

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



**Before the
State Of Wisconsin
Accounting Examining Board**

In the Matter of Disciplinary Proceedings Against
Jay L. Lindseth, Respondent

FINAL DECISION AND ORDER

Order No. **0004707**

Division of Legal Services and Compliance Case No. 14 ACC 018

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 12 day of MAY, 2016.

Member
Accounting Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Jay L. Lindseth, Respondent

DHA Case No. SPS-15-0089
DLSC Case No. 14 ACC 018

PROPOSED DECISION AND ORDER

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

Jay L. Lindseth
3105 E. Emily Avenue
Oak Creek, WI 53154

Wisconsin Accounting Examining Board
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Renee M. Parton
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondent Jay L. Lindseth (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 442.12(1) because Respondent: (1) violated Wis. Admin. Code § Accy 1.102 by knowingly misrepresenting facts while engaged in the practice of public accounting; (2) violated Wis. Admin. Code § Accy 1.201(1)(b) by failing to exercise due professional care in the performance of an engagement; (3) violated Wis. Admin. Code § Accy 1.401(1) by committing an act discreditable to the profession; and (4) violated Wis. Admin. Code § Accy 1.407 by failing to respond to communications from the board within 30 days of mailing of such communication by registered or certified mail.

The Division served Respondent on October 23, 2015, by sending a copy of the Notice of Hearing and Complaint to his address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on November 24, 2015.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on November 24, 2015. Consistent with the notice, the Division filed a recommended proposed decision on December 23, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–10 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Jay L. Lindseth is licensed in the State of Wisconsin to practice as a Certified Public Accountant, having license number 12516-1, first issued on October 12, 1990, and current through December 14, 2015.¹

2. Respondent's most recent address on file with the Department is 3105 E. Emily Avenue, Oak Creek, Wisconsin 53154.

3. On September 18, 2013, Respondent met with the Wisconsin Department of Revenue (DOR), while representing BLS, a small Schedule C business, in furtherance of an appeal of a sales and use tax field audit.

4. During the appeal process, the following occurred:

- a. On November 4, 2013, Respondent provided DOR invoices to represent 2009 sales pertaining to the audit.
- b. On or before December 17, 2013, the electronic backup file for the invoices was inspected by DOR auditors and revealed Respondent created the invoices on September 17, 2013 and November 1, 2013.
- c. On December 20, 2013, Respondent admitted that he knowingly misrepresented facts on September 18, 2013 and November 4, 2013 to DOR.

5. On July 28, 2014, the Department received a complaint from DOR.

¹ In its December 23, 2015 submission, the Division states that its records indicate that Respondent's license is now current through December 14, 2017.

6. The Department, on behalf of the Accounting Examining Board, mailed Respondent requests for information on September 8, 2014 and September 30, 2014, via registered mail and certified mail.

7. Respondent failed to respond to the Department's requests.

8. On August 11, 2015, the Department mailed a Stipulation and Final Decision and Order to Respondent at 3105 E. Emily Avenue, Oak Creek, Wisconsin 53154.

9. The August 11, 2015 mailing was returned to the Department on August 24, 2015, with a postal note "unable to forward."

10. Respondent has not updated the Department with his new address.

Facts Related to Default

11. The Complaint and Notice of Hearing in this matter were served on Respondent on October 23, 2015, by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

12. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 24, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached no later than November 18, 2015. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

14. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

15. At the prehearing conference held on November 24, 2015, the Division provided a telephone number for Respondent. The ALJ attempted to reach Respondent at the telephone number provided, but Respondent could not be reached at that number.

16. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

17. On November 24, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than December 23, 2015, a recommended proposed decision and order.

18. The Division timely filed its recommended proposed decision and order on December 23, 2015.

19. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the November 24, 2015 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on November 24, 2015. As a result, an order may be entered against him on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wis. Admin. Code §§ Accy 1.102, 1.201(1)(b), 1.401(1) and 1.407

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 442.12(1), which states, in relevant part:

(1) Subject to the rules promulgated under s. 440.03(1), the examining board may do any of the following:

...
(b) Revoke, limit, or suspend for a definite period any certificate, license, or practice privilege, or officially reprimand the holder, if it finds that the holder has violated this chapter or any duly promulgated standard or rule of practice or for any other sufficient cause.

Wisconsin Admin. Code § Accy 1.102 states, in relevant part, that "[n]o person licensed to practice as a certified public accountant as defined in the statutes, shall knowingly misrepresent facts, and when engaged in the practice of public accounting . . . shall not subordinate his or her judgment to others."

Wisconsin Admin. Code § Accy 1.201(1) states that "[a]ll persons licensed to practice as a certified public accountant, as defined in the statutes, shall comply with the following general standards as interpreted by bodies designated by the American Institute of Certified Public Accountants Council, and must justify any departures therefrom." Wisconsin Admin. Code § Accy 1.201(1)(b) states that "[a] certified public accountant shall exercise due professional care in the performance of an engagement."

