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

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In the Matter of Disciplinary Proceedings Against  
Jerome H. Huser, Respondent

FINAL DECISION AND ORDER

Order No. **0005496**

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**Division of Legal Services and Compliance Case No. 16 ACC 009**

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 7<sup>th</sup> day of NOVEMBER, 2017.

Member  
Accounting Examining Board



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

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In the Matter of Disciplinary Proceedings Against  
Jerome H. Huser, Respondent

DHA Case No. SPS-17-0015  
DLSC Case No. 16 ACC 009

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**PROPOSED DECISION AND ORDER**

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

Jerome H. Huser  
1202 Vandenburg Street  
Sun Prairie, WI 53590

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 Jerome H. Huser (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 June 30, 2017, 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 (DHA) on July 27, 2017.

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 July 27, 2017. Consistent with the Notice, the Division filed a recommended proposed decision and order by August 18, 2017.

## FINDINGS OF FACT

### Facts Related to the Alleged Violations

Findings of Fact 1–6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Jerome H. Huser is certified and licensed by the State of Wisconsin as a certified public accountant, having credential number 5829-1, first issued on September 22, 1978 and expired on December 15, 2015.

2. The Department's most recent address on file for Respondent is 1202 Vandenburg Street, Sun Prairie, Wisconsin 53590.

3. On or about April 7, 2016, the Department received a complaint alleging that Respondent engaged in unprofessional conduct from 2010 and 2011. The Division subsequently opened Case Number 16 ACC 009 for investigation.

4. On April 26, 2017, the Department, on behalf of the Board, sent a letter to Respondent's address of record via certified mail, requesting that he respond to the allegations in the complaint.

5. On May 10, 2017, the letter was returned to the Department by the post office, marked not deliverable as addressed, unable to forward.

6. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew his certified public accountant credential through December 14, 2020.

7. The informal complaint filed with the Division against Respondent alleged that Respondent borrowed \$4,100 from the complainant while acting as the complainant's family's certified public accountant, that Respondent did not repay his debt, and that Respondent could not be located by the complainant. It further alleged that Respondent wrote the complainant checks but that the checks could not be cashed due to insufficient funds. (April 5, 2016 complaint attached to Division's August 18, 2017 Recommended Proposed Decision and Order)

### Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on June 30, 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 Accounting Examining 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."

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

10. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for July 27, 2017. 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 July 24, 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."

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

12. At the prehearing conference held on July 27, 2017, the Division provided three potential telephone numbers for Respondent. The ALJ attempted to reach Respondent at all three numbers provided but none of them were in service.

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

14. On July 27, 2017, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than August 18, 2017, a recommended proposed decision and order.

15. On August 1, 2017, the Notice of Prehearing Conference sent to Respondent was returned to DHA by the post office, marked not deliverable as addressed, unable to forward.

16. On August 4, 2017, the Notice of Default and Order sent to Respondent was returned to DHA by the post office, marked not deliverable as addressed, unable to forward.

17. The Division timely filed its recommended proposed decision and order.

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

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the July 27, 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 prehearing conference held on July 27, 2017. As a result, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

### Violation

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 on April 26, 2017, the Department, on behalf of the Board, sent Respondent a letter by certified mail, requesting that he respond to the allegations in the informal complaint. The informal complaint alleged Respondent took over \$4,000 from his client and never repaid this debt. The certified letter sent to Respondent was returned to the Department by the post office marked not deliverable as addressed, unable to forward. Respondent failed to respond to a communication from the Board within 30 days of the certified mailing. As a result, Respondent violated Wis. Admin. Code § Accy 1.407 and is therefore 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 right to renew his certified public accountant credential be revoked. Given that Respondent has made no argument to the contrary and that the

recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law, I adopt the Division's recommendation.

"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 when the State cannot assure the public of the licensee's competence to practice the profession, 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 credential 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. See e.g., *In the Matter of Disciplinary Proceedings Against Constance E. Hackbarth*, Order No. 0005392 (Aug. 10, 2017); *In the Matter of the Disciplinary Proceedings Against Brandon T. Roach*, Order No. 0005126 (Jan. 13, 2017); *In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, Order No. 0002317 (Feb. 26, 2013). Thus, Respondent has an automatic right to renew his credential 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 his certificate at any time. Revocation is necessary to deter other credential holders from engaging in similar conduct. Respondent has demonstrated a lack of respect for the Board's legitimate and necessary authority. Respondent failed to cooperate throughout the Department's investigation and in this proceeding. The underlying allegations of the informal complaint also involve Respondent's evasiveness, as well as his untrustworthiness, with his client. Respondent's certified public accountant credential has been expired since December 15, 2015. Due to Respondent's failure to respond to the Department's investigation, it is unclear whether he is continuing to practice as a certified public accountant. Further, he has failed to keep his contact information current with the licensing authority and both his failure to respond to the Department and the underlying allegations of the informal complaint would constitute serious misconduct. Therefore, revocation of Respondent's right to renew his certified public accountant credential 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 likely in this case, as Respondent refused to engage in any way with the Board which granted his credential. Having obtained no information during the investigation from Respondent, the Board cannot assure the public that Respondent will practice his profession in a competent and ethical manner. Moreover, revocation of Respondent's right to renew his credential 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 that uncooperative 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 his certified public accountant credential is warranted.

### Costs

As a result of Respondent's right to renew his certified public accountant credential 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 previous orders, considered many factors when determining if all or part of the costs should be assessed against a respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 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 is serious. Respondent did not cooperate with the Department's investigation or with these proceedings. As a result, the Division sought revocation of Respondent's right to renew his certified public accountant credential. Further, Respondent made no argument concerning whether costs should be assessed against him. 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.

Accordingly, 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 Jerome H. Huser's right to renew his certified public accountant credential (number 5829-1) 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 August 22, 2017.

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DIVISION OF HEARINGS AND APPEALS  
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By: 

Jennifer E. Nashold  
Administrative Law Judge