

- State's Exhibit 7. Letter of 4 April 2006 from Respondent to Accountancy Board
- State's Exhibit 8. Printout of Respondent's website dated June 2006
- State's Exhibit 9. Respondent's letterhead "Darcy Group Limited"
- State's Exhibit 10. Respondent's business cards
- State's Exhibit 11. Respondent's answer to charges
- &
- Resp'd Exhibit A. Statement of John F. Darcy
- Resp'd Exhibit B. Respondent's business cards

Findings of Fact &
Conclusions of Law:

1. This Board licenses the Respondent and may exercise disciplinary authority for alleged acts of licensee unprofessional conduct. 26 V.S.A., Chapter 1; 3 V.S.A. § 129(a); Board of Public Accountancy Admin. Rules (adopted Aug. 2003) ("Accountancy Rules"); and Office of Prof. Reg. Admin. Rules (adopted Feb. 2003) ("OPR Rules").
2. Respondent has a lapsed certified public accountant license originally issued by the State of Vermont in 1985. The Respondent's license lapsed on 31 July 2005 although he received a temporary license, which then expired on 30 October 2005
3. The Charges against the Respondent and his firm allege unprofessional conduct for violations of laws governing the practice of the profession in violation of 3 V.S.A. §129a (3) and failure to conform to professional standards in violation of 3 V.S.A. §129a (b).
4. Among the relevant facts pleaded by the State include allegations that:
 - (a) The Respondent's license to practice accounting lapsed when he failed to meet State requirements for licensure renewal by the conclusion of the licensure period ending on 31 July 2005.
 - (b) The Respondent received an extension to renew his license, however, it finally lapsed on 30 October 2005.
 - (c) The Respondent's firm failed to satisfy the license renewal requirements set forth in Vermont law for CPA (Accountancy Rule 10.7(B) and (E)).
 - (d) The Respondent continued to hold himself out as a "CPA" in his advertising and promotional materials after his license expired in 2005 in violation of the laws governing the profession.
 - (e) The Respondent's promotional materials included stationary, a website, and business cards.

See Charges at ¶¶s A through K at pp 3-5.

5. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
6. The Respondent admitted the material factual allegations in the Charges both through his Answer filed in response to the Charges and in his testimony before the Board.
7. Since the parties do not dispute the facts alleged by the State, the issue for the Board is whether these facts, in the context of the evidence presented by the Respondent, constitute unprofessional conduct.
8. The State's Specification of Charges contains thirteen paragraphs of legal argument and eleven paragraphs of factual allegations (¶¶ "A" through "K" at pp 3-5).
9. Based on its legal assertions and factual allegations, the State makes one charge of unprofessional conduct for "committing the acts" set forth in the Charges in violation of Vermont statutes and rules. Charges at 5. From the manner in which the State pleaded the Specification of Charges against the Respondent, the Board reads the Charges to contain two specific counts against the Respondent.
10. The first count alleges a violation of 3 V.S.A. § 129a (a)(3) (violating the laws governing the practice of the profession). Charges at ¶ 2.
11. The second count alleges a violation of 3 V.S.A. § 129a (b) (failure to conform to the essential standards of practice on one or more occasions to such an extent that it rises to the level of unprofessional conduct). Charges at ¶ 3.
12. Relative to the count alleging unprofessional conduct pursuant to §129a (a)(3) (violations of laws governing the practice of the profession), the State cites six specific laws which it alleges the Respondent violated.
13. The six laws the State alleges the Respondent violated are 26 V.S.A. § 14(b) (no individual may use the CPA title); 26 V.S.A. § 14(c) (no firm may use the CPA designation); Accountancy Rule 10.7 (B) (requirement for peer review); Accountancy Rule 10.7 (E) (proof of peer review); Accountancy Rule 10.10(A)(6) (misleading advertising); and Accountancy Rule 10.12(B)(2) (misleading firm name).
14. Relative to 129a (a)(3), the Board finds that the State met its burden of showing that the Respondent violated laws governing the practice of the profession. The Respondent and his firm did use a CPA designation (1 V.S.A. §14(b) and (d)), and the Respondent failed to obtain a peer review as required by Vermont law to qualify for relicensure in violation of Accountancy Rule 10.7 (B) and (E).
15. Relative to Accountancy Rules 10.10(6), the Board finds that the Respondent should have been more careful in using the promotional materials that he did after his license lapsed.

