable probation or parole; and

c. Restitution has been made or is reasonably in the process of being made to any victims of the crime.

Pursuant to 193 IAC 7.38(5) provides that a reinstatement application shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with rule 7.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent.

193 IAC 7.30(3) currently provides:

7.30(3) *Notification of clients.* Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following a hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's

final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

This same notification requirement was in effect when the Board accepted the voluntary surrender of Respondent's CPA certificate on September 17, 1996 and when Respondent's CPA certificate was deemed revoked following the final decision from the Eighth Circuit Court of Appeals. At that time, the provision was found at 193A IAC 12.12(3). (Department Exhibits 11, 12)

The preponderance of the evidence presented at hearing failed to establish that the basis for the revocation of the Respondent's CPA certificate no longer exists or that it is in the public interest for his certificate to be reinstated. In reaching this conclusion, the Board gave great weight to the very serious nature of the violations that led to the revocation of Respondent's CPA certificate. Respondent was convicted of seven felony counts that involved dishonesty with a client, dishonesty with lending institutions, and dishonesty with governmental bodies. Respondent's convictions involved activities which are central to the practice of public accounting: preparation of tax returns, providing investment advice, handling client funds, and submissions to financial institutions and governmental bodies. See Iowa Code section 542.3(23)(practice of public accounting defined).

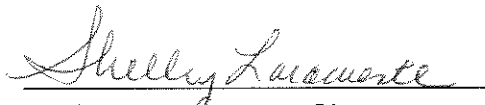
As provided in the Board's rules, the authorized use of a legally restricted title relating to the practice of public accounting imposes on persons engaged in such practice certain obligations to both their clients and the public. These obligations stem from the reliance placed on CPA's by the public in general and by the business community in particular and include the requirement that CPA's "maintain high standards of personal conduct in professional activities in whatever capacity performed." 193A IAC 13.3(1). Respondent's actions egregiously violated the trust placed in him by members of the public, by financial institutions, and by the government. His actions may have diminished public confidence in the integrity of the accounting profession. Given the extremely serious nature of the Respondent's criminal convictions and violations, he bears a heavy burden to establish that he has been sufficiently rehabilitated so that he can resume the practice of public accounting without posing a risk to the public and the business community. The burden is even greater to demonstrate that it is in the public interest for his certificate to be reinstated.

Respondent's presentation at hearing failed to persuade the Board that anything has changed significantly since his second request for reinstatement was denied or that it is in the public interest for his certificate to be reinstated at this time. Based on his testimony at hearing, the Board continues to have concerns about whether Respondent understands what compilation services are and whether he is providing compilation services to clients in Iowa. Moreover, Respondent has never fully acknowledged the harm that he caused to the public and to the CPA profession nor has he shown any sincere remorse for his actions. CPAs must be trustworthy individuals who abide by high ethical standards. Based on this record, the Board was unable to conclude that the Respondent should be issued a new CPA certificate.

ORDER

IT IS THEREFORE ORDERED that the reinstatement application filed by Robert J. Darrah on December 1, 2015 is hereby DENIED.

Dated this 27 day of June, 2016.



Shelley Laracuente, Chair
Iowa Board of Accountancy Examiners

cc: Ryann A. Glenn, 215 South Main Street, Suite 301, PO Box 893, Council Bluffs,
Iowa 51502-0893 (CERTIFIED)

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An aggrieved or adversely affected party can appeal a final decision of the Board by filing a petition for judicial review with the district court, in accordance with Iowa Code section 17A.19.