

88-11

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

IN THE MATTER OF	)	DIA NO. 89DOCPL-3
	)	CASE NO. 88-11
THOMAS E. LAY	)	
	)	FINDINGS OF FACT,
CERTIFICATE NO. 2984	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER

A Complaint was filed by William M. Schroeder, Executive Director of the Iowa Accountancy Examining Board (hereinafter the Board), and Gaylon L. Halverson, Board Chair, on December 14, 1988, alleging that Thomas E. Lay (hereinafter the Respondent) had violated several Iowa Code and Iowa Administrative Code sections.

An Order and Notice of Hearing was issued on December 14, 1988 setting the hearing for this case on January 26, 1989 at 11:30 a.m.

The hearing on the above complaint was held on January 26, 1989 beginning at 2:10 p.m. in the conference room, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Present were the following members of the Board: Ken Putzier, C.P.A., Gaylon Halverson, C.P.A., Diane McNulty, C.P.A., and A. E. (Al) Iverson, C.P.A. Present also was Theresa O'Connell Weeg, Assistant Attorney General, who appeared for the State. The Respondent, Mr. Thomas E. Lay, was not present and was not represented by legal counsel. The State presented proof of service at the hearing. Present also were members of the Board staff and a court reporter. Amy Christensen Couch, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. The hearing was open to the public.

After hearing the testimony and examining the exhibits, the Board discussed the decision to be rendered in open session. 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 return of service showing service on December 22, 1988, the recorded testimony of the witness, and State's Exhibit 1, which is certified copies of documents in State v. Lay, Criminal No. 40533.

FINDINGS OF FACT

1. The Respondent, Thomas E. Lay was properly served with the Complaint and Order and Notice of Hearing on December 22, 1988. (Return of Service).

2. On September 28, 1988, the Respondent was charged with theft in the first degree in violation of Iowa Code sections 714.1(2) and 714.2(1) (1987) by misappropriating property in his trust, possession or control.

3. On November 2, 1988, the Respondent pled guilty to the charge of theft in the first degree in violation of Iowa Code sections 714.1(2) and 714.2(1) in the case of State of Iowa v. Thomas Earl Lay, In the District Court in and for Polk County. (State's Ex. 1; testimony of Mr. William Schroeder).

4. On December 8, 1988, the Respondent was adjudged guilty and was sentenced to a term of imprisonment not to exceed ten years and ordered to make restitution. (State's Exhibit 1; testimony of Mr. Schroeder).

#### CONCLUSIONS OF LAW

1. The Respondent was properly served with the Complaint and Order and Notice of Hearing according to law. Therefore, under Iowa Code sections 17A.12(3) and 116.23 (1987) the Respondent is bound by this decision as if he had appeared at the hearing.

2. Iowa Code section 116.21 (1987) provides, in part, the following:

"After notice and hearing . . . the board may revoke or may suspend for a period not to exceed two years, any certificate . . . or any registration . . . for any one or any combination of the following causes:

. . .

5. Conviction of a felony under the laws of any state or of the United States.

. . .

7. Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

. . .

10. Conduct discreditable to the public accounting profession."

Theft in the first degree is a felony involving dishonesty. State v. Willard, 351 N.W.2d 516, 518 (Iowa 1984).

The Respondent is guilty of violating Iowa Code sections 116.21(5), (7), and (10) (1987) in that he committed theft in the first degree and was convicted.

3. 193A Iowa Administrative Code 11.6(1) provides that "A CPA, PA or AP shall not commit any act that reflects adversely on their fitness to engage in the practice of public accountancy."

193A Iowa Administrative Code 12.2(3) provides that:

"When considering alleged violations of Iowa Code subsection 116.21(11) the phrase "conduct discreditable to the public accounting profession" shall be construed in the light of the following broad recognition of responsibilities:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA, PA, or AP engaged in such practice certain obligations both to their clients and the public. These obligations include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe, where applicable, generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of the [sic] personal conduct in all matters affecting one's fitness to practice public accountancy.

Habitual intoxication or addiction to the use of drugs will be considered as not maintaining a high standard of personal conduct."

The Respondent violated 193A Iowa Administrative Code sections 11.6(1) and 12.2(3) when he committed theft in the first degree and was convicted.

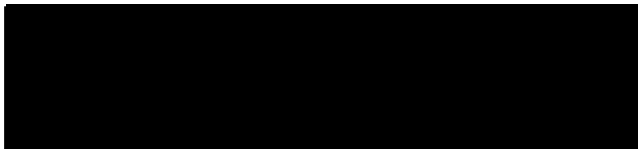
ORDER

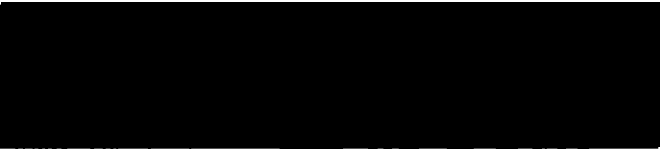
It is hereby the ORDER of the Accountancy Examining Board of the State of Iowa that Iowa CPA certificate number 2984 issued to the Respondent, Thomas E. Lay, is REVOKED. It is the further ORDER of the Board that the Respondent will turn in his CPA certificate to the Board within ten (10) days of receipt of this Order if he has not already done so.

