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

In the Matter of Disciplinary Proceedings Against
Kevin A. Pettit, Respondent

FINAL DECISION AND ORDER

Order No. **0005809**

Division of Legal Services and Compliance Case No. 16 ACC 006

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 July, 2018.

Ol. Rohmeyer
~~Member~~ *Chief Legal Counsel*
Delegate of Accounting Examining Board



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Kevin A. Pettit, Respondent

0005800

DHA Case No. SPS-18-0001
DLSC Case No. 16 ACC 006

PROPOSED DECISION AND ORDER

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

Kevin A. Pettit
4721 James Avenue
Racine, WI 53402

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 Kevin A. Pettit (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 442.12(1) and Wis. Admin. Code § Accy 4.101(8) because Respondent: (1) violated Wis. Admin. Code § Accy 1.401(1) by committing an act discreditable to the profession; and (2) 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 January 4, 2018, 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 for the telephone prehearing conference held before the Division of Hearings and Appeals on February 8, 2018.

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 telephone prehearing conference, the Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on February 8, 2018. Consistent with the Notice, the Division filed a recommended proposed decision and order on February 22, 2018.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Kevin A. Pettit is certified and licensed by the State of Wisconsin as a certified public accountant, having credential number 8829-1, first issued on June 8, 1984 and expired on December 15, 2017.

2. Respondent's most recent address on file with the Department is 4721 James Avenue, Racine, Wisconsin 53402.

3. On March 9, 2016, the Department received a complaint against Respondent from B.S. and C.S. alleging failure to return client records. The Division of Legal Services and Compliance subsequently opened Case No. 16 ACC 006 for investigation.

4. According to the Complaint filed in Walworth County Circuit Court Case No. 16CV00227: B.S. and C.S. hired Respondent to prepare their personal and scrapyard business taxes starting in 2011.

- a. In July 2014, after B.S. suffered a serious head injury, Respondent convinced B.S. to sell his scrapyard business and assets in an effort to secure long-term income for himself and C.S.
- b. In November 2014, B.S. sold his company and all assets to Respondent, who was still B.S. and C.S.'s personal and business accountant. Respondent agreed to pay B.S. and C.S. \$400 per week for the rest of B.S.'s life, or of C.S.'s life if she was to outlive B.S.
- c. In April 2015, B.S. suffered another injury.

- d. Respondent began to liquidate all assets of the scrapyard business. Respondent sold the company land in September 2015 and ceased paying B.S in February 2016.

5. On January 24, 2017, B.S. was awarded damages for breach of contract, unjust enrichment, breach of fiduciary duty, theft by fraud and fraud in Walworth County Circuit Court Case No. 16CV00227. B.S. was awarded actual damages trebled pursuant to Wis. Stat. § 895.446(3)(c), attorney fees and punitive damages, totaling \$1,520,269.88.

6. On May 10, 2017, the Department sent a certified letter to Respondent at his address of record requesting he respond to investigative questions and supply additional information regarding the complaint. This letter was returned to the Department marked unclaimed and unable to forward.

7. On May 10, 2017, the Department sent a certified letter to Respondent's business address requesting he respond to investigative questions and supply additional information regarding the complaint. This letter was returned to the Department marked unclaimed and unable to forward.

8. On May 17, 2017, the Department sent a certified letter to another potential address for Respondent requesting he respond to investigative questions and supply additional information regarding the complaint. This letter was returned to the Department marked not deliverable as addressed and unable to forward.

Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on January 4, 2018, 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."

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

11. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for February 8, 2018. 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 February 5, 2018. 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."

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

13. At the prehearing conference held on February 8, 2018, the Division provided a telephone number for Respondent, although the Division believed it to be not in service. The ALJ attempted to contact Respondent at the telephone number provided but it was not in service.

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

15. On February 8, 2018, the ALJ issued a Notice of Default and Order, requiring the Division to file no later than February 23, 2018, a recommended proposed decision and order.

16. The Division timely filed its recommended proposed decision and order on February 22, 2018.

17. 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 February 8, 2018 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone prehearing conference held on February 8, 2018. 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 1.401(1) and 1.407

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 442.12(1) and Wis. Admin. Code § Accy 4.101(8). Under Wis. Stat. § 442.12(1)(b), the Board may “[r]evoke, 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.” Pursuant to Wis. Admin. Code § Accy 4.101(8), grounds for discipline include “[e]ngaging in conduct reflecting adversely upon the licensee’s fitness to perform services, including conduct constituting incompetence.” “[C]onduct constituting incompetence” includes “gross negligence [and] recklessness.” *Id.*

