

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
ACCOUNTING EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **DAVID D. REDIGER**, Respondent

FINAL DECISION AND ORDER

Order No.
ORDER 0002585

Division of Legal Services and Compliance Case No. 11 ACC 004

The State of Wisconsin, Accounting Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Accounting Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 5th day of September, 2013.

Member
Accounting Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **DAVID D. REDIGER**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0070

Division of Legal Services and Compliance Case No. 11 ACC 004

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

David D. Rediger
1693 South Vrain Street
Denver, CO 80219-4409

David D. Rediger
Conejos County Jail
202 Main Street
P.O. Box 37
Conejos, CO 81129

Wisconsin Accounting Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Bradley S. Mavis
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated on October 9, 2012, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division),

served a formal Complaint against Respondent David Rediger, with an Amended Complaint served on November 1, 2012. The Amended Complaint alleged that Mr. Rediger engaged in acts discreditable to the profession in violation of Wis. Admin. Code § Accy 1.401(1) by being convicted of misdemeanor theft which is substantially related to the accounting profession, by committing felony theft and by failing to report criminal convictions to the Department; thereby subjecting him to disciplinary action pursuant to Wis. Stat. § 443.12(1)(b) and (2m).

On March 19, 2013, the undersigned Administrative Law Judge (ALJ) issued a Summary Judgment Order, which granted the Division's motion for summary judgment with respect to whether Mr. Rediger committed the violations alleged, but denied the motion with respect to the issues of what discipline and costs, if any, were appropriate. That Order is attached to this decision and incorporated by reference herein.

On April 1, 2013, a telephone status conference was held to establish whether the issues of discipline and costs could be determined based on the parties' written submissions or whether a hearing on these issues was required. Mr. Rediger, who appeared at the status conference by telephone from the Conejos County Jail in Conejos, Colorado, indicated that he preferred a hearing, and a hearing date of June 4, 2013 was established. Mr. Rediger represented that he would be released from the Conejos County Jail prior to that date, would be in the Madison, Wisconsin area for other court hearings involving his sister and would therefore be able to attend the June 4, 2013 hearing. The ALJ did not receive any written or telephone communication from Mr. Rediger prior to the June 4, 2013 hearing.

Mr. Rediger failed to appear at the June 4, 2013 hearing. Counsel for the Division indicated that the Department had not received any communications from Mr. Rediger since the April 1, 2013 status conference. The Division's pre-filed exhibits were admitted and the

Division's attorney offered arguments on the issues of discipline and costs.

FINDINGS OF FACT

The undisputed material facts forming the basis of the violations found in this matter are contained in the March 19, 2013 Summary Judgment Order, incorporated by reference herein and discussed below.

DISCUSSION AND CONCLUSIONS OF LAW

Violations

In the order granting summary judgment to the Division with respect to the alleged violations, it was determined that Mr. Rediger violated Wis. Admin. Code § Accy 1.401 by engaging in acts that are discreditable to the profession. Wisconsin Admin. Code § Accy 1.401(2)(f) specifically delineates that one act discreditable to the profession is a failure to notify the Board in writing within 60 days after being convicted of a crime. Mr. Rediger failed to report three misdemeanor convictions, the 1991 misdemeanor disorderly conduct conviction in Jefferson County, and the two 2012 misdemeanor convictions of Public Buildings – Trespass, Interference and Interference with Staff, Faculty or Students of Educational Institutions in Conejos County, Colorado.

In addition, the Summary Judgment Order concluded that Mr. Rediger committed acts discreditable to the profession by engaging in conduct resulting in felony theft charges in Denver County, Colorado. In that case, Rediger held himself out as a Colorado Certified Public Accountant (CPA), conduct which assisted him in unlawfully taking over \$63,000 from an individual who believed Mr. Rediger to be a CPA and who entrusted him with large sums of money. Mr. Rediger pled guilty to felony theft, although a conviction was never entered due to a deferred prosecution agreement. Finally, the Summary Judgment Order concluded that the

conduct resulting in misdemeanor theft charges against Mr. Rediger in other jurisdictions, to which Mr. Rediger pled guilty, constituted acts discreditable to the profession, despite the fact that Mr. Rediger was given deferred prosecution agreements or withheld judgments in those cases.

