

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/wscga>

- 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 the Disciplinary Proceedings
Against Douglas A. Schwartz, Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008884**

Division of Legal Services and Compliance Case Nos. 20 ACC 004 and 20 ACC 009

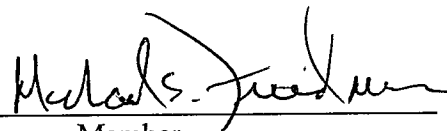
The State of Wisconsin, Accounting Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 29 day of November, 2023.



Member
Accounting Examining Board



Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Douglas A. Schwartz, Respondent.

DHA Case No. SPS-22-0068
DLSC Case Nos. 20 ACC 004
and 20 ACC 009

PROPOSED DECISION AND ORDER

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

Douglas A. Schwartz (Respondent)

New Berlin, WI 53146

Attorney Jon A. Derenne
Attorney Renee M. Parton
Department of Safety and Professional Services
(Department)
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707
jon.derenne1@wisconsin.gov

PROCEDURAL HISTORY

On November 3, 2022, the Wisconsin Department of Safety and Professional Services (Department), Division of Legal Services and Compliance filed a Notice of Hearing and Complaint and served Douglas A. Schwartz (Respondent). Administrative Law Judge (ALJ) Angela Chaput Foy was assigned to the matter. The Respondent filed an Answer on November 28, 2022. A prehearing conference was held on December 16, 2022.

On January 10, 2022, the parties filed a stipulation of facts, and an adjourned prehearing conference was held on January 12, 2023 that resulted in a scheduling order, which included a briefing schedule on prehearing motions. On February 10, 2023, the Department filed a Motion for Summary Judgment. The Respondent filed a brief written response to the motion late, on April 10, 2022. The Department filed its reply brief on April 27, 2023. On May 19, 2023, an order was issued granting the Department's motion for summary judgment, finding that the undisputed facts established as a matter of law that the Respondent committed the violations alleged in the Complaint.

On May 23, 2023, a prehearing conference was held. The remaining issue for determination was what discipline, if any, is appropriate in light of the violations. The parties

jointly requested that the issue be addressed by briefs, since neither party intended to present evidence on the issue. Pursuant to the scheduling order, on June 13, 2023, the Department filed a statement specifying the discipline it was seeking for the violations. On July 5, 2023, the Department filed a memorandum on discipline and costs. On July 7, 2023, the Respondent filed a statement in opposition. Neither party filed a response brief.

FINDINGS OF FACT

1. The Respondent, Douglas A. Schwartz (Birth year 1965), is certified and licensed in the state of Wisconsin as a certified public accountant (CPA), having certification and license number 16321-1, first issued on October 3, 1997 and current through December 14, 2023. The Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in New Berlin, Wisconsin.

2. The Respondent's CPA business is "Alan Douglas LLC." His firm is not currently, and has not at any time, been licensed as a CPA firm by the state of Wisconsin. The Respondent is the registered agent for Alan Douglas LLC.

3. On November 13, 2018, one of the Respondent's clients, Complainant A, paid invoice #10121 issued by the Respondent in the amount of \$750.59 for accounting services rendered.

4. On November 20, 2018, Complainant A made a second payment to the Respondent in the amount of \$750.39 for the same invoice.¹

5. On November 26, 2019, Complainant A emailed the Respondent, stating that he had reviewed his financial records from the previous year and noticed the two payments for invoice #10121 made in November 2018. Complainant A requested a refund of \$750.39 in the form of a check to reimburse him for the double payment.

6. On December 16, 2019, the Respondent's CPA license expired.

7. On December 18, 2019, Complainant A emailed the Respondent, again seeking the return of his overpayment. In this email, Complainant A states that the Respondent had not replied to his previous email and phone messages.

8. On January 14, 2020, Complainant A emailed the Respondent, again stating that the Respondent had not replied to any of his previous calls or emails regarding the overpayment. Complainant A once again requested that the Respondent refund the overpayment, or he would file a complaint with the Department.

¹ In the Stipulation of Facts, the parties agreed that the payment was for the same invoice, although the amount differed by \$0.20.

9. On February 10, 2020, the Department received a complaint from Complainant A that the Respondent had allowed the duplicate payment and then failed to respond to Complainant A while acting as an accountant for Complainant A's business.

