

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of the Certified Public
Accountant Certificate of James Ruff

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

The above-entitled matter came before the Minnesota Board of Accountancy on August 1, 2024.

On April 18, 2024, Administrative Law Judge Kimberly Middendorf (ALJ) recommended that the Board impose discipline against Respondent James Ruff following an evidentiary hearing. On May 16, 2024, the Board notified the parties of their right to file arguments and exceptions in accordance with Minn. Stat. § 14.61, subd. 1 (2022). On July 12, the Board's Complaint Committee filed its arguments and exceptions. Ruff did not submit any argument or exceptions to the Board. The record closed on July 12.

Based on all the facts, records, and proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. The Board adopts and incorporates as its own the Findings of Fact in the ALJ's recommendation.
2. Any conclusions of law from the ALJ's recommendation that should properly be termed findings of fact are hereby adopted as such.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

1. The Board adopts and incorporates as its own the Conclusions of Law in the ALJ's recommendation.

2. Any findings of fact from the ALJ's recommendation that should properly be termed conclusions of law are hereby adopted as such.

3. This order is in the public interest.

ORDER

Pursuant to Minn. Stat. § 326A.08, subd. 5(a) (2022), Ruff is censured and reprimanded.

Pursuant to Minn. Stat. § 326A.08, subd. 7(a) (2022), Ruff shall pay a \$3,000 civil penalty to the State of Minnesota.

Pursuant to Minn. Stat. § 16D.17(1) (2022), Ruff is notified that this shall become a final civil penalty unless he requests a hearing from the Board on the civil penalty within thirty days.

Pursuant to Minn. Stat. § 16D.17(2) (2022), Ruff is notified that when the civil penalty becomes final, the Board may file and enforce the civil penalty in the same manner as a district court judgment against him without further notice or additional proceedings. Ruff is notified that simple interest computed in accordance with Minn. Stat. § 16D.13 (2022), shall begin to accrue on the civil penalty thirty days after the date of this order.

Dated: 08/01/2024

MINNESOTA
BOARD OF ACCOUNTANCY



Godson Sowah, Secretary/Treasurer

MEMORANDUM

Censure and reprimand are appropriate in this case because Ruff violated multiple CPA regulations: he advertised under a misleading firm name, failed to renew his certificate, and then, after failing that obligation, continued to engage in conduct requiring licensure by advertising as a CPA and offering audit services.

The Board also imposes a \$3,000 civil penalty. The Board may impose a civil penalty of up to \$5,000 for each violation of a statute or rule enforced by the Board. Minn. Stat. § 326A.08, subd. 7(a) (2022). In determining the amount of the civil penalty, the Board must consider the willfulness of the violations; the gravity of the violations, the history of past violations; the number of violations; the economic benefit gained by the person by allowing or committing the violations; and other factors that justice may require. *Id.* § 14.045, subd. 3(a) (2022). Additionally, for a violation after an initial violation, the Board must also consider the similarity of previous violations to the current ones, the time elapsed since the last violation, the number of previous violations, and the response of the person to the most recent previous violation. *Id.* § 14.045, subd. 3(b) (2022).

Three of these factors are particularly relevant here: the number of violations, Ruff's history of past violations, and the deterrence effect of a civil penalty (i.e. an "other factor" the Board may consider). Here, Ruff committed four violations: he held out as a CPA in at least two locations without a valid certificate, used a misleading firm name, and failed to renew his certificate when he had not obtained exempt status. Ruff is therefore subject to a maximum penalty of \$20,000. A \$3,000 civil penalty is eminently reasonable in light of this potential maximum even in the absence of willfulness.

With respect to past violations, Ruff's present violations show a similar careless disregard for CPA regulations that was present in his past cases. Ruff was previously disciplined for failing

to file tax returns, failing to complete CPE, and failing to file quarterly review reports. Here, he similarly failed to file a license renewal application and failed to conform the name he was advertising under to the name of the corporation he had actually incorporated. This pattern of disregarding compliance obligations despite past discipline supports a higher civil penalty.

Finally, the Board may appropriately consider the deterrent effect a civil penalty would have on Ruff and others. *See State by Humphrey v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 792 (Minn. 1993) (“Hopefully, payment of a civil penalty will both specifically and generally deter similar conduct. The civil penalty also furthers a legitimate purpose other than punishment: it lowers the incentive to engage in consumer fraud and thus aids the state in enforcement of the statute.”). Imposing a \$3,000 civil penalty against Ruff furthers these deterrence goals.

