

STATE OF IOWA
BEFORE THE DEPARTMENT OF COMMERCE
ACCOUNTANCY EXAMINING BOARD

IN RE:)	
)	CASE NO. 91-06
HAROLD H. HOLDER)	DIA NO. 93DOCAB-1
)	
)	FINDINGS OF FACT,
CERTIFICATE NO. R1216)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

To: Harold H. Holder

On September 21, 1993, the Executive Secretary of the Iowa Accountancy Examining Board filed a complaint on behalf of the Iowa Accountancy Examining Board against the Respondent, Harold H. Holder.

On September 21, 1993, Daryl Henze, Chairperson of the Iowa Accountancy Examining Board, issued an order and notice of hearing indicating:

It is hereby ordered that a hearing be held upon the complaint to discipline the certificate issued to Respondent, Harold H. Holder.

You are notified that a hearing will be held at 1:00 p.m. on the 3rd day of November 1993 at 1918 S.E. Hulsizer, Ankeny, Iowa.

On November 3, 1993, at 1:30 p.m., at 1918 S.E. Hulsizer, Ankeny, Iowa, a hearing was held in the above-captioned matter. It is noted for the record that the Respondent in this matter was not present, however, evidence of notice of hearing was provided by a signed return-receipt requested.

The hearing continued without the Respondent as provided in Iowa Code Chapter 17A. The state was represented by Assistant Attorney General Theresa Weeg. There was a quorum of the board present for the hearing.

The following exhibits were admitted into evidence as exhibits A through I.

- A Letter from Daniel P. Curran dated February 27, 1991.
- B A memo from George Welch dated March 6, 1991.
- C Letter to Harold Holder dated April 11, 1991.
- D Letter from Harold Holder dated May 1, 1991.
- E Letter to Harold Holder dated June 4, 1991.
- F U.S. West telephone listing and article.
- G Certified letter to Harold Holder dated August 30, 1993.

- H Letter from Harold Holder dated September 8, 1993.
- I Complaint from F. R. Christensen dated September 13, 1993.

The complaint issued on September 21, 1993, indicated the following:

- Count I Respondent is charged pursuant to Iowa Code Section 542C.21(3) (1993), with holding himself out to the public as a CPA without a valid Iowa CPA certificate, in violation of Iowa Code Section 542.25(1).

- Count II Respondent is charged pursuant to Iowa Code Section 542C.21(3) with practicing as a CPA without a valid permit to practice, pursuant to Iowa Code Section 542C.20(5) and 193A Iowa Administrative Code Section 9.11(2).

The hearing was presided over by Administrative Law Judge Kim A. Fields of the Iowa Department of Inspections and Appeals who was instructed, following deliberations, to prepare this decision.

THE RECORD

The record in the above-captioned matter consists of the testimony of William Schrader and the aforementioned exhibits.

FINDINGS OF FACT

1. The Iowa Board of Accountancy Examiners has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 542C and 272C (1993).
2. On January 10, 1969, the Respondent, Harold H. Holder, was issued an Iowa CPA Certificate Number R1216 by the board.
3. Iowa CPA Certificate Number R1216 and the Iowa permit to practice lapsed on June 30, 1986.
4. On February 27, 1991, Daniel P. Curran of T. G. & T. Insurance Service of Davenport, Iowa, filed a personal, confidential complaint to chairman of the ethics committee of the Iowa Board of Accountancy Examiners.
5. On March 6, 1991, George Welch, consultant to the Iowa Board of Accountancy Examiners, provided a memo to the ethics and enforcement committee of the Iowa Board of Accountancy Examiners. The memo indicated that Mr. Holder is in violation of the Iowa

accountancy statute and rules of the Iowa Accountancy Examining Board for the following reason:

Mr. Holder is practicing public accounting as a certified public accountant without a permit to practice or a valid CPA's certificate.

6. On April 11, 1991, Assistant Attorney General Theresa Weeg wrote a letter stating in pertinent part:

The board records indicate that your CPA certificate and permit to practice have lapsed. Accordingly, you are not authorized by law to issue review reports, or provide other services which involve the exercise of the attest function, as those services may be by law only performed by properly licensed CPAs. See Iowa Code Section 116.25(8) (1991). You must immediately cease and desist from providing services to the public that may only be provided by the CPAs until that time you decide to reinstate your certificate and permit.

Be advised that the board is authorized pursuant to Iowa Code Section 116.21(3) to take disciplinary action against you in the event it finds that you have provided services which you are not legally authorized to provide and that it will do so in the event the board obtains evidence that you have after the date of this letter held yourself out as a CPA or performed services that only a CPA may perform.

