

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION, BOARD)
OF ACCOUNTANCY,)
)
Petitioner,)
)
vs.) Case No. 11-6262PL
)
AHMAD LABIB BALTAGI,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011), before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on February 1, 2012, by video teleconference at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

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For Respondent: Frederick R. Dudley, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent committed the violations alleged in the Administrative Complaint and, if so, what disciplinary action should be taken against him.

PRELIMINARY STATEMENT

The instant proceeding began when Mr. Baltagi (Baltagi) requested a hearing to contest the allegations that the Department of Business and Professional Regulation, (Department), had made against him in an Administrative Complaint filed on July 5, 2011. In Count One, Baltagi is charged with a failure to maintain good moral character, in violation of section 473.323(1)(1), Florida Statutes (2010), by having a default judgment entered against him. In Count Two, Baltagi is charged with violating section 455.227(1)(f), Florida Statutes (2010), by having his authority to practice a regulated profession acted upon by the licensing authority of any jurisdiction.

The case was transferred to DOAH pursuant to section 120.57(1) on December 12, 2011. On January 31, 2012, a telephonic motion hearing was held with the parties, on a Motion for Telephonic Appearance filed by the Department. During the motion hearing, the parties agreed to not offer any evidence at

the final hearing concerning the facts and circumstances that led to the entry of a default judgment against Baltagi.

During the final hearing, the Department presented the testimony of Baltagi and Dan Hevia, an expert in accounting; Exhibits 8-11, 17, and 20-23 were admitted at the request of the Department. Baltagi presented the testimony of Jim Thielen, an expert in accounting; Exhibits 12-16 and 24-27 were offered by Baltagi and admitted into the record. Judicial Notice was taken of Chapters 455 and 473, Florida Statutes, and Rule 61H1-36.004(2)(b) of the Florida Administrative Code.

A Transcript of the hearing was filed with DOAH on February 16, 2012. At the final hearing, the parties agreed to extend the deadline for the filing of proposed recommended orders to March 16, 2012. Both proposed recommended orders were filed on that date, and have been fully considered in entering this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with the duty to regulate the practice of certified public accountants in Florida and to prosecute administrative complaints pursuant to chapters 120, 455, and 473, Florida Statutes.

2. At all times relevant to the allegations of the Complaint, Baltagi was licensed in Florida as a certified public accountant. Baltagi's license number is AC 0028318.

3. Baltagi is the sole owner of Baltagi Business Services, Inc., which does business as "Fast Cash Services." He is also the sole owner of Labib Baltagi, Inc., which prepares income tax returns as a Jackson Hewitt tax franchise. The two businesses are located adjacent to each other, but are two separate businesses.

4. Fast Cash Services had as its primary business operation the cashing of checks for the customers of Baltagi's Jackson Hewitt tax franchise.

5. In 2006, the United States, on behalf of the Internal Revenue Service (IRS), filed a complaint against Baltagi, alleging that he had prepared 32 federal tax returns for Native Americans that failed to include per-capita distributions from gaming proceeds in their taxable income.

6. In June of 2006, Baltagi signed a Stipulated Judgment of Permanent Injunction, which provided as follows:

Pursuant to 26 U.S.C. §§ 7402(a), 7407 and 7408, defendants and their employees are permanently enjoined from:

- a. preparing or assisting in the preparation of, or counseling of or advising the preparation of filing of, federal tax returns which assert that per capita distributions of gaming proceeds paid to Native Americans are exempt from federal income tax;
- b. preparing or assisting in the preparation of, or counseling or advising of federal tax returns that assert any position for which there is not a realistic possibility of being

sustained on its merits that results in the understatement of tax liability, or that evinces a willful, intentional, or reckless disregard for the applicable laws, rules, and regulations;

c. engaging in any fraudulent or deceptive conduct which interferes with the proper administration of the internal revenue laws.

7. In summary, the Stipulated Judgment prohibited Baltagi from preparing federal income tax returns that asserted that per capita gaming proceeds were exempt from federal income taxes, and from preparing federal income tax returns that understate tax liability by asserting any other frivolous or unrealistic position.