April 18, 2024

VIA EFILING ONLY

Doreen Johnson
Executive Director
Minnesota Board of Accountancy
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Saint Paul, MN 55101
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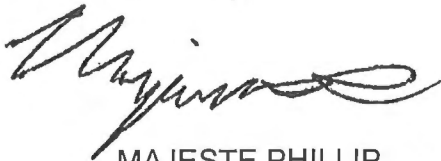
Re: ***In the Matter of the Certified Public Accountant Certificate of James Ruff***
OAH 21-0100-39449

Dear Executive Director Johnson:

Enclosed and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** in the above-entitled matter. The official record, along with a copy of the recording of the hearing, is also enclosed. The Office of Administrative Hearings' file in this matter is now closed.

If you have any questions, please contact me at (651) 361-7853, majeste.phillip@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MAJESTE PHILLIP
Legal Specialist

Enclosure

cc: Docket Coordinator
Allen C. Barr
James Ruff

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

In the Matter of the Certified Public Accountant Certificate of James Ruff **FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Kimberly Middendorf for a hearing on February 8, 2024, via Microsoft Teams. Allen Cook Barr, Assistant Attorney General, appeared on behalf of the Board of Accountancy (Board) Complaint Committee (Committee). James Ruff (Respondent) appeared on his own behalf, without legal counsel. The record in this matter closed on February 22, 2024, with the submission of the parties' closing arguments.

STATEMENT OF THE ISSUES

1. Did Respondent violate Minn. Stat. § 326A.10(c) (2022) and Minn. R. 1105.5600, subp. 1(C)(1) (2021), by using the certified public accountant (CPA) title and advertising audit services after his license expired?
2. Did Respondent use a firm name that is misleading about the legal form under which Ruff practices, in violation of Minn. Stat. § 326A.10(h)(1) (2022) and Minn. R. 1105.6300(B)(1)(a), (e) (2021)?
3. Did Respondent violate Minn. Stat. § 326A.08, subd. 5(a)(8) (2022) and Minn. R. 1105.7800(D) (2021), by failing to renew his CPA certificate?

SUMMARY OF RECOMMENDATION

The Committee established that Respondent committed the alleged violations. The Board has grounds to impose appropriate discipline.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. From 1982 to 2021, Respondent held a Certified Public Accountant (CPA) certificate issued by the Board.¹ The permit was issued to Respondent's firm, "James M Ruff, Inc." The certificate expired on December 31, 2021, because

¹ Testimony (Test.) of James Ruff; Test. of Doreen Johnson.

Respondent did not apply for renewal.² Respondent did not inform the Board that he would no longer provide professional services or use the CPA designation.³ He did not surrender his certificate.⁴

2. Earlier in his career, Respondent's firm employed two or more certified public accountants. By 2020, Respondent was operating as a solo practitioner.⁵

3. In or around 2010, Respondent created a LinkedIn profile.⁶ Respondent listed his title as "Certified Public Accountant" at "Ruff and Co., inc- CPA's" from "1985 to Present."⁷

4. No business entity in the name "Ruff & Company CPAs, Inc." or "Ruff and Co., inc- CPA's" has ever been incorporated in Minnesota.⁸

5. Also, in or around 2010, Respondent's firm created a website offering CPA services in the name of "Ruff & Company CPAs, Inc."⁹ As of April 5, 2022, the website was viewable to the public.¹⁰

6. Respondent did not recall who created the website and forgot it existed until the Committee brought it to his attention during the investigation.¹¹

7. When the Committee brought the website to Respondent's attention during its investigation, he deactivated it.¹²

8. Respondent is not active on LinkedIn¹³ and did not update it after his permit expired in December 2021.¹⁴ The profile described various accounting services, including audits.¹⁵ When made aware of his inaccurate profile during the Committee's investigation, he updated it with correct information.¹⁶

9. Respondent performed no attest or compilation services in 2020 or thereafter.¹⁷

² Test. of D. Johnson.

³ Test. of D. Johnson.

⁴ Test. of D. Johnson; see Test. of J. Ruff.

⁵ Test. of J. Ruff; Ex. 1.

⁶ Test. of J. Ruff; see Ex. 7.

⁷ Ex. 7; Test. of D. Johnson.

⁸ Exs. 2, 3; Test. of D. Johnson; Test. of J. Ruff.

