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STATE OF WISCONSIN
BEFORE THE ACCOUNTING EXAMINING BOARD

IN THE MATTER OF THE
DISCIPLINARY PROCEEDINGS AGAINST

DANIEL J. BIWAN AND
BIWAN & ASSOCIATES, LTD. CPA'S,
RESPONDENTS.

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FINAL DECISION AND ORDER

Order 0000 778

Division of Enforcement Case File No. 08 ACC 013

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Daniel J. Biwan
P.O. Box 981
Minocqua, WI 54548

Biwan & Associates, Ltd. CPA's
P.O. Box 981
Minocqua, WI 54548

Wisconsin Accounting Examining Board
P.O. Box 8935
Madison, WI 53707-8935

Wisconsin Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Accounting Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Daniel J. Biwan is licensed in the state of Wisconsin as a Certified Public Accountant (CPA), having license number 1-14135. This license was first granted to Mr. Biwan on October 1, 1993 and it expired on December 14, 2009. The license was renewed on July 27, 2010 and is current through December 14, 2011.

2. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Mr. Biwan is P.O. Box 981, Minocqua, WI 54548.
3. Respondent Biwan & Associates, Ltd. CPA's (Biwan & Associates) is licensed in the state of Wisconsin as an accounting firm, having license number 3-982. This license was first granted to Biwan & Associates, Ltd. CPA's on May 10, 2004 and it expired on December 14, 2007. The license was renewed on November 2, 2010 and is current through December 14, 2011.
4. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Biwan & Associates, Ltd. CPA's is P.O. Box 981, Minocqua, WI 54548.
5. On or about May 23, 2008, the Department received a complaint alleging that Daniel J. Biwan had failed to cooperate with the American Institute of Certified Public Accountants (AICPA) Peer Review Board. A Division of Enforcement case was subsequently opened for investigation.
6. The Department's investigation revealed that Biwan & Associates is a sole proprietorship and that Mr. Biwan is the sole CPA in Biwan & Associates (even though the name of the company, "Biwan & Associates, Ltd. CPA's" implies that there is more than one CPA in the company).
7. The Department's investigation further revealed that on December 20, 2007, Biwan & Associates was terminated from the AICPA Peer Review Program for failure to cooperate with the Peer Review Board regarding the firm's failure to acknowledge its agreement to take corrective or monitoring actions as a result of Biwan & Associates' most recent peer review. Biwan & Associates failed to complete the peer review process.
8. On or about November 17, 2009, Mr. Biwan and Biwan & Associates completed the required peer review with no adverse findings.
9. Mr. Biwan submitted a written response to the Department, dated April 22, 2009; in that letter, he stated, "I have only 5 clients that I prepare compiled statements for." On May 7, 2009, a Department investigator placed a telephone call to Biwan & Associates in Minocqua, Wisconsin at (715) 356-5214 and spoke with Mr. Biwan. Mr. Biwan admitted that he was the only CPA in the firm.
10. On April 5, 2010, a Department investigator placed a telephone call to Biwan & Associates in Minocqua, Wisconsin at (715) 356-5214. A woman answered the phone saying, "Biwan & Associates." The investigator identified herself and asked to speak with Mr. Biwan. The woman told the investigator that Mr. Biwan was on the phone, but that she would have him return the investigator's call. The investigator provided the woman with her direct Department phone number and office hours. Mr. Biwan did not return the investigator's call.
11. The Department's investigation further revealed that, as of January 14, 2011, Biwan & Associates, Ltd., CPA's was listed with the Wisconsin Department of Financial Institutions as a firm with the Entity ID number B04284. The Registered Agent is listed as

Daniel J. Biwan, 321 Front Street, P.O. Box 981, Minocqua, WI 54548, and the Principal Office is listed as the same address.

12. The Department sent Mr. Biwan correspondence, by first class mail dated April 14, 2010, to his most recent address on file with the Department, P.O. Box 981, Minocqua, WI 54548. This correspondence included a requested response date of April 28, 2010. Mr. Biwan did not respond by April 28, 2010 or after that date.

13. The Department sent Mr. Biwan correspondence, by first class mail dated April 22, 2010, to his most recent address on file with the Department, P.O. Box 981, Minocqua, WI 54548. This correspondence included a requested response date of May 6, 2010. Mr. Biwan did not respond by May 6, 2010 or after that date.

