

Provision

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF ARCHITECTS

In re: Christopher Liddle } Docket No. AR02-0805
License No. 003-0001742 }

FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER

Introduction & Summary:

On 20 September and 17 October 2006, the Vermont Board of Architects heard this contested case of alleged unprofessional conduct brought against Respondent Christopher Liddle. Gregg Gossens, architect Board Member; Emma Pudvah, public Board member; Ray McCandless, public Board member; and Sandra Vitzthum, architect Board member participated in the decision. All Board members participating served in an *ad hoc* capacity due to the recusal of standing Board members. Prosecuting Attorney Robert H. Backus appeared on behalf of the State of Vermont. Michael L. Burak appeared on behalf of the Respondent. The Respondent appeared in person and testified. Kevin F. Leahy was the presiding officer.

The State brought a specification of charges (the "Charges," attached) against the Respondent on 7 November 2005 alleging unprofessional conduct for allegedly making a deliberate materially false statement on applications for license renewal.

The Respondent, in his Answer to the Charges, denied that he owed (or believed in good faith that he did not owe) taxes to the state of Vermont at the time of his renewal application. *See* Respondent Answer, dated 2 December 2005. The Respondent denied knowing he was not in good standing at the time he filed his renewal applications, and he denied the State's allegation that he was not in good standing at the time the Charges were filed against him.

At the hearing, the Prosecution withdrew the specific Charge at 8(i) (revocation of license due to non-payment of taxes) as it had no evidence to support this particular claim. In fact, the Board learned from the uncontested testimony of the witnesses that Mr. Liddle was not in default at the time the Charges were filed. *See* Exhibit 16 (8 Sept. '05 letter from Vt. Dep't of Taxes stating Respondent is in good standing). Also, the Department of Taxes did not seek the revocation of Mr. Liddle's license. *See* 32 V.S.A. § 3113(f) (licensing agency shall revoke professional license upon written request by the Tax Commissioner).

The critical issue before the Board in this contested case was what the Respondent knew. Specifically, when he submitted his renewal applications for the periods beginning 2001, 2003 and 2005, did he know that he was not "in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont?" Charge at ¶ 7(i) (an architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with an application for license renewal).

At the hearing, the Board received and/or the parties agreed to the admission of the following exhibits:

- State's Exhibit 1. Respondent's Tax Return '97.
- State's Exhibit 2. Respondent's Tax Return '98.
- State's Exhibit 3. Respondent's Tax Return '99.
- State's Exhibit 4. Respondent's Tax Return 2000.
- State's Exhibit 5. Respondent's Tax Return '01.
- State's Exhibit 6. Respondent's Tax Return '02.¹
- State's Exhibit 8. 1 August 2005 letter from J. Pieciak.
- State's Exhibit 9. 24 August 2005 letter from J. Pieciak.
- State's Exhibit 10. Respondent Renewal Application dated Jan. '01.
- State's Exhibit 11. Respondent Renewal Application dated Jan. '03.
- State's Exhibit 12. Respondent Renewal Application dated Dec. '04.
- State's Exhibit 13. Respondent license status report.
- State's Exhibit 14. 6 July '05 Tax Dep't ltr. re: Liddle missing tax returns.
- State's Exhibit 15. 19 Aug. '05 Tax Dep't ltr. re: '97 and '98 tax returns.
- State's Exhibit 16. 8 Sept. '05 Tax Dep't ltr. to OPR re: filing of outstanding tax returns.
- State's Exhibit 17. 3 Aug. '05 Vovakes letter confirming lack of good standing.
- State's Exhibit 18. 20 Dec. '05 Vovakes letter confirming good standing.
- Respondent's Exhibit A: Christopher Liddle Curriculum Vitae.

Testifying for the state were Carla Preston of the Office of Professional Regulation and Brenda Vovakes of the Dep't of Taxation. Testifying for the Respondent were Mr. Liddle and Joseph Pieciak, Jr., his accountant.

