

STATE OF VERMONT  
BOARD OF PUBLIC ACCOUNTANCY

IN RE: )  
Kenneth Heath ) Case No. AC02-0801  
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Public Accountancy ("the Board") held a hearing in this matter on April 29, 2003 at 26 Terrace Street in Montpelier, Vermont. Board Members Pamela Douglass, Cairn Cross and Lee Spivey participated in the decision. Kenneth Heath ("the Respondent") was not present and was not represented by counsel. Assistant Attorney General George Haegele IV appeared for the State. Christopher Winters was the Presiding Officer.

The Respondent was sent notice of the hearing by certified mail, signed for by the Respondent on December 18, 2002. The Respondent did file an answer to the State's Specification of Charges and does not dispute any of the charges against him.

Findings of Fact

1. The Respondent holds Vermont certified public accountant license number 001-352, which is currently lapsed.
2. The Respondent also holds a Vermont accounting firm registration for the accounting firm of Kenneth Heath, CPA, numbered 092-427, which is currently lapsed.
3. On or about June 14, 2002, the Respondent was convicted in New Hampshire of two felony offenses for violation of New Hampshire RSA 637:3 for committing theft by obtaining or exercising unauthorized control over the personal property of another with the purpose to deprive him thereof.
4. The victims of this crime, Lisa and Craig Washburn, were accounting clients of the Respondent and the money taken from the victims, without their authorization, was obtained under the pretense of a settlement and compromise of taxes owed by the victims to the Internal Revenue Service.
5. The Respondent indicated the owed tax amount could be settled for approximately \$15,000.00, when, in fact, he had negotiated a settlement amount of \$5,000.00

with the IRS. He did not inform the victims of this fact and continued to collect the money from them.

6. The Respondent was ordered to pay restitution of approximately \$12,400.00 by the New Hampshire criminal court, \$10,000.00 of which has been paid to date. The rest of the amount is overdue and owed to the victims.

7. The Respondent continues to violate his conditions of parole and is scheduled for a violation hearing in the near future.

8. The Respondent absconded to Florida and New York and was extradited from New York when arrested while trying to cross the border into Canada.

### Conclusions of Law

A. Pursuant to 3 V.S.A. § 129 and 26 V.S.A. § 78(c), after a hearing, the Board may take disciplinary action against a licensee found to have committed unprofessional conduct.

B. Based on the above findings, the Petitioner has been convicted of crimes related to the practice of the profession in violation of 3 V.S.A. § 129a(a)(9).

C. Based on the above findings, the Respondent has engaged in conduct which evidences moral unfitness to practice public accounting in violation of 26 V.S.A. § 76(b)(4).

D. In determining the appropriate sanction in a case, the Board is guided by its Administrative Rules, Rule 11.4. Factors which may tend to aggravate or mitigate the seriousness of the offense and affect the sanction imposed include honesty, financial loss, intent, and incorrigibility, among other factors.

E. Pursuant to 26 V.S.A. § 78(a)(3), the Board may suspend, revoke, or reinstate licenses and order restitution to aggrieved consumers.

### Opinion

Mr. and Mrs. Washburn have suffered and incurred considerable expense because of Respondent's actions, including the \$10,000 stolen by the Respondent, having to hire another accountant to refile their tax returns and straighten out the Respondent's errors, money they paid the Respondent for the "services" he rendered, mileage and lost wages for the several trips they have had to make to hearings involving the Respondent. However, it is difficult to determine, from the documentation presented, exactly how much money they have lost as a result of the Respondent's actions, though it certainly exceeds the \$12,400.00 in restitution

ordered by the court. Accordingly, the Board orders below a conservative amount of restitution, as supported by State's Exhibit 1.

**Order**

In light of the foregoing findings and conclusions, the Board hereby REVOKES the Respondent's licenses, both individually and as a firm, and orders RESTITUTION to be paid to Lisa and Craig Washburn, in the amount of \$5,000.00. Failure to comply with this Order is a further violation of unprofessional conduct and would affect any future attempt at reinstatement.

**Appeal Rights**

This is a final administrative determination of the Vermont Board of Public Accountancy. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By:   
Pamela Douglass  
Acting Chair

Date: 5/16/03

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/16/03