

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

In the Matter of Ronak R. Shah, CPA
Certificate and License No. 17738

**ORDER MODIFYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER ISSUED ON 9/12/11**

This came before the Minnesota Board of Accountancy ("Board") on Respondent Ronak R. Shah's ("Respondent") petition for reconsideration. Assistant Attorney General Nathan J. Hartshorn appeared on behalf of the Complaint Committee, Stephen Warch, Esq., appeared on behalf of Respondent, and Assistant Attorney General Chris Kaisershot advised the Board.

Based on all the files, records, and proceedings herein, the Board hereby issues the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On September 12, 2011, the Board issued Findings of Fact, Conclusions of Law and Order ("Order") in the above-entitled matter. The Order imposed a \$4,000 civil penalty against Respondent, suspended his certified public accountant certificate for five years, and imposed conditions upon the reinstatement of his certificate.
2. On September 22, 2011, Respondent petitioned the Board to reconsider the discipline imposed by the Order. Specifically, Respondent requested that "the Board grant reconsideration, rescind the five year suspension, and impose lesser discipline."
3. Any Finding of Fact herein, which should more properly be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Board has reviewed the entire evidentiary record in this matter and has agreed to reconsider the discipline imposed against Respondent.

2. The assessment of penalties and sanctions by an administrative agency is not a factual finding, but the exercise of a discretionary grant of power. See *In re Haugen*, 278 N.W.2d 75, 81 n.10 (Minn. 1979).

3. The purpose of any administrative agency proceeding concerning the revocation or suspension of a license or certificate is not to punish the individual: "[T]he purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. The function of the Board is, therefore, not only to consider [Respondent's] acts, but also the harm to the public if such acts remain unpunished and the deterrent effect upon others of a severe penalty." *Padilla v. Minn. State Bd. of Med. Exam'rs*, 382 N.W.2d 876, 877-78 (Minn. Ct. App. 1986), *rev. denied* (Minn. Apr. 24, 1986).

4. Any Conclusion of Law herein, which should more properly be deemed a Finding of Fact, is hereby adopted as such.

ORDER MODIFYING SANCTIONS

Upon reconsideration of this matter and consideration of the foregoing Findings of Fact and Conclusions of Law, and based upon all the files, records, and proceedings herein, it is hereby ORDERED as follows:

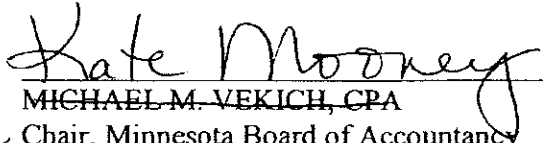
A. The Findings of Fact and Conclusions of Law set forth in the Order are AFFIRMED in their entirety;

B. The penalties and sanctions set forth in the Order are MODIFIED as follows:

1. **IT IS HEREBY ORDERED** that Respondent shall pay a **CIVIL PENALTY** of four thousand dollars (\$4,000) to the Board within sixty (60) days of the date of this order.
2. **IT IS FURTHER ORDERED** that Respondent's certified public accountant certificate is **SUSPENDED FOR FIVE ~~(5)~~ THREE (3) YEARS**, effective on the date of this Order.
3. **IT IS FURTHER ORDERED** that Respondent may petition the Board, pursuant to Minn. Stat. § 326A.09, for reinstatement of his certificate no earlier than ~~TWO AND ONE HALF (2 1/2)~~ **ONE AND ONE HALF (1 1/2) YEARS** after the date of this Order. Such reinstatement shall not be granted until and unless Respondent meets the following conditions:
 - a. Respondent timely pays the civil penalty ordered above;
 - b. Respondent completes and provides the Board with proof of having completed one hundred twenty (120) hours of Board-approved continuing professional education, in compliance with the Board's continuing education rules;
 - c. In addition to the continuing professional educational requirements cited above, Respondent completes and provides the Board with proof of having completed twenty-four (24) hours of Board-approved continuing professional education in ethics; and
 - d. Respondent agrees that he will not, in the future, violate any statute, rule, or order that the Board has issued or is empowered to enforce.

Dated this 18 day of Oct, 2011

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

 CPA
~~MICHAEL M. VEKICH, CPA~~
Vice Chair, Minnesota Board of Accountancy

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

In the Matter of Ronak R. Shah, CPA
Certificate and License No. 17738

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

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on May 3, 2011, at the Office of Administrative Hearings in St. Paul, Minnesota.