Discipline

As a result of Mr. Rediger's violations of Wis. Admin. Code § Accy 1.401, he is subject to discipline by the Board pursuant to Wis. Stat. § 442.12(1)(b). The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). In the instant case, the Division recommends that Mr. Rediger's CPA license be revoked. Based on the record in this case and the factors set forth in *Aldrich*, revocation is warranted.

Accountants are entrusted with clients' funds and financial information. Mr. Rediger's history of theft demonstrates dishonesty and a lack of trustworthiness. Most directly related to his accounting license is the felony theft case, to which Mr. Rediger pled guilty on April 24, 2000. In that case, Mr. Rediger held himself out as a Colorado CPA, although he was not licensed in Colorado, and, based on that representation, the victim, William Whiteford, entrusted Mr. Rediger with large amounts of money so that Mr. Rediger could pay Mr. Whiteford's credit card expenses while Mr. Whiteford was traveling. Mr. Rediger violated that trust by taking over \$63,000 from Mr. Whiteford. This conduct resulted in a Cease and Desist Order from the Colorado State Board of Accountancy. In the stipulation resulting in that Order, Mr. Rediger admitted that he was holding himself out as a CPA in Colorado, despite not having a valid Colorado license, and agreed to quit doing so.

In addition, Mr. Rediger has engaged in other acts of theft, has committed other crimes, with convictions as recently as 2012, and has failed to report any of his convictions to the Wisconsin Board as required by law, thereby depriving the Board of its ability to adequately ensure that Mr. Rediger is qualified to practice accounting in a safe and ethical manner.

As reflected in the deferred prosecution agreements into which he entered, Mr. Rediger has been given multiple opportunities to learn from his mistakes and rehabilitate himself without having convictions appear on his record. He has continually failed to avail himself of those opportunities and has repeated his disreputable actions, despite the possibility of severe repercussions. There is simply nothing in the record to suggest that imposing anything short of revocation would adequately protect the public, deter others from engaging in such conduct or have a rehabilitative effect on Mr. Rediger. Indeed, the record does not reflect that Mr. Rediger has an interest in being rehabilitated at this time. Based on Mr. Rediger's pattern of dishonest and irresponsible behavior, it is too dangerous to allow him to practice under the auspices of approval by the State of Wisconsin. As a result, his license should be revoked.

Costs

Pursuant to Wis. Stat. § 440.22, the Board has the authority to assess respondents for costs of the disciplinary proceedings. Factors to consider include: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Case No. LS 0802183 CHI (Aug. 14, 2008).

Based on these factors and the record in this case, I agree with the Division's

recommendation that full costs be imposed. The counts advanced by the Division in this proceeding against Mr. Rediger were proven. The conduct was serious. In addition, although Mr. Rediger participated in these proceedings, in the end, he inexplicably failed to show up at his hearing on June 4, 2013. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. Mr. Rediger's Certified Public Accountant license is REVOKED.
2. Mr. Rediger shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935**


3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent David Rediger.

Dated at Madison, Wisconsin on June 10, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709

FAX: (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge

Attachment: March 19, 2013 Summary Judgment Order.



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings Against
DAVID D. REDIGER, Respondent

DHA Case No. SPS-12-0070
DLSC Case No. 11 ACC 004

SUMMARY JUDGMENT ORDER

TO: David D. Rediger
1693 South Vrain Street
Denver, CO 80219-4409

Inmate David D. Rediger
Conejos County Jail
202 Main Street
P.O. Box 37
Conejos, CO 81129

Attorney Laura M. Varriale
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

The above-captioned matter is before this tribunal on a motion for summary judgment filed on January 10, 2013 by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division). Respondent, David Rediger, filed a response to the Division's motion on February 19, 2013, and the Division filed a reply to Mr. Rediger's response to the Division's motion for summary judgment on February 27, 2013.