7. Assistant Attorney General Theresa Weeg received a handwritten note dated May 1, 1991, stating:

Please be advised that services outlined in your letter of April 11, 1991, are no longer provided by this office.

Yours truly, H. H. Holder

8. On June 24, 1991, Assistant Attorney General Theresa Weeg, on behalf of the Iowa Accountancy Examining Board wrote a letter stating in pertinent part:

The Iowa Accountancy Examining Board met recently and at that meeting discussed your May 1 response to my letter of April 11, 1991. In the board's view, your response did not adequately address the questions posed in my letter.

Accordingly, please provide answers to the following questions:

1. Are you in any way holding yourself out to the public as a CPA?
2. Are you performing any attest functions in your current practice?
3. Do you display your CPA certificate in your office?
4. Do you use the CPA designation on your business sign, letterhead, advertising or any other materials?
5. Do you plan at any time in the near future to reinstate your certificate and permit to practice?

The board received no response to the June 24, 1991, letter.

10. In the October 92-93 U.S. West Direct Yellow Pages for the Quad Cities area listed "Harold H. Holder Certified Public Accountant - Tax Planning and Preparation - Computerized Accounting and Bookkeeping - Payroll and Sales Reports - Management Consultant.

11. The 1992-93 U.S. West Directory Page was provided to the Iowa Board of Accountancy Examiners Executive Secretary prior to August 30, 1993, which generated the letter of August 30, 1993.

12. On August 30, 1993, William M. Schroeder, Executive Secretary of the Iowa Accountancy Examining Board, wrote a letter to the Respondent, which in pertinent part states:

The Iowa Accountancy Examining Board's Committee on Ethics and Enforcement recently received the attached U.S. West Direct Yellow Page and the Residential Directory and found you are still holding yourself out as a CPA. In order to discuss your current violation of Iowa Code section 542C.28, the committee has scheduled an informal discussion.

Pursuant to chapters 542C and 272C(1993) of the Code of Iowa, the informal discussion will be held September 21 at 1:00 p.m. in the Country Inn, Highway 1 and I-80 Exit 246, Iowa City, Iowa.

On September 8, 1993, the Respondent wrote a letter to the Iowa Board of Accountancy Examiners stating:

In response to your letter of August 30, 1993, regarding my practice as a CPA, I submit the following:

My practice is limited to preparing financial statements for small business and applicable tax returns. I prepare personal tax returns

during the year. I do not prepare any audits and do not intend to engage in this field.

My original certificate was issued by the state of Pennsylvania in 1962 experience consists of six years with Deloitte Touches, formerly Haskins and Sells 10 years as corporate controller of a major corporation and 19 years in my present occupation.

I do believe my education and experience are adequate to hold myself out as a CPA capable of helping small business with their financial statements and tax returns as required by the government.

This particular ad as seen in the telephone directory will be changed at the time the directory is reissued. I do not intend to be present at your informal discussion held September 21, 1993. Sincerely, Harold H. Holder, CPA.

12 Letter dated September 8, 1993, from the Respondent to the board. That letterhead Harold H. Holder, CPA, in addition to the Respondent's signature block.

13. On September 13, 1993, the Iowa Accountancy Examining Board received a letter from F. R. Christensen with regard to a complaint against the Respondent. The letter, in pertinent part, stated:

Please accept this letter as my filing of a formal complaint against my former accountant, Harold H. Holder, C.P.A. Mr. Holder was my business and personal CPA from approximately September 1991 to approximately May 1993.

He prepared my business accounting work as well as my personal and business tax returns for 1991-1992. Due to a substantial increase in my income from 1991-1992, it became necessary that I pay estimated quarterly income tax payments in 1992. Mr. Holder advised me to pay estimated federal payments but said nothing about state payments. As a result of not paying state payments, Illinois assessed me a penalty of \$287.81. I believe as a result of Mr. Holder not informing me to pay the state estimated tax, he should be responsible for this penalty. He contends that he did tell me, and he bears no responsibility. I said to him that if he had told me, I certainly would have paid it. The state quarterlies were pretty small compared to the federal. I said that he should have been monitoring my payments to make certain

I was complying with all tax matters. He is the CPA, not me. I've enclosed copies of my correspondence with Mr. Holder for your review.

Additionally, I've enclosed a copy of my 1992 1040 page 2 as well as his cover letter to me. He has signed the return as well as his letter to me representing himself as a CPA. And it has recently come to my attention he may not be a CPA or may not be properly registered.

14. On March 31, 1993, the Respondent signed the 1040 of Frank R. and Pamela A. Christensen as H. H. Holder, CPA.

CONCLUSIONS OF LAW

Iowa Code 542C.21. Causes for revocation, suspension or refusal to renew.

