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Before the
State Of Wisconsin
Accounting Examining Board

In the Matter of Disciplinary Proceedings Against
Constance E. Hackbarth, Respondent

FINAL DECISION AND ORDER

Order No. 0005392

Division of Legal Services and Compliance Case No. 15 ACC 010

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 10th day of AUGUST, 2017.

Member
Accounting Examining Board



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

In the Matter of Disciplinary Proceedings Against
Constance E. Hackbarth, Respondent

DHA Case No. SPS-17-0005
DLSC Case No. 15 ACC 010

PROPOSED DECISION AND ORDER

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

Constance E. Hackbarth
355 Main Street
P.O. Box 327
Allenton, WI 53002

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 Sarah E. Norberg
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 Constance E. Hackbarth (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 442.12(1) because Respondent violated Wis. Admin. Code § Accy 1.407 by failing to respond to communications from the Accounting Examining Board (Board) within 30 days of mailing of such communication by registered or certified mail.

The Division served Respondent on February 2, 2017, by sending a copy of the Notice of Hearing and Complaint to her 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), even though Respondent had signed for the Complaint on February 18, 2017. Respondent appeared for the telephone prehearing conference held before the undersigned Administrative Law Judge (ALJ) on March 8, 2017. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14. The ALJ denied the motion and provided Respondent with an extension in which to file an Answer to March 16, 2017.

A telephone status conference was held before the ALJ on April 3, 2017. Respondent failed to file an Answer and failed to appear for the telephone status conference. 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 status conference, the ALJ found Respondent to be in default and issued a Notice of Default and Order on April 3, 2017. Consistent with the Notice, the Division filed a recommended proposed decision and order on April 18, 2017.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Constance E. Hackbarth is certified by the State of Wisconsin as a Certified Public Accountant, having certificate number 15498-1, first issued on April 26, 1996, and expired on December 15, 2015.

2. The Department's most recent address on file for Respondent is 355 Main Street, Post Office Box 327, Allenton, Wisconsin.

3. On May 21, 2015, the Department received a complaint alleging that Respondent had cashed a client's check for preparing her 2014 income tax return but the tax return was never filed with the Internal Revenue Service. Division of Legal Services and Compliance Case Number 15 ACC 010 was subsequently opened for investigation.

4. On February 29, 2016, the Department, on behalf of the Board, sent a letter to Respondent's address of record via certified mail, requesting that she respond in writing to the allegations in the complaint.

5. On March 4, 2016, Respondent signed for the certified letter.

6. No response has been received to the Department's February 29, 2016 letter.

7. On September 26, 2016, the Department, on behalf of the Board, sent a letter to Respondent's address of record via certified mail, requesting that she respond to the allegations in the complaint, advising her that her license was currently expired, and informing her that Wisconsin Statutes prohibit her from practicing as a Certified Public Accountant without a current license and that failure to respond to the Department may be cause for discipline.

8. On September 30, 2016, Respondent signed for the certified letter.

9. No response has been received to the Department's September 26, 2016 letter.

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondent on February 2, 2017, 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."

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

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 8, 2017. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached no later than March 3, 2017. 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."

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

14. At the prehearing conference held on March 8, 2017, the Division provided a telephone number for Respondent, and the ALJ was able to reach Respondent at the telephone number provided.

15. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 based on Respondent's failure to file an Answer.

16. The ALJ denied the motion and provided Respondent with an extension in which to file an Answer to March 16, 2017.

17. The ALJ scheduled a telephone status conference for April 3, 2017. Notice of this status conference was sent to both parties, with instructions that Respondent shall file an Answer no later than March 16, 2017, and provide a copy of her Answer to the ALJ and the Division. The Notice instructed Respondent: "Failure to file an Answer by March 16, 2017 will result in default being entered against Ms. Hackbarth."

18. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).
19. Respondent failed to appear for the status conference held on April 3, 2017.
20. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).
21. On April 3, 2017, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than April 24, 2017, a recommended proposed decision and order.
22. The Division timely filed its recommended proposed decision and order on April 18, 2017.
23. 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 April 3, 2017 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the status conference held on April 3, 2017. As a result, an order may be entered against her 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 1.407

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 1.407 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 undisputed facts establish that the Department, on behalf of the Board, mailed Respondent requests for information on February 29, 2016, and September 26, 2016, via certified mail. Respondent signed for the certified mail on March 4, 2016, and September 30, 2016, respectively. This is not a case where Respondent alleges that she never received the Department's requests for information. Respondent received them, as evidenced by her signing

the certified mail return receipt cards; she just never bothered to respond. This pattern was continued by Respondent in this proceeding where she signed for the Complaint on February 18, 2017, but never bothered to file an Answer. The undisputed facts establish that Respondent failed to respond to communications as requested by the Board. Therefore, Respondent violated Wis. Admin. Code § Accy 1.407.

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

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 right to renew her certified public accountant certificate 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).

Even though Respondent's certificate is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew her certificate until December 14, 2020.

The same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case as Respondent may renew her certificate at any time. *See In the Matter of the Disciplinary Proceedings Against Brandon T. Roach*, LS-0005126 (Jan. 13, 2017); *In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, LS-0002317 (Feb. 26, 2013); *In the Matter of the Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

Revocation is necessary to deter other credential holders from engaging in similar conduct. Respondent has demonstrated a lack of respect for the Board's authority and the public which the Board serves. The Board was attempting to gather information from Respondent about a very serious allegation that she had been paid to prepare a client's tax returns but then failed to file the return. Respondent failed to provide any information regarding the allegation, failed to cooperate throughout the Department's investigation, and has been minimally cooperative in this proceeding. Respondent's certified public accountant certificate has been expired since December 15, 2015. Due to Respondent's failure to respond to the Department's investigation, it is unclear whether she is continuing to practice as a certified public accountant. Therefore, revocation of Respondent's right to renew her certified public accountant certificate is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation appears unlikely in this case, as Respondent refused to cooperate during the investigation process with the Board which granted her certificate. Having obtained no information during the investigation from Respondent, the Board cannot ascertain whether rehabilitative measures might be effective. Moreover, revocation of Respondent's right to renew her certificate in this case is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's right to renew her certified public accountant certificate is warranted.

Costs

As a result of Respondent's right to renew her certified public accountant certificate 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. See Wis. Stat. § 440.22(2). In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385. The Board has also, in numerous previous orders, considered many factors when determining if all or part of the costs should be assessed against a respondent. Factors have included: (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 e.g. *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are particularly relevant to the instant case. 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. Additionally,

Respondent's conduct and violations are serious. Respondent did not cooperate with the Department's investigation or with the hearing proceedings. As a result, the Division sought a revocation of Respondent's right to renew her certified public accountant certificate. Revocation of a license equates to the general absence of mitigating factors in this case. Further, Respondent made no argument concerning whether costs should be assessed against her. Finally, 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 favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all certified public accountants in Wisconsin.

Based on the foregoing, all of the costs of this proceeding should be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

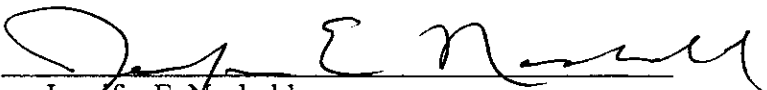
ORDER

Accordingly, it is hereby ORDERED that Respondent Constance E. Hackbarth's right to renew her certified public accountant certificate (number 15498-1) is REVOKED, effective on the date the final decision is signed by the Board.

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 May 10, 2017.

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By: 
Jennifer E. Nashold
Administrative Law Judge