16. Using stationary stating "The Darcy Group, Ltd., Certified Public Accountants" (Ex. 8) or business cards which show both the CPA designation as well as a website with "CPA" affixed to it (Ex. 10) was no longer appropriate subsequent to October 2005.
17. The Board finds that the use of the CPA during the period after October 2005 could have, in all "reasonable probability cause[d] an ordinarily prudent person to misunderstand" that Mr. Darcy's CPA designation represented a Vermont license rather than the North Carolina license, which he holds as well. Also, advertising the firm as "Certified Public Accountants" (emphasis added) is likely to suggest that clients have more than one accountant available to them at Respondent's office, which was not the case. *See* Accountancy Rule 10.12(B).
18. While Mr. Darcy did take steps to protect his clients from the representation that he is a Vermont licensed CPA in good standing, the Board finds the possibility for confusion still existed.
19. The critical mitigating circumstance, from the evidence presented to the Board, is that the statute and rule violations in this case did not relate to the provision of professional services to any client or prospective client.
20. The Respondent violated laws and rules governing the practice of the profession, but the Board's view of the evidence is that the Respondent's transgressions do not constitute unprofessional conduct under these circumstances. Instead the Board finds that this is "a case involving noncompliance with a statute or rule . . . not related to . . . client [] care," justifying an administrative penalty without a finding of unprofessional conduct. 3 V.S.A. § 129(a)(3).
21. The Board specifically finds that Mr. Darcy's transgressions did not involve an absence of care for his clients. For instance, the evidence showed that Mr. Darcy discontinued his attest services. Respondent also attempted in good faith to receive a variance from the specific license requirements during much of the period in question. Ex. 1.
22. The Board also acknowledges that the Respondent is a licensee in good standing in the state of North Carolina. He testified that he believed it was reasonable to maintain the designation "CPA" on his business cards since he is a licensed CPA in another jurisdiction. He explained that he kept his North Carolina certificate in good standing to "make [the firm's] interaction with the IRS easier." *See* Ex. 7.
23. While the Board is confident that Mr. Darcy did not intend to mislead anyone, the Board still believes that an ordinarily prudent person might assume that the CPA designation refers to State of Vermont licensure rather the licensee status of another jurisdiction, particularly when the Respondent's address is in Vermont.
24. The Board finds that using CPA on Respondent's Vermont business cards (Ex. 10) was both a violation of the rules governing his practice, and an honest mistake on the part of the Respondent. Although the Board finds this transgression to be an honest mistake on the Respondent's behalf, the Board will not ignore it either.

25. The Board has broad discretion to levy a significant fine under these facts. *See generally* 3 V.S.A. §129(a)(3). The State argued that the Respondent should receive a fine of at least \$10,000.00; and indeed that option is open to the Board given the number of violations and the period over which they occurred.
26. While the Board is sympathetic to the State's argument about the need for a fine, the Board shall exercise its discretion and levy two fines against Darcy Group Ltd. The Darcy Group Ltd shall pay a single fine in the amount of \$1,000 for its violation of Accountancy Rule 10.12(B)(2). The Darcy Group Ltd shall also pay a single fine in the amount of \$1,000.00 for violations of 26 V.S.A. § 14(c) occurring after October 2005. The total fine for this matter shall be \$2,000.00.
27. The Board believes the lesser fine amount is justified in this particular case since the Respondent did make an attempt, albeit a procedurally flawed one, to come into compliance in 2005. Also the Board believes the Respondent has the ability to maintain his license in good standing if it is renewed.
28. Finally, the Board does not find that the Respondent violated 3 V.S.A. §129a (b) (failure to practice competently on one or more occasions).
29. It is not clear whether this second count against the Respondent goes to his failure to obtain a peer review prior to July 2005 or whether it goes to his behavior after his license expired in October 2005.
30. If the alleged violation of 3 V.S.A. §129a (b) is for conduct that occurred after October 2005, then the Respondent was not a licensed professional at the time and this statute does not apply to him. If the charge relates to the period prior to July 2005, then there is no evidence on which to make a finding of unprofessional conduct.
31. The second count against the Respondent, for violating 3 V.S.A. § 129a (b) will therefore be dismissed.

CONCLUSION:

32. In addition to receiving a completed application for licensure renewal, the Board shall set the following conditions that the Respondent must meet prior to receiving a renewed license for the period beginning August 2007.
33. These conditions shall be:
- (a) The Respondent shall immediately take down (i.e. remove) the website: <http://www.darcygrouppca.com> from the internet. The Respondent shall notify the Board when this has occurred. By "taken down," the Board means that this domain may not be recognized as a valid URL by anyone attempting to access it. Respondent may not continue to host anything on the URL <http://www.darcygrouppca.com> including an "under construction" page.
- (b) Respondent shall pay the fine in the amount of \$2,000.00.

(c) Respondent's completed 2007 renewal application shall include an affidavit comporting with Accountancy Rule 10.7(C) acknowledging that he has not performed attest services for the relevant period.

34. Upon meeting conditions (a) – (c), above, the Board will grant the Respondent's license renewal application for the licensing period beginning August 2007.

ORDER

Based on the findings of facts set forth above, the Board of Public Accountancy finds that Respondents' violations of 3 V.S.A. §129a warrant an ADMINISTRATIVE PENALTY. Pursuant to 3 V.S.A. §129(3), this shall NOT constitute a finding of unprofessional conduct against either Respondent; and

The Board levies an ADMINISTRATIVE PENALTY against Respondent, Darcy Group Ltd, in the amount of \$2,000.00 for noncompliance with statutes and rules; and

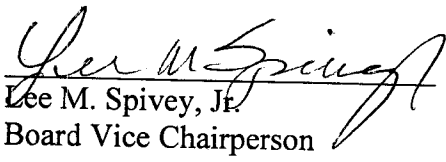
The Board CONDITIONS THE RENEWAL of Respondent's license for the current licensure period that began on 1 August 2007 consistent with the terms set forth in the preceding FINDINGS of FACT & CONCLUSIONS of LAW; and

The Board DISMISSES with prejudice the count of unprofessional conduct brought pursuant to 3 V.S.A. §129a (b) against the Responded John Darcy.

- END -

(signature page to follow)

Vermont Board of Public Accountancy:

By: 
Lee M. Spivey, Jr.
Board Vice Chairperson

Date: 9/4/07

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 9/11/07

APPEAL RIGHTS

This is a final administrative determination.

A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, National Life Building, North, FL 2 Montpelier, Vermont 05620-3402, within 30 days of the entry of the order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted based on the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.