After notice and hearing as provided in section 542C.23, the board may revoke or suspend for a period not to exceed two years a certificate issued under section 542C.5 or a license issued under section 542C.7 or 542C.8 or may revoke, suspend or refuse to renew a permit issued under 542C.20, or may censure the holder of permit for any one or any combination of the following causes:

1. A certificate, permit, or license shall be permanently revoked if fraud or deceit was used in obtaining a certificate as a certified public accountant or a license as an accounting practitioner, or in obtaining a permit to practice public accounting under this chapter.
2. Dishonesty, fraud or gross negligence in the practice of public accounting.
3. Violation of any of the provisions of Section 542C.25.
4. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter.
5. Conviction of a felony under the laws of any state or of the United States.
6. Engaging in any activity prohibited under section 542C.3 or permitting persons associated with the holder who are under the holder's supervision to do so.

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

8. Cancellation, revocation, suspension or refusal to renew the authority to practice as a certified public accounting practitioner by any other state, for any cause other than failure to pay appropriate fees in the other state.

9. Suspension. Revocation of the right to practice before any state or federal agency.

10. Conduct discreditable to the public accounting profession.

542C.20 Permit to practice. The certificate of certified public accountant granted by the board under section 542C.5 and the license to practice as an accounting practitioner under 542C.7 or 542C.8 shall be renewed as determined by the board. There shall be a renewal fee in the amount to be determined from time-to-time by the board. The board shall give notice by restricted certified mail, return receipt requested, to the holder of the certificate or license who has failed to renew it. If the holder fails to renew the certificate or license within 30 days of the receipt of the notice, the certificate or license lapses and is void.

Iowa Code 542C.25 Use of Title.

1. No person shall assume or use the title or designation (Certified Public Accountant) or the abbreviation (CPA) and any other title, designation, words, letters, abbreviation, sign, card, or device intending to indicate that the person is a certified public accountant unless the person has received and holds a valid certificate as a certified public accountant under section 542C.5. However, a foreign accountant who has registered under the provisions of section 542C.17 may use the title under which the foreign accountant is generally known in the foreign accountant's country, followed by the name of the country from which the foreign accountant received the certificate license or degree.

A person shall not assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that the person is a public accountant unless the person has received a certificate as a certified public accountant under section 542C.5.

No person shall sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business to any opinion attesting to reliability of any representation in regard to any person or organization embracing either financial information or facts respecting compliance with conditions established by the law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations unless the person holds a current permit issued under section 542C.20 and all the person's offices in this state for the practice of public accounting are maintained and registered under section 542C.19. However, the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing the person's signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title or office which the person holds in the organization, nor shall the provisions of this subsection prohibit any act or public official or public employees in the performance of the person's duties.

542C.28 Violation of use of title. Whenever in the judgement of the board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute a violation of section 542C.25, the board may make application to the appropriate court or an order enjoining such act or practice and upon showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court without bond.

542C.29 Penalty. Any person who violates any provisions of section 542C.25 shall be guilty of a serious misdemeanor.

Whenever the board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the attorney general of this state or to the county attorney of the county where the person maintains a business office who may in the attorney general's or county attorney's discretion, cause appropriate charges to be filed.

193A Iowa Administrative Code 12.4(116, 258A). Grounds for disciplinary action. The board may initiate disciplinary action against a CPA, AP or a firm of CPAs or APs on any of the following grounds:

12.4(1) For any of the grounds set forth in Iowa Code Section 116.21. (a) a violation of any of the rules of professional conduct set forth in 193A - chapter 11 is grounds for disciplinary action under Iowa Code Section 116.21(4). (b). When considering alleged violations of Iowa Code section 116.21(11), the phrase "conduct discreditable to the public accounting profession" shall be construed in light of the following:

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 the legally restricted title relating to the practice of public accountancy, imposed on a CPA or AP engaged in such practice certain obligations to both their clients and the public. These obligations include the obligation to maintain independence of thought and of 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 the client in confidence, to uphold the standards of public accountancy profession, and to maintain high standards of personal conduct in all manners 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 or professional conduct.

12.4(2) For a violation of any of the provisions of Iowa Code section 116.22.

12.4(3) For a violation of any of the provisions of Iowa Code section 116.25.

12.4(4) For violation of Iowa Code Section 258A.9(2) or 258A.9(3) and any of the provisions of 193A - chapter 15.

12.4(5). For any of the grounds set forth in Iowa Code section 258A.10 and for failure to comply with an order of the board imposing licensing discipline.