14. The Department sent Mr. Biwan correspondence, by certified mail dated May 27, 2010, to his most recent address on file with the Department, P.O. Box 981, Minocqua, WI 54548. This correspondence included a requested response date of June 10, 2010. The certified mail card was returned to the Department as signed by his secretary, K.N., with a date of delivery of June 3, 2010. Mr. Biwan did not respond by June 10, 2010 or after that date.

15. On July 28, 2010, Mr. Biwan was certified for delinquent taxes by the Wisconsin Department of Revenue (DOR).

16. Mr. Biwan submitted an application dated August 12, 2010 to renew the accounting firm license of Biwan & Associates; the license was renewed on August 24, 2010, but the license was subsequently returned to expired status on August 25, 2010 due to the DOR hold for Mr. Biwan's delinquent taxes.

17. Daniel J. Biwan affixed his signature as the designated CPA for the August 12, 2010 renewal application for Biwan & Associates. The final paragraph above the signature line of the renewal application states,

I further certify that I have authority to complete this form on behalf of the firm and that the information on this application for a firm license is **true and complete. I understand if I provide false information on this form, my certificate as a certified public accountant may be revoked or suspended.** I further agree to provide, upon request from the Accounting Examining Board or the Department of Regulation and Licensing, a complete list of firm members and persons having a financial interest or hold voting rights in the firm. (Emphasis added.)

Under Section B of the renewal application, Mr. Biwan checked box (1b) certifying that "[t]he firm has not undergone a peer review approved by the board because the firm has not offered or performed an attest service within the 3-year period preceding the application for renewal."

18. On August 27, 2010, the Department's Enforcement attorney assigned to this matter placed a telephone call to Biwan & Associates in Minocqua, Wisconsin at (715) 356-5214

and spoke with Mr. Biwan notifying him that he provided false information on the license renewal application for Biwan & Associates.

A. The Department attorney reminded Mr. Biwan that in his letter to the Department dated April 22, 2009, he admitted that he performed compilations for at least 5 clients, and that on May 7, 2009 he admitted to the Department Investigator that he performed compilations. However, on the August 12, 2010 license renewal application for Biwan & Associates, he checked the box certifying that the firm had not undergone a peer review within the 3-year period preceding the renewal application because the firm did not provide attest services, when in fact, the required peer review was completed on or about November 17, 2009, with no adverse findings.

B. Mr. Biwan replied, admitting to the Department attorney that he did not realize that compilations were attest services. Mr. Biwan asserted that he would never have checked the box that he did not perform attest services had he realized compilations were attest services.

19. On November 2, 2010, DOR submitted an Occupational License Clearance Certificate to the Department as notification that Mr. Biwan was no longer liable for delinquent taxes. The Department renewed the accounting firm's license on that same date.

20. The Department's investigation revealed that Daniel J. Biwan held himself out to the public as a licensed certified public accountant during the months of December 15, 2009 through July 26, 2010, while his license was in expired status.

21. The Department's investigation revealed that Biwan & Associates held itself out to the public as a licensed accounting firm during the months of December 15, 2007 through November 1, 2010, while its license was in expired status.

22. In resolution of this matter, Respondents Daniel J. Biwan and Biwan & Associates, Ltd. CPA's consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Accounting Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 442.12, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By practicing under a firm name which is misleading as to the type of organization, as described in Findings of Fact paragraph 6, Daniel J. Biwan and Biwan & Associates have violated Wis. Admin Code § Accy 1.405(1).

3. By practicing under a business firm name or designation that is misleading as to the number of individuals with an equity in the firm, as described in Findings of Fact paragraph 6, Daniel J. Biwan and Biwan & Associates have violated Wis. Admin Code § Accy 1.405(2), which states, in part,

...No person or firm engaged in practice as a certified public accountant may use a business name or designation that is misleading as to the number of individuals with an equity in the firm. A sole proprietor may not use a name implying multiple ownership

such as "& Co." or "& Company" or "& Associates," or "Firm" or "Associates" or "Company"...

4. By the conduct described in Findings of Fact paragraph 7, Biwan & Associates failed to complete a timely AICPA peer review as required in Wis. Stat. § 442.087(2), which constitutes a violation of Wis. Admin. Code. § Accy 9.02(1).

5. By the conduct described in Findings of Fact paragraph 14, Daniel J. Biwan failed to respond to communications from the board within 30 days of the mailing of such communications by registered or certified mail, which conduct is contrary to Wis. Admin. Code § Accy 1.407.