8. The Stipulated Judgment merely prohibited Baltagi from actions that all persons, whether they are certified public accountants or not, are prohibited from performing. Baltagi was never prohibited from filing tax returns, and his license was not, in any manner, disciplined. In fact, subsequent to this Stipulated Judgment, the IRS accepted Baltagi into its Enrolled Agent Program.

9. There was no clear and convincing evidence establishing that the IRS is a licensing agency, or that it regulates Florida certified public accountants.

10. Also in 2006, Fast Cash Services entered into a contract with iStream Financial Services, Inc., and its affiliate, Kenny Bank and Trust (KBT). Fast Cash Services was

tasked with verifying identification via current driver's licenses or other appropriate form of identification for clients who sought to cash a check.

11. In July and August of 2009, KBT received multiple Department of Treasury reclamation claims from Fast Cash Services. Someone other than the named payee cashed the reclamation checks, and one of Baltagi's employees failed to notice the discrepancy.

12. As a result of these checks being cashed, the Circuit Court for Waukesha County, Wisconsin, entered a default judgment against Baltagi in the amount of \$276,160.42 in response to a complaint filed by iStream Financial Services and KBT.

13. Baltagi began to pay KBT damages as a result of the judgment, although he firmly believes he was the victim of fraud as to the cashing of those reclamation checks.

14. The fact that a default judgment was entered against Baltagi does not, standing alone, establish that Baltagi failed to maintain good moral character.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the subject matter of the instant proceeding and of the parties hereto pursuant to chapter 120, Florida Statutes.

16. The Department seeks to impose penalties against Baltagi pursuant to section 473.323(3), Florida Statutes (2010), which includes the following penalties:

- (a) Denial of an application of licensure;
- (b) Revocation or suspension of the certified public accountant or firm's license or practice privileges in this state;
- (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense;
- (d) Issuance of a reprimand;
- (e) Placement of the certified public accountant on probation for a long period of time and subject to such conditions as the board may specify, including requiring the certified public accountant to attend continuing education courses or to work under the supervision of another licensee; or
- (f) Restriction of the authorized scope of practice by the certified public accountant.

17. Section 455.227(2), Florida Statutes (2010), provides that when the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

- (a) Refusal to certify, or to certify with restrictions, an application for a license;

- (b) Suspension or permanent revocation of a license;
- (c) Restriction of practice;
- (d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense;
- (e) Issuance of a reprimand;
- (f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the Department if there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonable tailored to the violations found; or
- (g) Corrective action.

18. At the hearing, the Department bears the burden of proving the allegations contained in the Administrative Complaint. Proof greater than a mere preponderance of the evidence must be presented by the Department to meet its burden of proof. Clear and convincing evidence of the licensee's guilt is required. See Dep't of Banking & Fin., Div. of Sec. and Investor Prot. v. Osborne Stern and Co., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987); and § 120.57(1)(j), Fla. Stat.

19. Clear and convincing evidence is an intermediate standard, requiring more proof than a preponderance of the

evidence but less than the exclusion of a reasonable doubt. In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). For proof to be considered clear and convincing, the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations. In re Davey, 645 So. 2d 398, 404 (Fla. 1994).

20. Section 473.323(1)(1) subjects a licensee to discipline for:

Failing to maintain a good moral character as provided in s. 473.308 while applying for licensure, or while licensed in this state or using practice privileges pursuant to s. 473.3141.

21. Section 473.308(6)(a) provides the following definition:

Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

22. A circuit court in Wisconsin entered a default judgment against Baltagi, resulting from allegations that Baltagi had cashed checks without properly verifying the identity of the payees. Baltagi believes he was a victim of fraud in the cashing

of those checks, yet he has been making payments on the amount he owes pursuant to the default judgment.

23. The fact that a default judgment was entered against Baltagi does not establish, clearly and convincingly, that Baltagi failed to maintain good moral character, as defined in section 473.308(6)(a).

24. As to Count Two, section 455.227(1)(f) subjects a licensee to discipline for:

Having a license or the authority to practice the required profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

25. There is no evidence establishing, clearly and convincingly, that the IRS is a licensing agency. Likewise, there was no evidence that Baltagi's license was revoked, suspended, or otherwise acted against by the IRS or any other entity.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner dismiss the Administrative Complaint against Respondent.

DONE AND ENTERED this 12th day of April, 2012, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of April, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.