

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2000-1927

**Bureau of Commercial Services,
Petitioner**

Agency No. 11-99-0677-00

v

**Agency: Bureau of Commercial
Services**

**Paul C. French, Jr.,
Respondent**

Case Type: Sanction

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**Issued and entered
this 14th day of February, 2001
by Howard T. Spence
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the issuance of a Notice of Hearing dated November 8, 2000, scheduling a contested case hearing for December 13, 2000. The Notice of Hearing was mailed to Respondent's last known address.

Appearances: Tracey Hampton, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither Respondent, Paul C. French, Jr., nor an attorney on behalf of Respondent appeared at the hearing.

The Notice of Hearing was issued pursuant to allegations by the Bureau of Commercial Services (Petitioner) that Paul C. French, Jr., (Respondent) violated the

Occupational Code, 1980 PA 299, as amended, being MCL 339.2401-2412; MSA 18.425(2401)-(2412) (Code).

The hearing in this matter commenced as scheduled on December 13, 2000. At the hearing, Ms. Hampton requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.272; MSA 3.560 (272) (APA), and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

- (1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

- (2) Except as otherwise provided by law, disposition may be made of a contested case by...default....

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint were deemed true.

During the December 13, 2000, hearing, three exhibits were accepted into the record. Those exhibits were:

Exhibit 1	Judgment of Sentence and Commitment to Jail
Exhibit 2	Affidavit of registered non-practicing license status
Exhibit 3	Order of Probation

During the December 13, 2000, hearing, no other evidence was offered into the record other than the exhibits. No witnesses testified at the hearing.

ISSUES AND APPLICABLE LAW

The general issue in this matter is whether or not Respondent violated the Occupational Code, 1980 PA 299, as amended, being MCL 339.101 *et seq*; MSA 18.425(101) *et seq*. (Code).

The specific issues in this case are whether or not the Respondent violated the following Sections of the Code: Section 734(b);Section 734(d); Section 734(j); Section 604(b); and Section 604(d) (Code). Those Sections state in pertinent part:

Sec. 734. A holder of a certificate as a certified public accountant, a registration, or a license is subject to the penalties of section 602 for 1 or more of the following: (a) Fraud or deceit in obtaining a certificate as a certified public accountant, a license to practice public accounting, or a registration under this article.

(b) Dishonesty, fraud, or negligence in the practice of public accounting.

(d) Conviction of a felony under the laws of this or another state or the United States or conviction of a crime, an element of which is dishonesty, fraud, or negligence, under the laws of this or another state or of the United States, including, but not limited to, the failure to file a personal federal, state, or local income tax return.

(j) A violation of the provisions of section 604.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

(b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(d) Demonstrates a lack of good moral character.

FINDINGS OF FACT

Based on the record, I make the following findings of fact:

1. On or about February 25, 2000, Respondent was found guilty in the Thirty Sixth Circuit Court of Paw Paw, Michigan, of ten counts of "Embezzlement by Agent \$1,000-\$20,000."

2. Respondent was convicted of a crime, an element of which is dishonesty, fraud or negligence under the laws of the state of Michigan.

3. Respondent's conduct in committing "Embezzlement by Agent \$1,000-\$20,000" demonstrates his inability to serve the public as a certified public accountant in a fair, open and honest manner and his lack of good moral character.

4. Respondent's conduct in taking monies entrusted to him on behalf of others constitutes fraud, deceit or dishonesty in the practice of an occupation.

5. Respondent's conduct in taking monies entrusted to him on behalf of others constitutes fraud, deceit or dishonesty in the practice of public accounting.

6. Respondent has violated a provision of Section 604 of 1980 PA 299, as amended.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994). The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist., 428 Mich 248, 406 NW2d 825 (1987). Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated the following Rules and Sections of the Code:

1. Respondent was convicted of a crime, an element of which is dishonesty, fraud or negligence under the laws of the state of Michigan, violating Section 734(d) of the Code.

2. Respondent's conduct in committing "Embezzlement by Agent \$1,000-\$20,000" demonstrates his inability to serve the public as a certified public accountant in a fair, open and honest manner and his lack of good moral character, violating Section 604(d) of the Code.

3. Respondent's conduct in taking monies entrusted to him on behalf of others constitutes fraud, deceit or dishonesty in the practice of an occupation, violating Section 604(b) of the Code.

4. Respondent's conduct in taking monies entrusted to him on behalf of others constitutes fraud, deceit or dishonesty in the practice of public accounting, violating Section 734(b) of the Code.

5. Respondent has violated a provision of Section 604 of 1980 PA 299, as amended, violating Section 734(j) of the Code.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, the following recommendations are made by the Administrative Law Judge to the Board:

1. Based upon the above violations of the Code and Rules, a civil fine in the amount of \$500.00 be assessed against Respondent.
2. Any and all licenses under the jurisdiction of the Code held by Respondent be revoked.

Howard T. Spence
Administrative Law Judge