

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
Joel Leslie Wells, CPA

**FINDINGS OF FACT, CONCLUSIONS,
AND FINAL ORDER**

CPA Certificate and CPA Sole Proprietor Firm
Permit No. 17858

OAH Docket No. 11-0100-21205-2

The Minnesota Board of Accountancy ("Board"), having convened on June 21, 2010 to consider the above-referenced matter concerning Joel Leslie Wells ("Respondent"), and having reviewed the July 21, 2010 report of Administrative Law Judge Barbara L. Neilson ("ALJ report") and the record in the above-referenced matter, hereby issues the following:

FINDINGS OF FACT

1. The Board adopts the findings in the ALJ report, which are attached and incorporated herein.
2. On May 6, 2010, the Board served a Notice of and Order for Prehearing Conference and Hearing upon Respondent at Respondent's last known address on file with the Board.
3. Respondent failed to appear at the prehearing conference and is in default in this proceeding.
4. Pursuant to Minnesota Rules 1400.6000 (2009), the allegations in the Notice of and Order for Prehearing Conference and Hearing are taken as true.
5. Any Conclusions of Law which should properly be termed Findings of Fact are hereby adopted as such.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS

1. The Board adopts the Conclusions in the ALJ report, which are attached and incorporated herein.

2. The Board has jurisdiction in this matter under Minn. Stat. §§ 14.50 and 326A.01-326A.14 (2008).

3. The Board gave Respondent proper notice in this matter and has met all relevant substantive and procedural requirements of laws and rules.

4. Respondent violated Minn. Stat. § 326A.02(10)(d) (2008) and Minn. R. 1105.7800 A and D (2009).

5. Any Findings herein which should properly be termed Conclusions of Law are hereby adopted as such.

6. The following Order is in the public interest.

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following:

ORDER

1. IT IS ORDERED that Respondent's CPA certificate and CPA Sole Proprietor Firm Permit to practice public accounting in the State of Minnesota are revoked effective immediately.

2. IT IS FURTHER ORDERED that Respondent shall cease and desist from practicing public accounting in any manner in the State of Minnesota and from holding Respondent out to the public as a certified public accountant and CPA Sole Proprietor Firm, and shall neither offer nor provide any public accounting services of any nature within the State of Minnesota.

3. IT IS FURTHER ORDERED that if Respondent petitions for reinstatement of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit, Respondent shall meet with a Board Complaint Committee and comply with the following conditions:

a. Pay to the Board all fees Respondent would have had to pay to the Board had Respondent maintained an active CPA certificate and CPA Sole Proprietor Firm Permit, as required by Minn. Stat. §§ 326A.04 and 326A.05 (2008), and Minn. R. 1105.0600, 1105.3000, 1105.3100, 1105.3200, and 1105.4000, upon petition for reinstatement of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit; and

b. Report to the Board all past due continuing education credits, pursuant to Minn. R. 1105.2500(C) and 1105.3000, upon petitioning for reinstatement of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit.

4. IT IS FURTHER ORDERED that if Respondent petitions for reinstatement of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit, Respondent must pay the Board the total cost of the proceedings which resulted in the revocation of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit, including the costs paid by the Board to the Office of Administrative Hearings and to the Attorney General for legal services, Board staff time, cost of the Board Complaint Committee, costs of reproduction of the hearing record, and Board members costs of per diem, travel, parking and expenses. The procedure for payment shall be as follows:

a. Within three months of the execution of this order by the Board, the Executive Secretary of the Board shall forward to Respondent copies of statements, receipts, or other indicia of authenticity of all the costs resulting in the revocation of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit. Respondent shall have 30 calendar days to submit a written response as to the accuracy of such costs. Respondent may accept or contest the Board's determination of the costs. If the Board does not receive a written response from Respondent within the 30-day time period, Respondent will be deemed to have accepted the accuracy of the costs and to have waived the opportunity to contest the accuracy of those costs.

