

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:)	
JERRY D. KOONS,)	CASE NO. 91-26
Certificate No. 876,)	DIA NO. 92DOCAB-2
Respondent)	BOARD DECISION ON
)	INTRA AGENCY APPEAL

COPY

TO: Jerry D. Koons

On May 19, 1992, the Executive Director of the Accountancy Examining Board of the State of Iowa filed a Complaint against Jerry D. Koons, Certificate No. 876 (Respondent).

1. On March 21, 1992, the Board's Committee on Ethics and Enforcement asked that you resolve various issues with Mr. Davis and provide the Committee with written verification that the matter had been resolved.

2. On March 25, 1992, the Board issued a letter to you scheduling an informal discussion on Monday, April 20, 1992, at 10:30 a.m. in conference room A and B of the Department of Commerce, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. The Board indicated issues to be discussed were what actions you have implemented to improve the practice you purchased and written procedures that your firm utilized (quality control).

3. You indicated that you received the letter of March 25, 1992 by return receipt requested.

4. On July 6, 1992, the Iowa Accountancy Examining Board reviewed the investigative file and concluded that probable cause exists to file a Complaint and to order a hearing. You were ordered to appear before the Board at 10:00 a.m. on August 10, 1992 at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. The Order and Notice of Hearing were received as evidenced by a return receipt requested signed on July 9, 1992.

5. Hearing was held on August 10, 1992, at 10:00 a.m. in conference room A and B of the Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa. The entire Board was present. The Respondent indicated that he wanted the hearing open to the public. The State was represented by Assistant Attorney General Theresa O'Connell Weeg. The Respondent appeared and represented himself. The hearing was presided over by Administrative Law Judge Kim A. Fields from the Iowa Department of Inspections and Appeals, who was instructed, following deliberation, to prepare this Decision for the Board.

THE RECORD

The record includes the following exhibits:

State's Exhibit 1: Certified letter dated March 25, 1992

State's Exhibit 2: Letter dated July 21, 1992 to the Executive Director of the Iowa Accounting Examining Board

State's Exhibit 3: Affidavit signed by Dave Davis

The record also includes the testimony of the Respondent and William M. Schroeder, Executive Secretary, Iowa Accountancy Examining Board.

FINDINGS OF FACT

1. The Respondent was issued a Certified Public Accountant Certificate Number 876 on August 9, 1968, by the Board.
2. The Executive Secretary wrote a letter to the Respondent dated March 25, 1992.
3. The letter was sent certified mail, return receipt requested.
4. The letter provided:

The Board's Committee on Ethics and Enforcement reviewed your letter at a March 21, 1992 meeting. The Committee asks that you resolve the various issues with Mr. Davis and provide the Committee with written verification that the matters have been resolved.

In order to discuss the various other issues raised in your letter, failure to report substandard work; what actions you have implemented to improve the practice you purchased and the written procedures your firm utilized (quality control); the Committee has scheduled another informal discussion.

The informal discussion is scheduled for Monday, April 20, 1992 at 10:30 a.m. in Conference Room A & B of the Department of Commerce; 1918 S.E. Hulsizer; Ankeny, Iowa. The Committee is normally advised by the Attorney General's office and a representative from the office may be present to answer any of the Committee's legal questions. This informal discussion will be held in closed session under Iowa Open Meetings Law which means that the public will not be allowed to be present.

This discussion is part of the Committee's investigation of this matter and may or may not result in formal disciplinary charges being filed. You are not required to participate in this discussion, and have the option of proceeding to a formal hearing at this time. Further, if you choose to participate in this discussion, any matters that are discussed would be considered by the Committee in the event this case proceeds to a formal hearing.

Please advise the Committee, in writing, as to whether you will attend the discussion on April 20, 1992, within seven days of receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,

William M. Schroeder, Executive Secretary
Iowa Accountancy Examining Board

5. The Respondent did not appear at the informal discussion meeting scheduled on April 20, 1992 at 10:30 a.m. at the Department of Commerce, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa.
6. The Respondent did not provide a written response to the Board as requested in the March 25th letter.
7. On May 19, 1992, the Executive Secretary, William M. Schroeder of the Iowa Accountancy Examining Board, filed a Complaint against the Respondent.
8. The Complaint alleged:

The Respondent is charged with a violation of a rule of professional conduct promulgated by the Board, in violation of Iowa Code Section 116.21(4) (1991) when he failed to respond to Board communications, in violation of Iowa Administrative Code 193A-11.6.
9. On July 6, 1992, the Board issued its Order and Notice of Hearing.
10. Hearing was set for 10:00 a.m. August 10, 1992, at 1918 S.E. Hulsizer, Ankeny, Iowa 50021.
11. On July 21, 1992, the Respondent provided the Board with a letter. The letter stated:

Dear Mr. Schroeder:

We herewith respond to the Order and Notice of 7-6-92 in an attempt to cast a little light on the problems. Our response is structured following the Circumstances in the Order and Notice.

1. With regard to the dispute between a "former" client and our firm -

- a. The matter is still at hand. The Board, in the 3-25-92 correspondence, did not specify a time limit on settling the dispute and we have purposely let the matter rest to let bad feelings cool down.
- b. We have no problem attempting to settle the dispute in the near future, except that the client expects to be reimbursed for penalty allegedly caused by our firm. We did not cause the penalty - in fact the client had informed us their company was changing accountants prior to any necessary involvement on our part with regard to a tax payment.