10. On March 4, 2020, another client of the Respondent, Complainant B, submitted her personal and business tax information to the Respondent. Subsequently, she was told multiple times by the Respondent's assistant that the Respondent "was working on them now."

11. On May 8, 2020, the Department mailed a letter to the Respondent via certified mail at his address of record, requesting a response to Complainant A's February 10, 2020 complaint. On May 15, 2020, the Department received the certified mail receipt, which indicated that the Department's letter was signed for and received. The Department did not receive a response from the Respondent.

12. On June 3, 2020, the Department received a complaint from Complainant B alleging that the Respondent had failed to complete projects and failed to respond to Complainant B while acting as an accountant for Complainant B's business.

13. On July 7, 2020, the Department mailed a second letter to the Respondent via certified mail at his address of record, again requesting a response to Complainant A's February 10, 2020 complaint.

14. On July 27, 2020, the Department finally received a response from the Respondent to Complainant A's complaint, which included the following information:

- a. The Respondent acknowledged that he had received an overpayment from Complainant A.
- b. The Respondent acknowledged "not returning [Complainant A's] calls in a timely manner," and stated that he believed the correspondence from Complainant A was related to a separate matter.
- c. The Respondent provided a copy of a check for \$750.30 to Complainant A dated June 24, 2020 as evidence that he paid Complainant A on that date.
- d. The Respondent acknowledged that his CPA license expired on December 16, 2019, and that it still had not been renewed as of the date of his response.

15. On July 27, 2020, the Department contacted the Respondent via email to get a response to Complainant B's June 3, 2020 complaint. The Department did not receive a response from the Respondent.

16. On August 20, 2020, the Department mailed a letter to the Respondent at his address of record to request a response to Complainant B's complaint. The Department did not receive a response from the Respondent.

17. On September 17, 2020, the Department mailed a letter to the Respondent via certified mail at his address of record, again requesting a response to Complainant B's complaint. On September 24, 2020, the Department received the certified mail receipt, which indicated that the Department's letter was signed for and received. The Department did not receive a response from the Respondent.

18. On October 13, 2020, the Department mailed another letter to the Respondent via certified mail at his address of record, again requesting a response to Complainant B's complaint. On October 20, 2020, the Department received the certified mail receipt, which indicated that the Department's letter was signed for and received. The Department did not receive a response from the Respondent.

19. On January 12, 2021, the Respondent renewed his CPA license, which had expired December 16, 2019.

20. On December 15, 2021, the Respondent's certification and license expired again, and it was renewed on January 18, 2022.

21. On November 3, 2022, the Department filed the Complaint herein against the Respondent alleging that the above-stated conduct violated laws and regulations of his license and subjected him to discipline. On November 21, 2022, the Respondent filed an Answer to the Complaint. The information in the Answer was the first response the Department received from the Respondent regarding Complainant B's complaint, which included the following information:

- a. The Respondent stated that Complainant B's return was delayed due to Complainant B not including all of the necessary documentation.
- b. The Respondent stated that he completed the returns on June 23, 2020, in time for them to be filed by the extended deadline of July 15, 2020.

DISCUSSION

Jurisdictional Authority

The Accounting Examining Board (Board) has the authority to impose discipline against the Respondent. Wis. Stat. §§ 442.12. The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2).

Violations

On May 19, 2023, the Respondent was found to have violated the law and regulations as follows:

- (1) The Respondent engaged in the unlicensed practice of certified public accounting because his business has never been licensed and because he continued to practice during a period when his license had expired and was not yet renewed, in violation of Wis. Stat. § 442.03 and Wis. Admin. Code § Accy 5.101.
- (2) The Respondent failed to exercise competence and diligence in a client engagement, in violation of Wis. Admin. Code § Accy 1.201(1)(b).
- (3) The Respondent failed to respond to the Department's requests for information within 30 days, in violation of Wis. Admin. Code § Accy 1.407.

Discipline

The Department recommends that the Respondent's certified public accountant license be suspended for two weeks. The Respondent acknowledges that some penalty is appropriate; however, he asks that it be in the form of an unspecified fine and required education on management and customer service. Because the Department's recommended discipline is consistent with the purposes articulated in *Aldrich*, I adopt the Department's recommendation. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

"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). 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. *Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The recommended discipline is consistent with the purposes of discipline. The Respondent's unlicensed practice, failure to exercise competence and diligence in a client engagement, and failure to respond to the Department constitutes a danger to the public and is serious misconduct warranting a two-week suspension of his license. It is a fundamental requirement that a certified public accountant be licensed, both as an individual and his firm. The credential application process is where licensees prove their qualifications for licensure, and in return, the license then serves as an assurance to the public from the state that the individual or firm is competent in the field of practice. The Respondent prevented the Department from reviewing his competency by failing to renew his license and failing to obtain a license for his firm.