Nathan J. Hartshorn, Assistant Attorney General, appeared on behalf of the Complaint Committee ("the Committee") of the Minnesota Board of Accountancy ("the Board"). Stephen Warch, Esq. appeared on behalf of Licensee/Respondent Ronak R. Shah ("Respondent").

The hearing record closed on the Administrative Law Judge's receipt of the Transcript on June 9, 2011.

On June 29, 2011, the Administrative Law Judge issued his Findings of Fact, Conclusions, and Recommendation (hereinafter referred to as "the Report") in this matter. A copy of the Report is attached hereto and incorporated by reference.

STATEMENT OF THE ISSUE

The issue in this contested case proceeding is whether it is appropriate to discipline Respondent, pursuant to Minn. Stat. § 326A.08, subd. 5(a)(2) and (10) (2010) and Minn. R. 1105.5600(D) (2009), for "fiscal dishonesty of any kind," on the grounds that Respondent (1) made two unauthorized withdrawals totaling \$7,000 from a bank account belonging to the Minnesota Society of Certified Public Accountants Political Action Committee ("MnCPA-PAC" and "the PAC") and (2) failed to repay the money to the PAC for more than two months after the withdrawals.

REVIEW

On September 12, 2011, the matter was heard, considered and decided by the full Board of Accountancy. Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101 was present to advise the Board. After reviewing the record, including the Report of the Administrative Law Judge, and having afforded the parties the opportunity to file exceptions and to present argument to a majority of the full Board of Accountancy, the Board hereby makes the following:

FINDINGS OF FACT

1. The Board adopts and incorporates herein all of the Findings of Fact in the Report.
2. As noted in the Memorandum included within the Report, Respondent disclosed new information at the May 3 hearing that he had not previously provided to the Committee or the Board. Among these new disclosures were the following representations by Respondent:
 - a. Respondent testified at the hearing that before making the withdrawals in question, he identified himself to the Wells Fargo teller by running a debit card through the bank's card reader. Respondent initially testified at the hearing that when he made the withdrawals, he believed this card was connected to only three accounts: his own personal checking account, personal savings account, and business account. Later in his testimony, he admitted that this initial statement was not true, and that he had recognized that the card was connected to at least one other bank account—his brother's.
 - b. Respondent testified at the hearing that while making one or both of the withdrawals at issue, he never attempted to communicate with the Wells Fargo teller to convey which account Respondent intended to withdraw money from. Respondent further testified that the teller, in one or both instances, also did not attempt to communicate with Respondent in order to identify which account Respondent intended to withdraw money from.
 - c. Respondent testified at the hearing that he had not seen the withdrawal slips between the time the tellers in question filled them out and the time he left the bank.

Respondent did not disclose any of this information in his February 2010 written submission to the Committee or his April 2010 in-person meeting with the Committee.

3. Any Finding of Fact more properly termed a Conclusion of Law is adopted as such.

CONCLUSIONS OF LAW

1. The Board adopts and incorporates herein all of the Conclusions of Law in the Report.

2. The Board adopts and incorporates herein the Memorandum included within the Report.

3. The Board's Conclusions regarding discipline are based on the Findings, Conclusions, and Memorandum detailed and/or incorporated above. As previously noted, some of the facts that are relevant to the Board's Conclusions were not available to the Committee prior to the May 3, 2011, hearing in this matter.

4. In light of (a) the severity of the multiple instances of fiscal dishonesty that have been proved by a preponderance of the evidence in this matter, (b) the lack of credibility that Respondent's explanations of the withdrawals suffer from, and (c) the unprofessional and irresponsible nature of Respondent's excuses for failing to return the PAC's money immediately after it was demanded, the disciplinary action detailed in the Order is in the public interest.

5. Any Conclusion of Law more properly termed a Findings of Fact is adopted as such.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board makes the following:

ORDER

1. **IT IS HEREBY ORDERED** that Respondent shall pay a **CIVIL PENALTY** of four thousand dollars (\$4,000.00) to the Board within sixty (60) days of the date of this order.
2. **IT IS FURTHER ORDERED** that Respondent's certified public accountant certificate is **SUSPENDED FOR FIVE (5) YEARS**, effective on the date of this Order.
3. **IT IS FURTHER ORDERED** that Respondent may petition the Board, pursuant to Minn. Stat. § 326A.09, for reinstatement of his certificate no earlier than **TWO-AND-ONE-HALF (2 1/2) YEARS** after the date of this Order. Such reinstatement shall not be granted until and unless Respondent meets the following conditions:
 - a. Respondent timely pays the civil penalty ordered above;
 - b. Respondent completes and provides the Board with proof of having completed one hundred twenty (120) hours of Board-approved continuing professional education, in compliance with the Board's continuing education rules;
 - c. In addition to the continuing professional education requirements cited above, Respondent completes and provides the Board with proof of having completed twenty-four (24) hours of Board-approved continuing professional education in ethics; and
 - d. Respondent agrees that he will not, in the future, violate any statute, rule, or order that the Board has issued or is empowered to enforce.