b. If Respondent submits a timely written challenge to the Board contesting the accuracy of these costs, Respondent shall specify the costs challenged and state the grounds for the challenge. The Board Complaint Committee may submit a response. If a cost is supported by a statement, receipt, or another indicator of authenticity, Respondent shall present written evidence that the disputed costs are inaccurate. At the next regularly scheduled Board meeting following review of the written materials submitted by Respondent and the Board Complaint Committee, the Board shall issue an order identifying the costs to be paid. The Board's order assessing costs shall be consistent with the requirements of this order.

c. Within ten days of the Board meeting at which the challenged costs are assessed, Board staff shall keep a record of all staff and Board member time involved with Respondent's challenge and shall advise Respondent in writing of the costs associated with that meeting. If Respondent wishes to contest the costs attributed to this challenge, Respondent shall follow the procedure outlined in paragraph 4.b above. If Respondent does not contest those costs, Respondent shall submit payment of those costs at the time Respondent applies for licensure.

5. IT IS FURTHER ORDERED that Respondent's violation of this order shall constitute unfitness by reason of negligence, habits, or other causes and provide grounds for further disciplinary action.

6. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit, and Respondent's meeting with a Board Complaint Committee, take any of the following action:

a. Reissue a CPA certificate and CPA Sole Proprietor Firm Permit to Respondent;

b. Reissue a CPA certificate and CPA Sole Proprietor Firm Permit to Respondent conditional upon further reports to the Board and limitations placed upon the scope of Respondent's practice; or

c. Continue the revocation of Respondent's CPA certificate and CPA Sole Proprietor Firm Permit upon Respondent's failure to meet the burden of proof.

Dated: September 16, 2010

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

By: _____

Its: _____

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of Joel Leslie Wells, CPA;
CPA Certificate and CPA Sole Proprietor
Firm Permit No. 17858

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on June 21, 2010, at 1:30 p.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Gregory P. Huwe, Assistant Attorney General, appeared on behalf of the Complaint Investigation Committee of the Minnesota Board of Accountancy ("Board"). There was no appearance by or on behalf of the Respondent, Joel Leslie Wells, CPA. By letters dated June 21 and 22, 2010, counsel for the Board made a motion that the Respondent be found in default and the allegations in the Notice and Order for Hearing and Prehearing Conference be taken as true. The record remained open for receipt of a response to the motion from the Respondent. No response was received, and the record closed on July 12, 2010.

STATEMENT OF THE ISSUES

The following issues are presented in this case:

1. Whether Respondent violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. §326A.08, subd. 5(a)(1);
2. Whether Respondent engaged in conduct or acts that are fraudulent, deceptive, or dishonest, in violation of Minn. Stat. §326A.08, subd. 5(a)(2);
3. Whether Respondent failed to file a renewal of his certificate and permit with the Board, in violation of Minn. Stat. § 326A.08 and Minn. R. 1105.7800 D;
4. Whether Respondent's firm provided attest services or assumed or used the title "Certified Public Accountants," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign card, or device tending to indicate that the firm is a CPA firm, in violation of Minn. Stat. § 326A.10(d);
5. Whether Respondent committed acts discreditable to the profession, in violation of Minn. R. 1105.7800; and

6. Whether Respondent's conduct constitutes grounds justifying the Board to take disciplinary action against him.

Based upon all of the files, records, and proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 6, 2010, the Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing) in this matter was mailed to the Respondent via certified mail and first class mail at his last known address on file with the Board of Accountancy.¹ The envelope was returned to counsel for the Board unclaimed. The Board has been unable to locate the Respondent or find an alternative home or business address.²

2. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on June 21, 2010.³

3. The Notice and Order for Hearing in this matter included the following notice:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

If any party has good cause for requesting a delay of the prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference or hearing. A copy of the request must be served on the other party.⁴

4. No one appeared at the June 21, 2010, prehearing conference on behalf of the Respondent. No request was made for a continuance, nor was any communication received by the undersigned from the Respondent.

5. The Notice and Order for Hearing alleges that:

(a) On July 29, 1996, the Board issued Respondent a CPA certificate. On December 31, 2009, the certificate expired.