193A Iowa Administrative Code 12.12 (116, 258A). Disciplinary sanctions. The board has authority to impose the following disciplinary sanctions:

a. Revoke a certificate, registration, license, or permit issued by the board. In the event of revocation, the licensee shall not be allowed to remain a partner or shareholder or a business entity if the law requires all partners or shareholders of such entity to be CPAs or APs.

b. Suspend a certificate, registration, license or permit issued by the board. A CPA or AP who is under suspension shall refrain, during the period of suspension, from all facets of the ordinary practice of public accounting.

c. Revoke or suspend the privilege to engage in one or more areas of practice of public accounting.

d. Impose a period of probation. As a condition to a period of probation, the board may impose terms and conditions deemed appropriate by the board which may include, but are not limited to the following:

(1) The board may require the licensee to undergo a quality review or peer review. The licensee shall select, a subject to approval of the board a CPA, a firm of CPAs or a review program which is endorsed by the American Institute of Certified Public Accountants. The costs of the review shall be paid by the licensee. The board shall be furnished a copy of the report issued by the reviewing party.

(2) The board may require the licensee to enter into an agreement with a CPA or a firm of CPAs to obtain a preissuance review of any audits, compilations, or reviews issued by the licensee during the period of probation. The agreement shall be approved by the board. The board may require the licensee to report regularly concerning the preissuance interviews conducted pursuant to the agreement. Any costs incurred in obtaining preissuance review shall be paid by the licensee.

e. Impose requirements regarding continuing education. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time periods for completing these courses. The board may also specify whether the continuing education be in addition to that routinely required for license renewal. The board may also specify that the additional continuing education be a condition for the termination of any suspension or reinstatement of a certificate, permit, license or registration. The board may also specify that current reference materials be obtained and maintained.

f. Required reexamination. Using one or more parts of CPA or AP examination given to candidates for the CPA certificate or the AP license.

g. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000.00. Civil penalties may be imposed for

any of the disciplinary violations specified in rule 12.4(116, 258A).

h. Issue a citation of warning. 193 Iowa Administrative Code 12.12 (116, 258A).

The board shall issue a formal press release in those instances where a certificate, permit or license has been suspended or revoked. 193 Iowa Administrative Code 12.15(3).

(All references to Iowa Code Chapter 116 in the administrative rules have been transferred to Chapter 542C.)

(All references to Iowa Code Chapter 258A in the administrative rules have been transferred to Chapter 272C.)

In the case at issue, the evidence sufficiently shows that the Respondent has not renewed his permit to practice as an accountant as required by 542C.20. The Respondent has held himself out as a CPA breaching his agreement of May 1, 1991. The Respondent has violated 542C.20(1) by not renewing his permit. The Respondent has violated 542C.25 by holding himself out as a CPA without a valid permit. The Respondent has continued to practice without a permit since June 30, 1986. The Respondent has flagrantly ignored the warnings of the board and continued to practice in violation of 542C.25.

Pursuant to the authority of Iowa Code Chapter 542C.21 and Iowa Administrative Code 193A, the board has determined that disciplinary action is warranted. Therefore, the board has ordered the following disciplinary action and made the following request to the attorney general:

To commence an injunctive action against you and recommend that should you violate the injunction, should one be ordered by the Scott County District Court, or this order, that criminal charges be filed against you in accordance with 542C.29.

Further, pursuant to 193 Iowa Administrative Code 12.15(3), a press release shall be issued to all newspapers in the Quad City area and the Des Moines Register.

DECISION AND ORDER

It is the decision of the Iowa Board of Accountancy Examiners that the Respondent has violated Iowa Code Section 542C.25(1), 542C.20(5) and 193A Iowa Administrative Code 9-11(2), justifying the imposition of sanctions. It is therefore ordered by the Iowa Accountancy Examining Board that: the Respondent, Harold H. Holder's, CPA certificate number R1216 is hereby revoked. The

Respondent will surrender his certificate within 30 days of this order.

The Respondent, Harold H. Holder, is hereby ordered to pay \$1,000.00 in civil penalties. The payment shall be made within 30 days of the date of receipt of this order.

The Attorney General is instructed to commence injunctive action to prevent the Respondent, Harold H. Holder, from practicing accountancy.

The Attorney General is further instructed that should the Respondent violate this order by continuing to practice, or refusal to pay the assessed civil penalty or refusal to surrender a certificate as ordered, then it is the opinion of this board that sufficient evidence exists to justify the implementation of Iowa Code 542C.29 and criminal charges should be filed.

Judicial review of the board's action may be sought in accordance with the terms of Iowa Administrative Procedures Act (Iowa Code Chapter 17A) from and after the date of this order.

Dated this 4th day of December 1993.


Daryl Henze
Chairperson
Iowa Accountancy Examining Board

KAF/dkc

cc: Harold H. Holder
2393 Tech Drive
Bettendorf, IA 52722

Iowa Accountancy Examining Board
William M. Schroeder
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Theresa Weeg
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