UNDISPUTED MATERIAL FACTS

1. Respondent David D. Rediger is licensed in the State of Wisconsin as a Certified Public Accountant, having license number 1-7221, first issued on August 5, 1981, and current through December 14, 2013. This license was expired between December 15, 2005 and

December 27, 2007, and between December 15, 2009 and January 13, 2011. (Complaint ¶ 1; Answer, ¶ 1)¹

2. In 1991, Mr. Rediger pled guilty to, and was convicted of, disorderly conduct in Jefferson County, Colorado in Case Number 1991M002809. (Division's Motion for Summary Judgment, Ex. 1)

3. On or about April 24, 2000, Mr. Rediger entered into a deferred prosecution agreement for felony Theft (Denver County, Colorado Case Number 99F01627). The allegations were for unlawfully or knowingly obtaining or exercising control over the money of another with the intent to deprive that person of the money. According to the Supporting Affidavit for Arrest Warrant (Affidavit), the victim, William Whiteford, believed Mr. Rediger to be a Certified Public Accountant (CPA) in Colorado and entrusted him with large sums of money. Mr. Whiteford traveled extensively and charged most of his expenses on credit cards and had large credit card bills. The money Mr. Whiteford gave Mr. Rediger was to be used to pay the credit card bills. According to the Affidavit, Mr. Rediger ended up taking over \$63,654 from Mr. Whiteford. In order to enter into the deferred prosecution agreement, Mr. Rediger pled guilty to the charge. On or about April 21, 2003, Mr. Rediger completed the agreement, including paying

¹ The Division served its original Complaint in this matter on Mr. Rediger and sent a copy to the Division of Hearings and Appeals (DHA) via email on October 9, 2012. A hard copy of the Complaint and Affidavit of Service was filed with DHA on October 18, 2012. Mr. Rediger's Answer, filed with DHA on October 29, 2012, consists of his handwritten response written on the Division's Complaint. On November 1, 2012, the Division served its Amended Complaint on Mr. Rediger and emailed a copy to DHA. A hard copy of the Amended Complaint and the Affidavit of Service were filed with DHA on November 2, 2013. Mr. Rediger did not file an Amended Answer to the Amended Complaint. The only differences between the original Complaint and the Amended Complaint are in paragraph 3, which amends the date of the Golden, Colorado conviction to 1991 instead of 1999 as alleged in the original Complaint, and paragraph 7, which changes the Orange County Florida outcome from a conviction, as alleged in the original Complaint, to a plea of guilty with adjudication of guilt withheld. For purposes of the findings of fact in this decision, the ALJ accepts as undisputed those facts alleged in the original Complaint which Mr. Rediger agreed to in his Answer.

restitution, and the charge was dismissed. (Complaint, ¶ 5; Answer, 5; Division's Motion for Summary Judgment, Ex. 2)

4. On or about February 2, 1999, the Colorado State Board of Accountancy (Colorado Board) issued a Cease and Desist Order to Mr. Rediger for holding himself out as a CPA without an active certificate from the State of Colorado. (Complaint, ¶ 4; Answer, ¶ 4) The investigation by the Colorado Board was commenced after reviewing a complaint filed against Mr. Rediger by Mr. Whiteford. (Division's Motion for Summary Judgment, Exs. 2 and 3) In the Agreement and Final Agency Order signed by the Colorado Board representative, Mr. Rediger and Mr. Rediger's attorney, Mr. Rediger admitted that he did not have a Colorado CPA license and that he "led the public, as well as W.K. Whiteford, to believe that he is a certified public accountant." (Division's Motion for Summary Judgment, Ex. 3, p. 2) He also agreed that he had held himself out as a CPA in various Yellow Pages and that he had a business office, at which "Rediger, David D., C.P.A." was listed on the building directory located on the first floor and on a wall placard on the floor accessing Mr. Rediger's office. (*Id.*, p. 3)