⁹ Test. of J. Ruff; see Ex. 6.

¹⁰ Test. of D. Johnson; Ex. 6.

¹¹ Test. of J. Ruff.

¹² Test. of J. Ruff.

¹³ Test. of J. Ruff.

¹⁴ Test. of D. Johnson; Ex. 7.

¹⁵ Ex. 7.

¹⁶ Test. of J. Ruff.

¹⁷ Test. of J. Ruff; see Ex. 1.

10. In 2020 and 2021, Respondent suffered a series of personal losses, including the death of his parents and his significant other. In December 2021, he contracted a severe case of COVID. Respondent began winding down his practice during this time in anticipation of eventual retirement.¹⁸

11. Throughout his career, Respondent has been a dedicated volunteer and involved in his community in ways that promote the profession. This includes serving as President of Willmar Jaycees, being nominated to receive the 10 Outstanding Young Minnesotans award, and serving as Board President of Willmar Area Chamber of Commerce. Respondent was a founding board member and past treasurer of Kandiyohi County Economic Development. He oversaw a multi-million-dollar expansion and renovation of his church when he was its treasurer. He was instrumental in funding and building a YMCA in his county. Respondent is also a recipient of Minnesota Society and American Institute of CPAs public service awards.¹⁹

12. Respondent was disciplined by the Board in 1999 for failure to timely file his tax returns and complete continuing education.²⁰ In 2006, Respondent was disciplined for failing to timely submit a required report.²¹

13. Respondent now primarily prepares tax returns. His clients are obtained through referrals from other clients, friends, and family.²²

14. On August 10, 2023, the Board served Respondent with a Notice and Order for Prehearing Conference (Hearing Notice), initiating this proceeding.²³

CONCLUSIONS OF LAW

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10, and 326A.02, subd. 4 (2022).

2. The Committee has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. When a preponderance of the evidence demonstrates that a CPA or firm violated Minn. Stat. §§ 326A.01-.14 or rules promulgated thereunder, Minn. Stat. § 326A.08, subd. 5(a), authorizes the Board to:

[. . .] deny, refuse to renew, suspend, temporarily suspend, or revoke the application, or practice privileges, registration or certificate of a person or firm; censure or reprimand the person or firm; prohibit the person or firm from preparing tax returns or reporting on financial statements; limit the scope of practice of any licensee; limit privileges under section 326A.14;

¹⁸ Test. of J. Ruff.

¹⁹ Test. of J. Ruff.

²⁰ Ex. 4.

²¹ Ex. 5.

²² Test. of J. Ruff.

²³ See Notice and Order for Prehearing Conference (Aug. 10, 2023).

refuse to permit a person to sit for examination; or refuse to release the person's examination grades if the board finds that the order is in the public interest[.]

4. The Board may institute proceedings against a former licensee within two years after license expiration.²⁴

5. Minn. R. 1105.5600, subp. 1 (2021) prohibits using the CPA title without a certificate with an active status, registration, or permit to practice issued under Minn. Stat. §§ 326A.04 and 326A.05.²⁵

6. Under Minn. Stat. § 326A.10(c):

A person who does not hold a valid certificate issued under section 326A.04 or a practice privilege granted under section 326A.14 shall not use or assume the title “certified public accountant,” the abbreviation “CPA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

7. Minn. Stat. § 326A.10(h)(1) provides that “No person holding a certificate or registration or firm holding a permit under this chapter shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter.”

8. A CPA firm name is misleading within the meaning of Minn. Stat. § 326A.10(h) if the CPA firm name contains any representation that would be likely to cause a reasonable person to misunderstand or be confused about the legal form of the firm, or about who the owners or members of the firm are.²⁶

9. Minn. R. 1105.7800(D) provides that failure to file an application, registration, renewal, or other document or form required to be filed with the board pursuant to Minn. R. ch. 1105, Minn. Stat. ch. 326A, or any other statutes or rule is an act discreditable to the profession and is a basis for disciplinary action under Minn. Stat. § 326A.08. Minn. Stat. § 326A.04, subd. 2(b) reads: “Certificate holders who do not provide professional services and do not use the certified public accountant designation in any manner are not required to renew their certificates provided they have notified the board as provided in board rule and comply with the requirements for nonrenewal as specified in board rule.”

10. The Committee bears the burden of proving, by a preponderance of the evidence, that Respondent committed the alleged violations.

²⁴ Minn. Stat. § 326A.08, subd. 10 (2022).