Wisconsin Admin. Code § Accy 1.401(1) states that "[n]o person licensed to practice as a certified public accountant, as defined in the statutes, shall commit an act discreditable to the profession."

The undisputed facts establish that on September 18, 2013, Respondent met with the DOR while representing a small Schedule C business, in furtherance of an appeal of a sales and

use tax field audit. On November 4, 2013, Respondent provided the DOR auditor invoices to represent his client's sales from 2009. However, according to the electronic backup file provided by Respondent, these invoices were created by Respondent on September 18, 2013 and November 4, 2013. On December 20, 2013, Respondent admitted to the DOR that he knowingly misrepresented facts when purporting the invoices submitted were from 2009 not 2013. By engaging in this conduct, Respondent violated Wis. Admin. Code § Accy 1.102.

Moreover, Respondent's actions lack due professional care in the performance of an engagement of public accounting, in violation of Wis. Admin. Code § 1.201(1). The American Institute of Certified Public Accountants Council (AICPA) interprets due professional care to mean a certified public accountant should possess the degree of skill commonly possessed by other certified public accountants and should exercise it with reasonable care and diligence. Due professional care requires a certified public accountant to provide a reasonable assurance that accounting practices utilized seek to minimize the risk of fraud and misstatements through use of good faith and integrity. *See Am. Inst. of Certified Pub. Accounting, Due Professional Care in the Performance of Work, AU § 230 (1972)*. By creating sales invoices for his client in 2013 and representing to a government agency that the invoices were from 2009, Respondent engaged in fraud in the performance of an engagement of public accounting.

Additionally, the undisputed facts show Respondent committed an act discreditable to the profession of certified public accounting, in violation of Wis. Admin. Code Accy § 1.401(1). By knowingly misrepresenting facts to a government agency and failing to exercise due professional care by committing fraud in the performance of an engagement of public accounting, Respondent committed an act discreditable to the profession.

Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent violated Wis. Admin. Code §§ Accy 1.102, 1.201(1)(b), and 1.401(1).

Further, Wis. Admin. Code § Accy 1.407 states that "[a] certified public accountant shall, when requested, respond to communications from the Board within 30 days of the mailing of such communications by registered or certified mail."

The Department mailed Respondent requests for information on September 8, 2014, September 30, 2014, and November 3, 2014 via registered mail, certified mail and email. The undisputed facts establish that Respondent failed to respond to the Department's request within 30 days of mailing. I conclude Respondent violated Wis. Admin. Code § Accy 1.407.

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 442.12(1).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other

credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's Certified Public Accountant license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

In particular, rules regulating Certified Public Accountants exist to protect the public by establishing procedures to ensure the fair performance of accounting. Contrary to this, Respondent knowingly presented false information to a government agency, which plainly demonstrates a violation of the underlying purpose of regulating the accounting profession. Thus, Respondent has failed to fulfill the responsibilities of his profession, and as such, is not fit to be a Certified Public Accountant.

In addition to ignoring the requirements of the law, Respondent has also ignored the Board's legitimate authority. Respondent has been nonresponsive throughout the Department's investigation and in this proceeding. When individuals demonstrate an inability to handle the amount of responsibility commensurate with holding professional licenses, they should not continue to be entrusted with that license. Therefore, revocation of Respondent's license is an appropriate response to his disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not plausible in this case, as Respondent refused to submit to the authority of the Board which granted his license. Having obtained no information from Respondent, the Board cannot even determine what competency issues may exist and therefore cannot ascertain what rehabilitative measures might be effective. Moreover, revocation in this case would send a strong message to licensees that refusing to cooperate with the Board's investigation of complaints is not an option. To allow licensees to disregard the Board's authority in this way would contravene the purpose of the licensing statutes.

In light of the facts of this case and the factors set forth in *Aldrich*, I conclude that revocation of Respondent's Certified Public Accounting license is warranted.

Costs

As a result of Respondent's license being revoked by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. Wis. Stat. § 440.22(2). With respect to imposition of costs, 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*, LS 0802183 CHI (Aug. 14, 2008).

Particularly relevant are the following facts. First, the Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct that led to the discipline at hand resulted from his knowingly providing false information to a government agency in furtherance of the performance of an engagement. Such conduct is serious. Third, as a result of Respondent's serious conduct, the Division sought revocation of Respondent's license to practice accounting in Wisconsin. The level of discipline sought is significant and recognizes the general absence of mitigating factors in this case. Fourth, Respondent did not cooperate with the Department's investigation or with these proceedings. Fifth, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all accountant licensees in Wisconsin.

Based on the foregoing, I conclude that the full costs of this proceeding shall be assessed against Respondent in an amount to be determined under to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, it is hereby ORDERED that Respondent Jay L. Lindseth's Certified Public Accountant license (no. 12516-1) is REVOKED, effective on the date the final decision is signed by the Department.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on January 20, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax: (608) 264-9885

By: _____

Jennifer E. Nashold
Administrative Law Judge