5. On or about August 10, 2004, Mr. Rediger was convicted of a forfeiture offense, Disorderly Conduct. (Eau Claire County Case Number 2004CM001052). (Complaint, ¶ 6; Answer, ¶ 6)

6. On or about February 17, 2006, Mr. Rediger pled guilty to a misdemeanor offense, Possession of Drug Paraphernalia, in Orange County, Florida. Adjudication of guilt was withheld. (Complaint, ¶ 7; Answer, ¶ 7; Division's Motion for Summary Judgment, Ex. 5)

7. On or about February 21, 2001, Mr. Rediger entered into a deferred prosecution agreement for two counts of Misdemeanor Theft (Polk County, Wisconsin Case Number

2008CF296). Mr. Rediger pled guilty or no contest² to allegations that he took property from a family member. On or about March 21, 2012, Mr. Rediger completed the agreement, including paying restitution, and the charge was dismissed. The theft allegations involved two jet skis belonging to Mr. Rediger's sister. (Complaint, ¶ 8; Answer, ¶ 8; Division's Motion for Summary Judgment, Ex. 6)

8. On or about April 27, 2012, Mr. Rediger was convicted of misdemeanor Public Buildings – Trespass, Interference, and misdemeanor Interference with Staff, Faculty or Students of Educational Institutions (Conejos County District Court, Colorado, Case Number 2009CR6). As of the time Mr. Rediger filed his Answer to the original Complaint, the case was on appeal and he contests his guilt. (Complaint, ¶ 9; Answer, ¶ 9)

9. Mr. Rediger failed to notify the Department of his convictions and the disciplinary action taken by the Colorado Board. (Complaint, ¶ 10; Answer, ¶ 10)

DISCUSSION

Standards Governing Summary Judgment

“The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge.” Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment “shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). “When a motion for summary

² The Deferred Judgment of Conviction states that Mr. Rediger pled guilty to the two counts whereas the Wisconsin Circuit Court Access printout reflects that he pled no contest to the two counts. (Division's Motion for Summary Judgment, Ex. 6)

judgment is made and supported as provided in this section [§ 802.08], an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial." Wis. Stat. § 802.08(3). "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party." *Id.*

"A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material." *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394.

Violations of Wis. Admin. Code § Accy 1.401

Pursuant to Wis. Stat. § 442.12(1)(b), the Board may discipline a licensee if the licensee violates Chapter 442 or any duly promulgated rule. The Division alleged in its original and Amended Complaint that Mr. Rediger violated Wis. Admin. Code § Accy 1.401 by engaging in acts that are discreditable to the profession.³ Wis. Admin. Code § Accy 1.401 states, in relevant part:

- (1) No person licensed to practice as a certified public accountant, as defined in the statutes, shall commit an act discreditable to the profession.
- (2) Interpretations of this section, not intended to be all-inclusive, are as follows:

...

³ The Amended Complaint also alleged that Mr. Rediger committed an act discreditable to the profession pursuant to Wis. Admin. Code § Accy 1.401(1) by "being convicted of misdemeanor theft which is substantially related to the profession." See Wis. Admin. Code § Accy 1.401(2)(e) ("Conviction of a crime the circumstances of which substantially relate to the practice of accounting is an act discreditable to the profession in violation of this section.") However, the Division appears to have abandoned that allegation, and justifiably so, as there was no "conviction" for theft.

(f) A certified public accountant shall notify the board in writing within 60 days after being convicted of a crime.