Dated this 12th day of September, 2011.

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

Kate Mooney

KATE MOONEY, Ph.D. CPA

MICHAEL M. VEKICH, CPA

Chair, Minnesota Board of Accountancy

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

In the Matter of Ronak R. Shah, CPA

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on May 3, 2011.

Nathan J. Hartshorn, Assistant Attorney General, appeared on behalf of the Complaint Committee (Committee) of the Minnesota Board of Accountancy (Board). Careen H. Martin, Esq. appeared on behalf of Ronak R. Shah (Licensee, Respondent). The record closed on receipt of the Transcript on June 9, 2011.

STATEMENT OF ISSUE

Whether it is appropriate to discipline the Licensee for making two unauthorized withdrawals of money from the bank account of the Political Action Committee (PAC) of the Minnesota Society of CPAs, and for not paying back the PAC until approximately two months after the unauthorized withdrawals were discovered?

Based on the files and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 14, 1996, the Board issued Shah CPA certificate number 17738. Respondent currently holds an active CPA license from the Board.¹

2. In 2009, Shah was a member of the Minnesota Society of Certified Public Accountants Political Action Committee (MnCPA-PAC and PAC). Shah was the Chairman of the PAC and was an authorized signatory on a checking account owned by the PAC. Shah owed fiduciary duties to the PAC.²

¹ Testimony of Renville.

² Testimony of Shah.

3. On September 26, 2009, Shah withdrew \$1,000 from the PAC's account and deposited the funds to his personal account. The withdrawal was not authorized by the PAC.³

4. On September 30, 2009, Shah withdrew an additional \$6,000 from the PAC's account and deposited the funds to his personal account. The withdrawal was not authorized by the PAC.⁴

5. The PAC learned of the missing \$7,000 in early October 2009 and attempted to recover the money from Shah.⁵

6. During the week of October 12, 2009, Shah admitted that he had withdrawn the money from the PAC's account. The PAC demanded that Shah return the money, and on at least two occasions, he promised to do so.⁶

7. At some point in October 2009, Shah decided not to return immediately to the PAC the \$7,000 he had withdrawn from its account.

8. On or about November 6, 2009, the PAC served Shah with a Complaint initiating a civil lawsuit against him. The Complaint alleges breach of fiduciary duty, civil theft, and conversion.⁷ The PAC did not file the suit in district court.

9. On or about December 2, 2009, Shah served the PAC with his Answer to its Complaint. The Answer admits the allegations in the Complaint setting out the "history of the event." It further admits the Complaint's allegations of conversion and breach of fiduciary duty.⁸

10. Shortly after Shah served the PAC with his Answer, the PAC threatened to file the lawsuit against Shah in court. In response, on December 7, 2009, Shah wrote a check to the PAC for the \$7,000 he had withdrawn.⁹

11. The PAC spent approximately \$5,900 on legal fees to collect the funds taken by Shah.¹⁰

12. On or about September 14, 2010, the Committee served Shah with its Notice and Order for Hearing and Prehearing Conference, initiating this disciplinary proceeding.

13. On or about December 7, 2010, the Committee served Shah with Requests for Admissions in the instant case by mailing them to his business address.

³ Committee's Exhibit 1.

⁴ *Id.*

⁵ Shah Exhibit 1.

⁶ *Id.*

⁷ Committee's Exhibit 2.

⁸ Complainant's Exhibit 13.

⁹ Testimony of Shah.

¹⁰ Committee's Exhibit 16.

Among the Requests for Admissions were requests that Shah admit that he "violated his fiduciary duty to MnCPA-PAC" and that his "conduct constitutes grounds justifying the Board's taking disciplinary action against (his) Certificate."¹¹

14. Shah did not respond to the Requests for Admissions within ten days, and still has not responded to them.

15. At no point in this proceeding has Shah provided a reason why he did not respond to the Requests for Admissions.

16. In correspondence to the PAC and the Committee, Shah asserted that he withdrew the \$7,000 from the PAC's account inadvertently. Shah maintained this position in testimony at the May 3 Hearing.¹²

17. Any Findings of Fact more properly termed Conclusions are adopted as such.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board have jurisdiction in this proceeding pursuant to Minn. Stat. §§ 14.50, 214.10, 214.103 and 326A.01-.14 (2010).