At the close of the prosecution's case, the Respondent's counsel moved for a dismissal of the charges claiming that the Board did not receive legally sufficient evidence for the State to prevail on its claim of unprofessional conduct. The Board denied the motion on the ground that the prosecution set forth a *prima facie* case from which a Board member could infer, by a preponderance of the evidence presented, that the Respondent did engage in unprofessional conduct.

¹ Exhibits 1 through 6 were not made part of the permanent public record due to their personal nature and the personal identifiers in these documents. This was done by Order of the Board and with the consent of the parties. The content of these tax returns is not material to this administrative decision. Rather their existence and the dates of their completion and filing are the relevant factors to this proceeding. The records were Ordered sealed and shall remain so until further order by this Board or until ordered released by a court of competent jurisdiction.

Findings of Fact &
Conclusions of Law:

1. The Respondent is a licensed architect and has held a Vermont license since 1989.
2. In January 2001, January 2003 and again in December 2004, the Respondent submitted to the Board his license renewal applications to keep his license current.
3. Under the section "Regarding Taxes" on the first two applications, the Respondent certified "under pains and penalties of perjury, [] I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont as of the date of this application." On the third application, the Respondent answered "Yes" to the statement: "I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont." See Exhibits 10, 11 & 12 (the "renewal applications").
4. The Office of Professional Regulation received a letter from Brenda Vovakes, Director of Compliance for the Vermont State Tax Department advising that Respondent was not in good standing at the time he made his renewal applications. Exhibit 17. Ms. Vovakes' 3 August 2005 letter states that the Respondent "was not in good standing with the Vermont Department of Taxes during the period [] January 1, 2000 through August 3, 2005." *Id.*
5. At the hearing, Ms. Vovakes testified and confirmed the position of the Tax Department that Mr. Liddle was not in good standing during the period when he submitted his three most recent renewal applications.
6. She acknowledged that he filed his outstanding returns and came into good standing by September 2005.
7. Mr. Liddle's accountant, Joseph S. Pieciak, Jr., testified that he worked with Mr. Liddle in July and August 2005 to assist him in putting together his tax returns from prior years. Mr. Pieciak stated that his work was initiated subsequent to the receipt of a letter from the Vt. Tax Department, Compliance Div. dated 6 July 2005 informing Mr. Liddle that the State did not have an "income tax return for tax years(s) 1998, 1999, 2000, 2001, 2002, 2003 and 2004." Exhibit 14.
8. Mr. Pieciak assisted in the assembly of the necessary records and putting together the tax returns for all of those years. Between the time the Tax Department notified Mr. Liddle in July 2005 (Exhibit 14) and 8 Sept. 2005, Mr. Liddle had brought himself into "good standing" with the Vt. Department of Taxes. Exhibit 16.
9. Mr. Liddle testified that he believed that he had filed his tax returns in the years for which he received a delinquency notice in July 2005.
10. He stated several reasons why he reasonably thought he was current and in good standing regarding his tax filing obligations. Among the reasons given by Mr. Liddle were that when he was married in 1997, his wife subsequently handled most financial matters. He testified that she had a prior business relationship with H & R Block tax preparation service; and she was

responsible for collecting and processing their financial data for tax purposes, along with his bookkeeper.

11. He also testified regarding the effect personal tragedies, particularly a family death and a divorce, had on him during the period in question. He explained how these circumstances, and all the understandable strain they put on him, made it hard to focus on many other less pressing matters.

12. Mr. Liddle testified that when he submitted the three renewal applications in question, he did so in good faith and believed that he was in good standing with the Vt. Department of Taxes.

13. Mr. Liddle acknowledged that he had filed tax returns in previous years to the ones identified as missing by the State in Exhibit 14. He further acknowledged that he is aware of the requirement of filing an annual tax return.