Wisconsin Admin. Code § Accy 1.401(1) states that “[n]o person licensed to practice as a certified public accountant shall commit an act discreditable to the profession.” The undisputed facts establish that B.S. and C.S. hired Respondent to prepare their personal and scrapyard business taxes starting in 2011. In July 2014, after B.S. suffered a serious head injury, Respondent convinced B.S. to sell his scrapyard business and assets to Respondent in an effort to secure long-term income for himself and C.S. In November 2014, B.S. sold his company and all assets to Respondent, who was still B.S. and C.S.’s personal and business accountant. Respondent agreed to pay B.S. and C.S. \$400 per week for the rest of B.S.’s life, or for the rest of C.S.’s life if she were to outlive B.S. In April 2015, B.S. suffered another injury. Respondent

began to liquidate all assets of the scrapyard business. Respondent sold the company land in September 2015 and ceased paying B.S. in February 2016. On January 24, 2017, in Walworth County Circuit Court Case No. 16CV00227, B.S. was granted judgment against Respondent for breach of contract, unjust enrichment, breach of fiduciary duty, theft by fraud and fraud. B.S. was awarded actual damages trebled pursuant to Wis. Stat. § 895.446(3)(c), attorney fees and punitive damages, totaling \$1,520,269.88. The undisputed facts establish that Respondent committed an act discreditable to the profession. See *In the Matter of Disciplinary Proceedings Against Jay L. Lindseth*, LS-0004707 (May 12, 2016). Accordingly, Respondent violated Wis. Admin. Code § Accy 1.401(1).

As a result of the above violation, Respondent violated “any duly promulgated standard or rule of practice” and is therefore subject to discipline under Wis. Stat. § 442.12(1)(b). He is also subject to discipline pursuant to Wis. Admin. Code § Accy 4.101(8) as this conduct constitutes “conduct reflecting adversely upon the licensee’s fitness to perform services.”

In addition, Respondent violated Wis. Admin. Code § Accy 1.407, which 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 May 10, 2017 and May 17, 2017, the Department, on behalf of the Board, mailed Respondent requests for information by certified mail. The May 10, 2017 letter was sent both to his address of record and his business address of record. The May 10, 2017 letters were returned as unclaimed. The May 17, 2017 letter was sent to another potential address for Respondent. The May 17, 2017 letter was returned as not deliverable. No response was received to any of these requests. Respondent failed to respond to a communication from the Board within 30 days of the certified mailings. Therefore, Respondent violated Wis. Admin. Code § Accy 1.407. As a result of this violation, Respondent is subject to discipline under 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 certification and licensure 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 certification and licensure 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 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 Jerome H. Huser*, LS-0005496 (Nov. 7, 2017). Thus, Respondent has an automatic right to renew his certification and licensure until December 14, 2022.

The same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case as Respondent may renew his certification and licensure at any time. Revocation is necessary to protect the public and deter other credential holders from engaging in similar conduct. Rules regulating Certified Public Accountants exist to protect the public by establishing procedures to ensure Certified Public Accountants act with integrity and do not engage in conduct that reflects adversely upon the licensee's fitness to perform services. Contrary to these standards, Respondent took advantage of his client who had suffered two injuries, one a serious head injury, and unduly influenced his client to sell the client's business to Respondent. As noted above, his client subsequently obtained a judgment against Respondent for breach of contract, unjust enrichment, breach of fiduciary duty, theft by fraud and fraud. Thus, Respondent has failed to fulfill the responsibilities of his profession, and as such, is not fit to be a Certified Public Accountant. Protection of the public is of paramount importance in this case, and revocation is the only means available to ensure that this is accomplished, particularly given that Respondent, by failing to participate in these proceedings, has not presented any evidence or argument demonstrating that he is fit to practice.

Revocation is also necessary to deter other credential holders from engaging in similar conduct. Respondent has demonstrated an appalling lack of regard for his professional duty to his client and a total lack of respect for the Board's legitimate and necessary authority. Respondent failed to cooperate throughout the Department's investigation and in this proceeding. Respondent's certified public accountant certification and licensure has been expired since December 15, 2017. Therefore, revocation of Respondent's right to renew his certified public accountant certification and licensure is an appropriate response to his disrespect for the professional conduct standards of his profession, 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 has not cooperated in the Department's investigation and in

this proceeding. 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 his certification and licensure 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 his certified public accountant certification and licensure is warranted.

Costs

As a result of Respondent's right to renew his certified public accountant certification and licensure 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 and violations are serious. Respondent took unfair advantage of his client who had been injured. Respondent did not cooperate with the Department's investigation or with these proceedings. As a result, the Division sought a revocation of Respondent's right to renew his certified public accountant certification and licensure. 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.

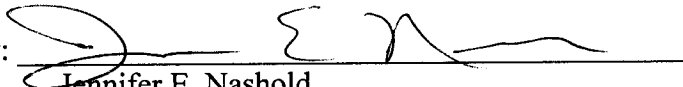
ORDER

Accordingly, it is hereby ORDERED that Respondent Kevin A. Pettit's right to renew his certified public accountant certification and licensure (number 8829-1) 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 February 27, 2018.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Jennifer E. Nashold
Administrative Law Judge