¹ See Affidavit of Service by U.S. Mail of C.O. Ransom (May 6, 2010), attached to Notice and Order for Hearing.

² See Letter to Administrative Law Judge from counsel for the Board (June 21, 2010).

³ Notice and Order for Hearing at 1.

⁴ Notice and Order for Hearing at 2 (emphasis in original).

- (b) On December 31, 1998, the Board issued Respondent a CPA Sole Proprietor Firm Permit. That permit expired on December 31, 2009.
- (c) Respondent's firm continued to offer and/or provide accounting services while Respondent was not performing services for the firm.
- (d) Respondent accepted a \$650 fee from a client and agreed to complete and file quarterly filings for 2009 federal, state, and unemployment insurance taxes, but failed to perform those services for the client.
- (e) By engaging in the above conduct, the Board alleges that the Respondent has violated Minn. Stat. §§ 326A.08 and 326.10(d), and Minn. R. 1105.7800

6. Because the Respondent is in default in this matter, the allegations contained in the Notice and Order for Hearing are deemed proven.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Board of Accountancy have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 326A.02 and 326A.08 (2008).

2. The Board provided the Respondent with notice of the charges against him and of the time and place of the prehearing conference by mailing the Notice and Order for Hearing to him at his last known address on file with the Board. This matter is, therefore, properly before the Board and the Administrative Law Judge.

3. Respondent is in default as a result of his failure to appear at the scheduled prehearing conference without the Administrative Law Judge's prior consent.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the Notice and Order for Hearing, Respondent violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. §326A.08, subd. 5(a)(1).

6. Based upon the facts set forth in the Notice and Order for Hearing, Respondent engaged in conduct or acts that are fraudulent or deceptive, in violation of Minn. Stat. §326A.08, subd. 5(a)(2).

7. Based upon the facts set forth in the Notice and Order for Hearing, Respondent failed to file a renewal of his certificate and permit with the Board, in violation of Minn. Stat. § 326A.08 and Minn. R. 7800 D.

8. Based upon the facts set forth in the Notice and Order for Hearing, Respondent's firm provided attest services or assumed or used the title "Certified Public Accountants," the abbreviation "CPA," or other titles, designations, words, letters, abbreviations, sign, card, or devices tending to indicate that the firm is a CPA firm, in violation of Minn. Stat. § 326A.10(d).

9. Based upon the facts set forth in the Notice and Order for Hearing, the Respondent committed acts discreditable to the profession, in violation of Minn. R. 1105.7800 A and D.

10. Minn. Stat. §§ 326A.02 and 326A.08 empowers the Board to take disciplinary action against the Respondent based upon the above violations.


11. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that disciplinary action be taken against Joel Leslie Wells.

Dated: July 21, 2010



BARBARA L. NEILSON
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. This Report is a recommendation, not a final decision. The Minnesota State Board of Accountancy will make the final decision after reviewing the hearing record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota Statutes, Section 14.61, the Board may not make its final decision until after the parties have had access to this Report for at least ten days. During that time, the Board must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact Doreen Frost, Executive Director of the Minnesota Board of Accountancy, 125 Golden Rule Building,

85 East 7th Place, St. Paul, Minnesota 55101 (Telephone: 651-296-7938), to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of Joel Leslie Wells, CPA; CPA Certificate and CPA Sole Proprietor Firm Permit No. 17858</i>	OAH Docket No.: 11-0100-21205-2
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Nancy J. Hansen certifies that on the 21st day of July, 2010, she served a true and correct copy of the attached Findings of Fact, Conclusions, and Recommendation by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Doreen Frost, Executive Director Minnesota Board of Accountancy 85 East Seventh Place, Suite 125 St. Paul, MN 55101	Gregory P. Huwe Assistant Attorney General 1800 Bremer Tower 445 Minnesota Street St. Paul, MN 55101
Joel Leslie Wells 4334 Metcalf Drive Eagan, MN 55122	LS