14. The gravamen of the State's case is that Mr. Liddle knew when he filed his application renewals at the close of the respective licensing periods ending in January 2001, 2003 and 2005, that he had not filed his tax returns for those relevant years preceding the renewal applications. The State contends that Mr. Liddle was aware of this fact. The State argues that omitting this fact on the renewal application was a deliberate act by the Respondent.

15. In response to the State's case, the Respondent argues in essence that, for reasons of inadvertence and understandable neglect, he was unaware at the time he filed his renewal applications that he was not in good standing.

16. The Board views the facts differently than does the Respondent.

17. At the hearing, Mr. Liddle gave many reasons why he did not file, until 2005, his taxes for years 1997, 1998, 1999, 2000, 2001 and 2002. The Board does not minimize the substance or significance of the many difficult personal, emotional and family setbacks and painful events that occurred to him during this period in his life.

18. However, the Board does not see how any of the personal tragedies suffered by Mr. Liddle explain why he stopped filing income tax returns *and*, at the same time, somehow forgot or did not realize that he never signed and filed these returns for all these years.

19. Mr. Liddle signed and filed tax returns prior to his marriage and therefore had to know he continued to have this basic obligation during the years in question.

20. A professional has a duty to know the information he is certifying is true. It is just not fathomable to this Board that a professional such as Mr. Liddle could be unaware of the fact that he did not sign and file his income tax returns for six consecutive years. In the context of so many years, spanning three renewal periods and three renewal applications, the Board can only conclude that Mr. Liddle knew that representations he made on his license application were untrue.

21. The Board is well aware that people will and do forget deadlines, miss filing dates and

overlook matters of otherwise paramount concern, such as completing one's income tax return. However, this is not a case of oversight or mistake. Mr. Liddle was asked no less than three times (before the 2001, 2003 & 2005 renewal periods) over a period of four years (2001-2005) regarding tax obligations to the State of Vermont. He answered questions that took into account multiple years for which he had not filed his taxes and not reconciled his obligations to the State. (i.e., from at least 1997 through 2002). With multiple cues focusing and reminding Mr. Liddle of the unfulfilled tax obligations, Mr. Liddle's claims -- that he failed to realize throughout this entire period that his tax obligations were unsatisfied -- do not stand up with this Board.

22. The Board's finding is also influenced by the nature of the reminders given to Mr. Liddle. In light of multiple un-filed tax returns, the Board asked Mr. Liddle about his taxes on three separate occasions by seeking from him a certification that he was "in good standing with respect to . . . all taxes due to the State of Vermont as of the date of this application." That question also carried the ominous preamble "under the pains and penalties of perjury . . . penalty for perjury is 15 years in prison, a 10,000.00 fine or both." Exhibit 10. The certification request also carried the same perjury warning on other applications but without the prison reference. Exhibits 11 and 12.

23. The Board is unable to accept Mr. Liddle's explanation that he read these warnings and questions and yet failed to consider the significance of not having filed tax returns for the intervening years between license renewals.

24. As a licensed architect, Respondent is well aware of what the word "certify" means. Certification means to take responsibility for the information presented, and professional architects know that they cannot "certify" that which they do not know or cannot verify. Also, the Board was impressed by Respondent's own CV (Exhibit A), which noted that Respondent has since 1998 served on the National Council of Architecture Registration Board's (NCARB) exam writing committee. A significant portion of any architectural examination focuses on professional obligations such as certification.

25. The Board did not hear a satisfactory explanation of how the Respondent could read that language and still not recall that he had not filed his taxes. The Board did not hear a satisfactory explanation of how the Respondent could read that language and not even wonder if the fact that he had not signed a tax return in several years might have a bearing on the veracity of his response.

26. Mr. Liddle was asked whether he was up-to-date with his tax obligations and he said "yes." He answered "yes" when he knew he had not even signed a return. To this Board, he cannot credibly claim -- given his level of education, experience and the fact that he has previously signed and filed tax returns -- that he reasonably assumed the returns had somehow been filed or otherwise disposed of by another party on his behalf.