Our normal office policy is when we cause the problem we pay the penalty. In borderline instances we normally pay, however, when the problem is deemed not our fault we do not pay. Each case stands alone.

- c. The client has asserted we have not been professional in our handling of affairs with them and we take exception to those assertions to the "umpth" degree. The ultimate proof of professionalism lies with our former clients, present clients, and the knowing public. We're certain if all these people - firms - whatever were polled nearly all would agree we are professional. And we know we are not perfect.
- d. The Board must realize that a former employee (12-7-90 to Noon 4-5-91) has been involved as the Davis's accountant and we presume this is not helping our situation. In all the years we have toiled we have never encountered an employee who was so hostile towards us - we have no way of knowing why - but she was hostile from the day she came to work and steadily got worse without stating a reason. Our intentions were to fire her at the conclu-

sions of the 1991 tax season because of her hostility towards us and she clients she serviced. (To the best of our knowledge she had no idea she would be fired.)

- e. Our feelings truly are that if this situation caused damage to our C.P.A. profession the damage was done at the outset and anything done now would not improve the situation. We know of no damage done.

2. With regard to our not advising the Board, in writing, as to whether we would attend an informal discussion on 4-20-92 we can only profoundly apologize and say -

- a. We received the Board's letter of 3-25-92 and apparently did not read it as carefully as we should have. The paragraph pertaining to a written response flew over three peoples' heads. At the time we were mired heavily in the tax season and the Board's letter probably did not get as well read as it normally would have.
- b. Again we offer our profound apologies for the lack of response and we do assure the Board it was not intentional. Certainly it was not our goal to attempt to conclude the matter at hand by knowingly refusing to reply.

We obviously plan on attending the August 10, 1992 hearing but will not be represented by legal counsel. Further we do not wish the disciplinary hearing to be open to the public.

12. The Respondent provided the Board an affidavit dated August 6, 1992, stating:

AFFIDAVIT

STATE OF IOWA, JASPER COUNTY, SS:

I, Dave Davis, being first duly sworn on oath depose and state that we, that being Davis Advertising, have had a dispute with Jerry D. Koons, C.P.A.

That Jerry D. Koons has returned all books and has paid us the penalty and interest which he felt he should have paid us and that all disputes with him are now resolved.

Dated this 6th day of August, 1992.

Signed/Dave Davis

Subscribed and sworn to before me by the said Dave Davis the 6th day of August, 1992, in Newton, Jasper County, Iowa.

Signed/Lee M. Walker, Notary Public
SEALED

CONCLUSIONS OF LAW

Causes for revocation, suspension, or refusal to renew.

After notice and hearing as provided in section 116.23, the board may revoke or 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 combination of the following causes:

Violation of rule of professional conduct promulgated by the board under the authority granted by this chapter. Iowa Code Chapter 116.21(4).

Disciplinary sanctions.

The board has authority to impose the following disciplinary sanctions:

Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000. Civil penalties may be imposed for any of the disciplinary violations specified in rule 12.4(116, 258A). 193A Iowa Administrative Code 12.12(1) "f".

Communications.

A CPA or AP shall when requested, respond to communication from the board within 30 days of the mailing of such communication by registered or certified mail. 193A Iowa Administrative Code 11.6(7).

In the case at issue, the evidence indicates that the Respondent did not provide a response to the March 25, 1992 letter within the seven days requested. Evidence further indicates the Respondent did not respond within 30 days of the mailing of the March 25, 1992 letter. The record shows that the only time the Respondent answered the Board's communication was when he received the Order

and Notice of Hearing. The Respondent's arguments that it went over his head during the busy season does not justify his failure to respond. Therefore, it is the determination of the Board that the Respondent did violate Iowa Code section 116.21(4) and 193A Iowa Administrative Code 11.6(7) by failing to timely respond to the Board's March 25, 1992 letter and failing to appear at the Board's informal discussion on April 20, 1992. This violation of the Board's rules is grounds for disciplinary action. The Board has authority to impose disciplinary action under Iowa Code section 116.21 and 193A Iowa Administrative Code 12.12(116, 258A).

DECISION AND ORDER

It is the decision of the Board of Accountancy that the Respondent's failure to respond to the Board's communication and failure to appear at the informal discussion meeting on April 20, 1992 violated Iowa Code section 116.21(4)(1991) and 193A Iowa Administrative Code 11.6(7). The Board has authority to impose disciplinary sanctions under Iowa Code section 116.21 and 193A Iowa Administrative Code 12.12. The Board hereby imposes a civil penalty of \$750.00 as a sanction for this violation. The civil penalty hereby imposed does not cover the expense incurred by this Board because of your action. The civil penalty imposed by this decision shall be paid within 30 days of the date of this Order.

It is further ORDERED that the Respondent provide in writing response to the failure to report substandard work, what actions he has taken to improve the practice he purchased, and written procedures his firm utilized for quality control. This response shall be provided within 30 days of the date of this Order.

Dated this 23 day of September, 1992.


Daryl K. Henze, Chairman
Iowa Accountancy Examining Board

KAF/jmm