The Respondent's inattentiveness to communications from his clients is a hazard that must be mitigated. Failure to respond with care and promptness can result in serious business or legal consequences for a client. Discipline is warranted to prevent future harm to clients.

A two-week suspension appropriately highlights the seriousness of the misconduct and the authority of the Department. The Respondent acknowledged in this statement on discipline that this process has already helped him reflect on changes to be made. The suspension may rehabilitate the Respondent by giving him sufficient time to implement improvements to his business practices. It may also emphasize the required cooperation with the Department and care to stay current with licensure requirements. The suspension also sends a strong message to other license holders that a disregard for client obligations or the Department's authority will not be tolerated. The combined effect of rehabilitation and deterrence will protect the public.

The recommended discipline is also appropriate after a review of Board precedent. While most often the Board issues a reprimand for violations of unlicensed practice or failure to timely respond to the Department, this matter is different because the Respondent's conduct violated both rules; it was not a single violation. Additionally, in a similar case, 19 ACC 016, the Board ordered a one-year limitation on the respondent's license, which prohibited him from working as a sole proprietor of an accounting firm for at least one year. The two-week suspension in this case is a more measured response than the one-year limitation.

Based upon the facts of this case and the factors set forth in *Aldrich*, the two-week suspension of the Respondent's license is reasonable and warranted.

Assessment of Costs

Assessment of costs is appropriate in this case pursuant to Wis. Stat. § 440.22(2) because a suspension is recommended. The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding based on the aggravating and mitigating facts of the case. *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. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against the a respondent: (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 respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a program revenue agency, funded by other licensees; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

Considering the above factors, it is appropriate for the Respondent to pay the full costs of the investigation and of this proceeding. The Department has proven each of the alleged bases for discipline. The allegations of unlicensed practice and failure to exercise competence and diligence in a client engagement can be very serious. Because of the Respondent's failure to respond to the Department, the investigation lasted several years.

Further, the Department is a program revenue agency whose operating costs are funded by credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Finally, the Respondent acknowledged

that his reimbursement of the costs and fees of these proceedings is appropriate. Therefore, it is appropriate for the Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

CONCLUSIONS OF LAW

1. The Accounting Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 442.12.
2. The Department has proven the allegations by a preponderance of the credible evidence. Wis. Admin. Code §§ HA 1.12(3)(b) and 1.17(2).
3. The Respondent engaged in conduct that constitutes a violation of Wis. Stat. § 442.03 and Wis. Admin. Code § Accy 5.101 because he practiced certified public accounting although his business has never been licensed and by continuing his practice during a period when his license had expired and was not yet renewed.
4. The Respondent engaged in conduct that constitutes a violation of Wis. Admin. Code § Accy 1.201(1)(b) by failing to exercise competence and diligence in a client engagement.
5. The Respondent engaged in conduct that constitutes a violation of Wis. Admin. Code § Accy 1.407 by failing to respond to the Department's requests for information within 30 days.
6. As a result of the above violations, a two-week suspension of the Respondent's license is warranted, reasonable, and appropriate. Wis. Stat. § 448.02(3). *Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).
7. Pursuant to Wis. Stat. § 440.22, it is appropriate to assess the full costs of the proceedings against the Respondent based on the violations proven.
8. The Division of Hearings and Appeals has authority to issue this proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.10.

PROPOSED ORDER

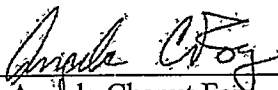
For the reasons set forth above, IT IS ORDERED that:

1. The Respondent's certification and license to practice as a certified public accountant in the state of Wisconsin (number 16321-1) is SUSPENDED for a period of two weeks, beginning ten business days from the date of this Order.
2. The Respondent 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 the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov
3. The terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on August 23, 2023

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (414) 227-4025
FAX: (608) 264-9885
Email: Angela.ChaputFoy@wisconsin.gov

By: 

Angela Chaput Foy
Administrative Law Judge