27. The Board finds that Mr. Liddle did deliberately withhold a material fact when making his renewal application. He withheld from the Board that he was not in good standing with respect to all taxes owed to the state of Vermont. This omission violated Admin. R. Bd. Architects 3.5.4.1

Charges:

28. The State originally charged Mr. Liddle with two unprofessional conduct violations (¶¶s 7(i) and 7(ii)) and with a revocation charge based on non-payment of taxes (¶ 8(i)). As explained, above, the revocation charge at ¶ 8(i) was withdrawn. The State acknowledged that it did not have a factual basis to substantiate this charge since Mr. Liddle did not owe any taxes when it charged him with unprofessional conduct. Exhibit 16.

29. The Board finds the Respondent engaged in unprofessional conduct in violation of Admin. R. Bd. Architects 3.5.4.1 (making materially false statement in connection with a license renewal) as set forth in ¶7 (i) of the *Charges*. The Board's order shall be based on this charge.

30. The State has not charged Mr. Liddle with violating laws or rules governing the profession. 3 V.S.A. §129a (a)(3). Other than the unprofessional conduct Rule, 3.5.4.1, the State has not alleged a violation of any law or rule governing the profession. Without any independent acts made in violation of a law or rule outside of the one for which he was already charged, the Board does not need to address this particular charge and does not find the Respondent engaged in unprofessional conduct pursuant to §129(a)(3) as set forth in ¶7(ii) of the *Charges*.

Sanction:

31. The State has requested a thirty-day suspension and a conditioned license for a period of five years.²

32. The Board believes that the conduct engaged in by the Respondent warrants a suspension.

33. Based on the facts of this particular case, the Board finds that a one-month suspension is an appropriate sanction for the unprofessional conduct found against this Respondent.

34. Based on the conduct engaged in by the Respondent, the Board will order that the Respondent take eight (8) hours of continuing education.

35. The continuing education must focus on the topic of professional responsibility and/or business ethics. The course(s) must be pre-approved by the Board or its designee.

36. Finally, in order to insure future compliance, the Board finds that a conditioned license for a period of three tax years is an appropriate remedy.

37. The condition carried on Respondent's license shall be as follows: Respondent shall file

² In support of its argument for a thirty-day suspension, the prosecution relies on three Real Estate Commission orders *In re. Lawlor REC 22-0904* (June 2005); *In re: Treadway REC 18-0904* (Sept. 2005); and *In re: Hartman REC 20-0904* (January 2005)). The Board does not find these cases relevant to the matter before it. *Lawlor* was an uncontested joint stipulation between a Respondent and the State, *Treadway* was a factually uncontested case involving a Respondent who was not in good standing with the tax department, and *Hartman* was a default judgment resulting in an indefinite suspension for a Respondent who failed to appear for the hearing).

with the Board an affirmation subsequent to the completion of the next three tax years (the years 2006, 2007 and 2008). The affirmation shall attest to the Respondent's tax status. It shall address whether he is current with the required filings for the previously completed tax year. The affirmation shall acknowledge whether he is current on his tax obligations or is in compliance with a plan to satisfy any outstanding tax obligations.

38. The Board expects to receive written affirmations attesting to Respondent's tax compliance for this year (2006) in 2007, for tax year 2007 in 2008, and the Board expects to receive the final affirmation for tax year 2008 at some point in 2009.

39. The annual affirmations of tax compliance submitted after completing tax filings for the tax years 2006-2008 shall be in addition to any affirmations the Respondent is required to make as part of license renewal.