Iowa Code section 116.23(10) (1978) provides that "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 days after the entry of the order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or

set aside in whole or in part. A copy of the petition shall be immediately served upon any member of the board and the board shall then certify and file in the court a transcript of the record upon which the order complained of was entered."

Dated this 18th day of March, 1989.

  
Gaylon L. Halverson  
Chairperson  
Iowa Accountancy Examining Board

  
Amy Christensen Couch  
Administrative Law Judge

ACC/jmm

Copy to:

Thomas E. Lay  
Theresa O'Connell Weeg  
Accountancy Examining Board

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF	)	
THOMAS E. LAY	)	CASE NO. 88-11
CERTIFICATE NO. 2984	)	
RESPONDENT.	)	ORDER AND NOTICE OF HEARING

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Now on this 14th day of December, 1988, the Iowa Accountancy Examining Board has reviewed the investigative file of the Respondent, Thomas E. Lay, and concluded that probable cause exists to file a complaint and to order a hearing in this matter.

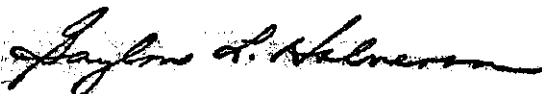
IT IS HEREBY ORDERED that a hearing be held upon the Complaint to discipline the certificate issued to the Respondent, Thomas E. Lay.

You are notified that this hearing will be held at 11:30 a.m. on the 26th day of January, 1989, at 1918 SE Hulsizer Avenue, Ankeny, Iowa 50021. You may appear personally and be represented by legal counsel at your expense, with the right to cross-examine witnesses and to examine evidence produced against you. If you fail to appear and defend this matter, the hearing will proceed and a decision will be made.

You are also hereby notified that you or your counsel may answer to the matters asserted in the Statement of Charges within twenty days after receipt of the Original Notice, which answer may admit or deny each matter asserted.

You are also hereby notified that a disciplinary hearing shall be open to the public at the discretion of the licensee.

Dated this 20th day of December 1988.



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Chairperson  
Iowa Accountancy Examining Board

Copy to:

Theresa O'Connell Weeg  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319  
Telephone: (515) 281-5166

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

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IN THE MATTER OF	)	
	)	CASE NO. 88-11
THOMAS E. LAY	)	
	)	
CERTIFICATE NO. 2984	)	COMPLAINT
	)	
RESPONDENT.	)	

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COMES NOW the Complainant, William M. Schroeder, and states:

1. He is the Executive Director of the Iowa Accountancy Examining Board and files this Complaint solely in his official capacity.

2. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 116, and 258A (1987).

3. On January 29, 1979, Thomas E. Lay, the Respondent, was issued Iowa CPA certificate number 2984 by the Board.

4. That certificate is in full force and effect at the present time.

**COUNT I**

The Respondent is charged with conduct discreditable to the public accounting profession pursuant to Iowa Code Section 116.21(10) (1987), as defined by Iowa Administrative Code Section 11.6(1) and 12.2(3) (1987), in that he pled guilty to a felony charge of first degree theft.

**COUNT II**

The Respondent is charged with being convicted of a felony under the laws of the State of Iowa, in violation of Iowa Code

Section 116.21(5) (1987), in that he pled guilty to a felony charge of first degree theft.

### COUNT III

The Respondent is charged with conviction of any crime, an element of which is dishonesty or fraud, under the laws of the State of Iowa, in violation of Iowa Code § 116.21 (1987) when he pled guilty to first degree theft.

### THE CIRCUMSTANCES

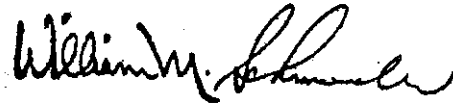
1. Respondent was formerly employed as the clerk for the city of West Des Moines.

2. On August 26, 1988, Respondent was charged with one count of first degree theft pursuant to Iowa Code §§ 714.1(2) and 744.2(1) (1987), a charge which arose out of an embezzlement of funds from his employer.

3. On November 2, 1988, Respondent pled guilty before the Iowa District Court for Polk County to theft in the first degree, in violation of §§ 714.1(2) and 714.2(1).

4. On December 8, 1988, Respondent was sentenced by the Iowa District Court for Polk County to a prison term not to exceed ten years. The Respondent was also ordered to make restitution to his victim.

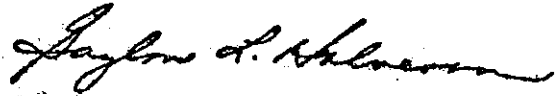
WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.



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WILLIAM M. SCHROEDER  
Executive Director  
Complainant

On this 14th day of December, 1988, the Iowa Board of Accountancy Examiners found probable cause to file this complaint and to order a hearing in this case.



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GAYLON L. HALVERSON  
Chair, Iowa Board of  
Accountancy Examiners

Copy to:

Theresa O'Connell Weeg  
Assistant Attorney General  
Hoover Building, 2nd Floor  
Des Moines, Iowa 50319  
Tel. (515) 281-5166  
ATTORNEY FOR THE STATE OF IOWA