It is undisputed that Mr. Rediger failed to report three⁴ misdemeanor convictions, the 1991 misdemeanor disorderly conduct conviction in Jefferson County, and the 2012 misdemeanor convictions of Public Buildings – Trespass, Interference, and Interference with Staff, Faculty or Students of Educational Institutions in Conejos County, Colorado. Thus, he violated Wis. Admin. Code § Accy 1.401 by failing to report his convictions to the Department within 60 days, thereby committing an act discreditable to the accounting profession.⁵

The Division also asserts that even though a conviction was never entered due to a deferred prosecution agreement, the conduct in the felony theft case in Denver County, Colorado to which Mr. Rediger pled guilty, in combination with being the subject of a Cease And Desist Order from the Colorado Board for holding himself out as a CPA while he was unlicensed, are acts discreditable to the profession. As stated, the Colorado Board's Cease and Desist Order involved the same conduct at issue in the Denver County Colorado criminal case. The Division also asserts that the remaining criminal allegations to which Mr. Rediger pled guilty, namely, disorderly conduct, possession of drug paraphernalia and misdemeanor theft, are acts discreditable to the profession.

I agree that Mr. Rediger's holding himself out as a CPA, conduct which assisted him in unlawfully taking over \$63,000 from Mr. Whiteford, constitutes behavior discreditable to the

⁴ The Division acknowledges that withheld judgments and successfully completed deferred prosecution agreements may not be counted as convictions under Wis. Admin. Code § ACY 1.401(2)(f). I also note that a county ordinance violation does not constitute a "crime" under Wis. Admin. Code § ACY 1.401(2)(f). See Wis. Stat. § 939.12 ("Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.").

⁵ Mr. Rediger suggests that the Conejos County, Colorado convictions may not be considered because they are on appeal. However, whether or not the convictions have been appealed is irrelevant to the issue of whether he had convictions against him that were required to be reported to the Department within 60 days.

accounting profession. I also agree that the conduct Mr. Rediger engaged in, which resulted in him pleading guilty to theft charges in Polk County, constitutes conduct discreditable to the profession: an accountant is placed in a position of trust by clients and theft necessarily involves dishonesty. Thus, Mr. Rediger is in violation of Wis. Admin. Code § Accy 1.401 for this conduct as well.⁶

Discipline and Costs

In light of the finding that Mr. Rediger violated Wis. Admin. Code § Accy 1.401, discipline may be imposed pursuant to Wis. Stat. § 442.12(1), and costs imposed pursuant to Wis. Admin. Code § SPS 2.18.

The Division requests that Dr. Rediger's license be revoked. The Division does not apply the framework or standards governing summary judgment to the issue of discipline and has not established that the facts regarding such a discretionary determination are "undisputed" or that this discretionary decision may be decided "as a matter of law," as required for summary judgment. Moreover, no argument has been made by either party with respect to costs. Accordingly, summary judgment is not granted on the issue of discipline or costs in this matter, and a telephone status conference will be held on April 1, 2013 at 10:30 a.m. to determine the procedure for deciding these remaining issues.

ORDER

For the reasons set forth above, IT IS ORDERED that:

⁶ Although the other charges to which Mr. Rediger pled guilty -- disorderly conduct and possession of drug paraphernalia -- are unlawful, I cannot conclude that they necessarily or specifically discredit the profession of accounting.

1. The Division's motion for summary judgment is granted with respect to the issue of whether Dr. Rediger violated Wis. Admin. Code § 1.401 and is therefore subject to discipline pursuant to Wis. Stat. § 443.12.

2. A telephone status conference will be held on **Monday, April 1, 2013, at 10:30 a.m.** The ALJ will initiate the call. At the status conference, the parties shall inform the ALJ whether the issues of discipline and costs may be determined on the basis of the parties' written submissions or whether a hearing on such issues must be held.

Dated at Madison, Wisconsin on March 19, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Telephone: (608) 266-7709
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By: 

Jennifer E. Nashold
Administrative Law Judge