6. By the conduct described in Findings of Fact paragraph 18, Daniel J. Biwan and Biwan & Associates, Ltd. CPA's have violated Wis. Admin. Code. § Accy 1.102 by knowingly misrepresenting facts to the Department when Mr. Biwan provided false information on the license renewal application form for Biwan & Associates.

7. By the conduct described in Findings of Fact paragraph 21, Daniel J. Biwan has violated Wis. Stat. § 442.03 by unlawfully practicing in this state as a certified public accountant without a valid license, for a period of less than one year. According to Wis. Stat. § 442.02(1m), "A person shall be considered to be in practice as a certified public accountant, within the meaning and intent of this chapter, if any of the following conditions is met: ... (dm) The person provides or offers to provide an attest service."

8. By the conduct described in Findings of Fact paragraph 22, Biwan & Associates has violated Wis. Stat. § 442.03 by unlawfully practicing in this state as a certified public accounting firm without a valid license, for a period of nearly three years.

9. Therefore, Daniel J. Biwan is subject to discipline pursuant to Wis. Stat. § 442.12(1)(b), (c) and (e).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Daniel J. Biwan (number 1-14135) to practice as a certified public accountant in the state of Wisconsin and the license of Biwan & Associates, Ltd. CPA's (number 3-982) to practice as an accounting firm in Wisconsin are hereby **SUSPENDED** for a period of two (2) months, commencing on the effective date of this Order. Respondents Daniel J. Biwan and Biwan & Associates, Ltd. CPA's shall submit all indicia of licensure to the Department Monitor within fifteen (15) days of the effective date of this Order, to be returned upon completion of the term of this suspension.

2. Daniel J. Biwan and Biwan & Associates, Ltd. CPA's shall not practice or attempt to practice as a certified public accountant or as a certified public accounting firm in the State of Wisconsin during the suspension period.

IT IS FURTHER ORDERED that:

3. The license of Biwan & Associates, Ltd. CPA's (number 3-982) to practice as a certified public accounting firm shall be and is hereby LIMITED as follows:

a. Respondent Biwan & Associates, Ltd. CPA's (or any successor organization) shall not practice or advertise under any name that holds itself out to the public as an accounting firm with more than one member who is a certified public accountant.

b. Respondent Biwan & Associates, Ltd. CPA's is specifically prohibited from using or containing the designation "CPA's" or "Associates," or the title "Certified Public Accountants" or any name that represents to the public that the Respondent has more than one certified public accountant. Respondent Biwan & Associates, Ltd. CPA's shall hereby change the name of the accounting firm to a name which represents to the public that the firm contains an individually certified public accountant, so long as Daniel J. Biwan's license is in good standing.

c. This limitation shall indefinitely remain in effect unless or until Respondent accounting firm has more than one licensed certified public accountant.

IT IS FURTHER ORDERED that:

4. The license of Daniel J. Biwan (number 1-14135) to practice as a certified public accountant shall be and is hereby LIMITED as follows:

a. Respondent Daniel J. Biwan shall take and successfully complete the take-home ethics portion of the CPA examination within six (6) months of the effective date of this Order.

b. Daniel J. Biwan shall submit proof of successful completion of the take-home examination to the address stated below. The examination completed pursuant to this requirement shall not be used to satisfy any accounting continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED THAT:

5. Respondent Biwan & Associates, Ltd. CPA's shall, within ninety (90) days of the date of this order, pay COSTS in this matter in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a SUMMARY SUSPENSION of Respondents' licenses. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent Biwan & Associates, Ltd. CPA's fails to timely submit payment of the costs, or Respondent Daniel J. Biwan fails to successfully complete the take-home ethics portion of the CPA examination, or Respondent Daniel J. Biwan fails to submit evidence of the completion of the take-home examination to the Department Monitor as ordered and as set forth above, both Respondents' licenses (numbers 1-14135 and 3-982) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent Biwan & Associates, Ltd. CPA's has complied with payment of the costs, and Respondent Daniel J. Biwan has completed the take-home ethics examination and submitted evidence of his successful completion of the examination.

IT IS FURTHER ORDERED that:

7. This Order is effective thirty (30) days after the date of its signing.

Dated this 29th day of March, 2011.

WISCONSIN ACCOUNTING EXAMINING BOARD

By: /s/ Karla E. Blair *dx*