Order:

In light of the foregoing findings of fact and conclusions of law, the Board of Architects finds that the Respondent engaged in unprofessional conduct as charged by the State in ¶ 7(i) of the Specification of Charges and:

ORDERS the suspension of Respondent's license for a period of 30 days. The Suspension shall begin ten (10) days after the docketing of this Order by the office of Professional Regulation and the suspension shall run for the next thirty (30) days; and the Board

ORDERS the Respondent to take eight (8) hours of continuing education within six months of the entry of this order. The continuing education shall focus on issues directly related to professional responsibility and/or ethics. The eight hours shall not count toward Respondent's continuing education requirement for license renewal and the course must be pre-approved by the Commission or its designee; and the Board

ORDERS that the Respondent's license be conditioned until the conclusion of tax year 2008; and the subsequent filing by the Respondent of all necessary forms required by the IRS and the Vt. Dep't of Taxes. This condition shall include a requirement that the Respondent submit an affirmation to the Board attesting that he submitted all personal and business tax filings and that he has no outstanding tax liability for the most recently concluded tax year or is current with a plan to satisfy any outstanding tax obligations

- END -

Vermont Board of Architects

By: Sandra R.F. Vitzthum Dated: 4 Dec 06

Sandra R.F. Vitzthum,
Acting Chairperson

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/13/06

Appeal Rights

This is a final administrative determination by the Vermont Board of Architects.

A party aggrieved by a final decision of a board or commission may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Drawer 09, Montpelier, Vermont 05609-1106 within 30 days of the entry of this 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 on the basis of the record created before the Commission. In cases of alleged irregularities in procedure before the Commission, not shown in the record, the appellate officer may take proof on that issue. 3 V.S.A. §§s 129(d) and 130a.

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF ARCHITECTS

IN RE:)
CHRISTOPHER C. LIDDLE) Docket No: AR02-0805
License No. 003-0001742)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Christopher C. Liddle:

Board Authority

1) The Vermont State Board of Architects ("the Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §§129 and 129a; 26 V.S.A. §§210 and 211; the Administrative Rules of the Board of Architects ("ARBA"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2) The Respondent is a licensed in the State of Vermont as an architect under license number 003-0001742. This license was originally issued on October 18, 1989 and is currently set to expire on January 31, 2007.

3) On January 12, 2001, January 20, 2003, and most recently on December 15, 2004, the Respondent completed and submitted to the Board license renewal applications in order to renew his architect's license.

4) On the first two applications, under the section "Regarding Taxes," the Respondent checked the statement, "I hereby certify, under the pains and penalties or perjury, that I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont as of the date of this application." On the third application, under the section "Applicant's Statement Regarding . . . Taxes . . .," the Respondent answered "Yes" to the statement, "I am in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont."

5) In a letter dated August 3, 2005 from Brenda Vovakes, Director of Compliance for the Vermont State Tax Department, Ms. Vovakes advised that the Respondent had not been in good standing with the Tax Department since January 1, 2000.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
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6) Upon information and belief, the Respondent is not currently in good standing with the Vermont State Tax Department.

Charges

7) For each of the three (3) applications submitted, by committing the above act(s), circumstance(s) and/or omission(s), the Respondent has committed unprofessional conduct in violation of:

i. ARBA, Rule 3.5.4.1 (An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal); and

ii. 3 V.S.A. §129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

8) Additionally, for each of the three (3) applications submitted, Respondent's license should be revoked or suspended under:

i. 32 V.S.A. §3113(f) (Upon written request by the commissioner and after notice and hearing to the licensee as required under any applicable provision of law, an agency shall revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person if the agency finds that taxes administered by the commissioner have not been paid and that the taxpayer's liability for such taxes is not under appeal. For purposes of such findings, the written representation to that effect by the commissioner to the agency shall constitute prima facie evidence thereof).

Relief Requested

WHEREFORE, the license of Christopher C. Liddle should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 7th day of November 2007.

STATE OF VERMONT

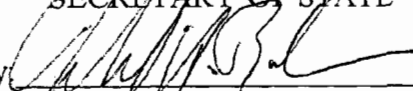


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STATE OF VERMONT
SECRETARY OF STATE

By


Robert H. Backus
State Prosecuting Attorney