

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 88-06
)	DIA NO. 90DOCAB-2
MICHAEL E. FORT)	
Certificate Number AP-146,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	AND ORDER

A Complaint was filed by William M. Schroeder, Executive Secretary of the Iowa Accountancy Examining Board (hereinafter the Board), and Daryl K. Henze, Board Chair, on March 24, 1990 alleging that Michael E. Fort (hereinafter the Respondent) had violated a rule of professional conduct in violation of Iowa Code section 116.21(4) (1989) when he failed to respond on two occasions to Board communications, in violation of 193A Iowa Administrative Code section 11.6(7).

An Order and Notice of Hearing was issued on March 24, 1990 setting the hearing for this case for May 10, 1990 at 11:00 a.m.

The hearing on the above Complaint was held on May 10, 1990 beginning at 10:55 a.m. in the conference room, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Present were the following members of the Board: Kenneth A. Putzier, C.P.A., Board Chair; Paul S. Stave, C.P.A.; John C. Cain, C.P.A.; Judy Kappmeyer, public member; Diane McNulty, C.P.A.; Daryl K. Henze, C.P.A.; Dorothy L. Votroubek, A.P. Present also was Theresa O'Connell Weeg, Assistant Attorney General, who appeared for the State. The Respondent, Michael E. Fort, was present and was represented by his attorney, Jerry Estes. Present also were members of the Board staff, the acting director of the Department of Commerce, and a court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was closed to the public pursuant to Iowa Code section 258A.6(1) at the request of the licensee.

After hearing the testimony and examining the exhibits, the Board convened in closed session pursuant to Iowa Code section 21.5(1)f to discuss the decision to be rendered in a contested case. The undersigned Administrative Law Judge was directed to prepare this Board's Decision and Order.

THE RECORD

The evidentiary record in this case includes the Complaint, the Order and Notice of Hearing, the recorded testimony of the witnesses, and the following exhibits:

- State's Exhibit 1: Certified letter to Respondent dated December 23, 1988 from the Board's Ethics Committee and attached letter of complaint.
- State's Exhibit 2: Certified letter to Respondent dated December 7, 1989 from the Board's Ethics Committee and attached complaint letter.
- Respondent's Exhibit 1: Handwritten letter by Richard McDowell dated February 18, 1988.
- Respondent's Exhibit 2: Copy of the Board's file sent to Respondent at his request.
- Respondent's Exhibit 3: Dismissal With Prejudice filed in the District Court for Webster County on March 17, 1988.

FINDINGS OF FACT

1. On July 31, 1978, Michael E. Fort, the Respondent, was issued Iowa AP Certificate No. 146 by the Board.
2. On April 22, 1988, the Iowa Accountancy Examining Board received a letter of complaint from Wayne and Phyllis Davis. The complaint concerned two licensees, one of whom was the Respondent. (Testimony of William Schroeder; State's Exhibit 1)
3. On December 23, 1988, the Board of Accountancy Examiners Committee on Ethics and Enforcement sent a certified letter to Respondent with the complaint of the Davises attached. The letter requested that Respondent reply within ten days of receipt as to the status of the matter alleged in the complaint. (Testimony of William Schroeder; State's Exhibit 1)
4. The Board received the return receipt card for its certified letter dated December 23, 1988. The return receipt card indicated that the letter, which was addressed to Michael E. Fort, P.O. Box 337, Iowa Falls, Iowa 50126, was received on December 27, 1988. Jean Cronk signed the return receipt card. The Board did not receive a reply, either in writing or by telephone, to its December 23, 1988 letter. (Testimony of William Schroeder; State's Exhibit 1)
5. On December 7, 1989, the Iowa Board of Accountancy Examiners Committee on Ethics and Enforcement sent a second certified letter to the Respondent. The second letter again requested Respondent to notify the Committee in writing within ten days as to the status of the matter alleged in the complaint. The Board received the return receipt card, which indicated the letter had been received on December 8, 1989. (Testimony of William Schroeder; State's Exhibit 2)

6. The Board did not receive a written reply to its second letter dated December 7, 1989. Approximately one week before the hearing, Respondent called the Board's Executive Secretary and requested a copy of the Board's file. (Testimony of William Schroeder, Michael E. Fort)

7. At the hearing, Respondent submitted Exhibit 1, a handwritten letter dated February 18, 1988. This letter was written by Richard McDowell, an employee of the Respondent. The letter concerned Mr. McDowell's activities connected with K-D, Inc. and Wayne Davis, and had been drafted in connection with a civil lawsuit. Respondent stated that after he received the Board's first certified letter dated December 23, 1988 he sent a copy of Respondent's Exhibit 1, together with a copy of Respondent's Exhibit 6, to the Board office. Respondent's Exhibit 6 is a copy of the Dismissal With Prejudice in Webster County District Court in a lawsuit involving Wayne and Phyllis Davis vs. Michael E. Fort. Respondent stated that he did not include a cover letter with these documents, nor did he send the documents by certified mail. William Schroeder, Executive Secretary for the Board, testified that he has no record of receiving these documents from Respondent. (Testimonies of Michael E. Fort, William Schroeder; Respondent's Exhibits 1 and 3)

8. Respondent testified that when he received the Board's second letter dated December 7, 1989, he assumed that it was a mistake since he had responded to the first letter. It was during his busy season and he did not reply to the letter of December 7, 1989. (Testimony of Michael E. Fort)

9. The Board is willing to give the Respondent the benefit of the doubt and assumes that he did send a response to the Board's first letter even though the Board does not have any record of receiving this response. Respondent admitted he did not send a cover letter with the two documents he sent to the Board. A letter drafted by another person in connection with another matter and a District Court document, without any personal explanation from the Respondent, is not an adequate response to the Board's inquiry. The Board also notes that Respondent did not send this response by certified mail.

CONCLUSIONS OF LAW

1. Iowa Code section 116.21 (1989) provides in relevant part:

116.21 Causes for revocation, suspension, or refusal to renew.

After notice and hearing as provided in section 116.23, the board may revoke or may suspend for a period not to exceed two years, any certificate issued under section 116.5, or any registration granted under section 116.6, or any license issued under section 116.7 or 116.8, or may revoke, suspend, or refuse to renew any permit issued under section 116.20, or may censure the

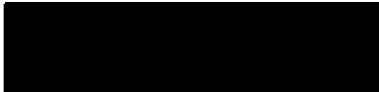
holder of any such permit, for any one or any combination of the following causes:

4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter.
2. 193A Iowa Administrative Code section 11.6(7) provides that a CPA, PA or AP shall, when requested, respond to communications from the board within thirty days of the mailing of such communications by registered or certified mail.
3. The preponderance of the evidence established that Respondent failed to respond to a communication from the Board dated December 7, 1989, which was sent to the Respondent by certified mail. Therefore, the Respondent has violated Iowa Code section 116.21(4) and 193A Iowa Administrative Code section 11.6(7).

ORDER

IT IS HEREBY THE ORDER of the Accountancy Examining Board of the State of Iowa that Respondent shall pay a civil penalty in the amount of Two Hundred and Fifty Dollars (\$250.00) within thirty (30) days of receipt of this Order.

Dated this 25 day of May, 1990.


Kenneth A. Putzier, C.P.A., Board Chair
Iowa Accountancy Examining Board

MW/jmm

cc: Theresa O'Connell Weeg
Jerry Estes

In accordance with Iowa Code Section 116.23(10) (1989) anyone adversely affected by an order of the Board may obtain a review of that order by filing a written petition for review with the district court within thirty (30) days after the entry of that order.