²⁵ Minn. R. 1105.5600, subp. 1(c)(1).

²⁶ Minn. R. 1105.6300(B)(1)(a),(e).

11. The Committee established that Respondent violated Minn. Stat. § 326A.10(c) by identifying as a “certified public accountant” or “CPA” on the website and his LinkedIn profile. The Committee established that Respondent violated Minn. Stat. § 326A.10(h)(1) by using incorrect and misleading firm names on the website and his LinkedIn profile.

12. Minn. R. 1105.5600, subp. 1(C)(1), allows the Board to take reasonable disciplinary action for the established violations.

13. Pursuant to Minn. Stat. § 14.045, subd. 3(a) (2022), in determining the amount of a monetary penalty, the Board should consider: the willfulness of the violation; the gravity of the violation, including damage to humans; the history of past violations; the number of violations; the economic benefit of the gained by the violation; and other factors that justice may require.


14. There is no evidence of willfulness, harm to people, or economic gain stemming from the violations.

15. The Board may take appropriate disciplinary action against Respondent.

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Board find that Respondent committed the violations alleged and take reasonable and appropriate disciplinary action against Respondent.

Dated: April 18, 2024


KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61 (2022), the Board shall not make a final decision until this Report has been made available to the parties to the proceeding for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Doreen Johnson, Executive Director of the Minnesota Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, MN 55101 (telephone (651) 296-7938), to learn the procedure for filing exceptions or presenting argument.

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 Administrative Law Judge of the date the record closes. 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 (2022). In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2022), the Board 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.

MEMORANDUM

The Committee argues that Respondent James Ruff advertised using a misleading firm name, failed to renew his certified public accountant certificate, and then continued to advertise as a CPA after the expiration. The Committee contends that these actions violate Minnesota's laws regulating CPAs, and that the Board should discipline Respondent accordingly. Respondent acknowledges that his certificate expired and that he did not update his online presence to reflect this fact. However, Respondent argues that he did not intend to mislead the public, that he did not perform any services requiring a certificate after its expiration, and that no one was harmed by his oversight. Respondent urges that no discipline be imposed and that he be allowed a path back to certification should he wish to resume providing CPA services at some time in the future.

The Committee established that Respondent committed the three violations it alleged. A CPA's clientele place tremendous trust in their chosen professional. Should that trust ever be breached, it is imperative that legal recourse be available. The right to seek recourse against a business entity is hindered, if not impossible, when the entity's identity is misstated. Here, there is no evidence of an intent to conceal Respondent's firm's identity. Yet, in two different online resources, Respondent advertised with an

incorrect corporate identity. The law demands greater care from Minnesota's licensed professionals.

The same is true of using the term "certified public accountant." When one is not in fact certified, using the term is misleading on its face to the public. There is no dispute that Respondent neglected to maintain his online presence as required by law, failing to update the website and his LinkedIn profile after allowing his certificate to lapse. Similarly, the law requires that a CPA either remain in good and active standing with the Board or inform the Board of a decision not to renew a certificate and surrender it. This requirement is necessary for the Board's carrying out its oversight of regulated professionals. Respondent did not satisfy this obligation.

While the record establishes that Respondent did commit the violations alleged by the Committee, it also establishes that the violations were not serious ones. No member of the public filed a complaint with the Board. There is no evidence that anyone was misled by the website or the profile or even saw the inaccurate information apart from Committee staff. Most importantly, there is no evidence that Respondent harmed anyone. Respondent has a largely unblemished record of compliance over a career spanning more than three decades. He corrected his oversights upon being made aware of them, as he did in the two prior instances of noncompliance. These violations were not willful. Rather, the record suggests that Respondent's failure to renew his certificate and update his online presence were oversights by a professional nearing the end of his career and dealing with serious health and family issues.

The misleading corporate firm name is of somewhat greater concern than the other established violations, as it suggests a lack of the care a professional must employ in advertising one's services. In two online fora, Respondent misstated the name of his corporation. This information was apparently in the public realm since approximately 2010, yet never corrected until the Committee discovered it in 2022.

Finally, the Administrative Law Judge agrees that Respondent has a lengthy history of service to his community that should be taken into consideration in determining whether and what discipline is appropriate.²⁷ Respondent has lent his skills to many community endeavors throughout his long career, in ways that surely promote accountancy as a profession.

K. J. M.

²⁷ Respondent's Closing Argument (Feb. 22, 2024).