2. The Committee gave proper notice of the violations to Shah and fulfilled all procedural requirements.

3. Because he failed to (1) respond to the Committee's Requests for Admissions within ten days and (2) provide any evidence or argument "show[ing] that there was a justifiable excuse for failing to respond" to these Requests, the Committee's Requests are deemed admitted by Shah.¹³

4. One of these Requests is an admission that Shah's "conduct constitutes grounds justifying the Board's taking disciplinary action against [his] Certificate." As a result, Shah is deemed to have admitted that disciplinary action from the Board against him is justified.

5. The preponderance of the evidence presented by the parties shows that Shah intentionally withdrew \$7,000 from the PAC's account without authorization.

6. The preponderance of the evidence also shows that Shah intentionally decided not to return the PAC's money immediately, despite his concession that the money belonged to the PAC, the PAC's demands that he return it, and his own promises to do so.

¹¹ Committee's Exhibit 15.

¹² Shah Exhibit 2.

¹³ Minn. R. 1400.6800 (2009).

7. Under Minn. Stat. § 326A.08, subds. 5(a)(2) and (10):

The [B]oard may, by order, 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; [or] limit the scope of practice of any licensee...if the [B]oard finds that the order is in the public interest and that, based on a preponderance of the evidence presented, the person or firm:

[...]

(2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to performing or offering to perform professional services, providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on the person's or firm's ability or fitness to provide professional services; [or]

[...]

(10) has engaged in any conduct reflecting adversely upon the person's or firm's fitness to perform services while a licensee....

8. Clauses (2) and (10) of the above statute are further defined in Minnesota Rule 1105.5600(D), which states, in pertinent part, that "conduct reflecting adversely upon the licensee's fitness to perform services, within the meaning of Minnesota Statutes, section 326A.08, subdivision 5, paragraph (a), clauses (2) and (10), includes," inter alia, "fiscal dishonesty of any kind" ¹⁴

9. As a result, in order to demonstrate that discipline is warranted in this proceeding, the Committee must show that Shah engaged in "fiscal dishonesty of any kind." ¹⁵

10. The Committee bears the burden of making that showing by a preponderance of the evidence. ¹⁶

11. The Committee established, by a preponderance of the evidence, that Shah withdrew \$7,000 from a PAC bank account without authorization, that this withdrawal was intentional, and that it constituted "fiscal dishonesty" as that term is used in Minn. R. 1105.5600(D)(2).

¹⁴ Minn. R. 1105.5600(D)(2) (2009).

¹⁵ Minn. Stat. § 326A.08, subd. 5(a)(2) and (10); Minn. R. 1105.5600(D)(2).

¹⁶ Minn. Stat. § 326A.08, subd. 5(a) (2010); Minn. R. 1400.7300, subp. 5 (2009).

12. The Committee established, by the preponderance of the evidence, that Shah's decision to retain the \$7,000 until December 2009 constituted a further instance of "fiscal dishonesty" as that term is used in Minn. R. 1105.5600(D)(2).

13. Because of the dishonesty he has engaged in, disciplinary action against Shah's license is in the public interest. See Minn. Stat. § 326A.08, subd. 5(a)(2) and (10) and Minn. R. 1105.5600(D)(2).

14. For these reasons, even if Shah had responded to the Committee's Requests for Admissions and was not deemed to have admitted that disciplinary action against him from the Board is warranted, disciplinary action against Shah is warranted based on the merits of the case.¹⁷

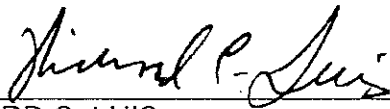
15. Any Conclusions more properly termed Findings of Fact are adopted as such.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Minnesota Board of Accountancy take appropriate disciplinary action against the license of Respondent Ronak R. Shah.

Dated: June 29, 2011



RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally.
Transcript Prepared: Jean Brennan
John Brennan Court Reporters.

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, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Doreen Johnson Frost, Executive Director, 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.

¹⁷ See Conclusions 3 and 4.

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. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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 the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency 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 Administrative Law Judge does not find the Respondent's account of the bank withdrawals made on September 26 and September 30, 2009, and of subsequent related events, to be credible because of various contradictions, changes in narrative and implausible scenarios in Mr. Shah's explanation of why he withdrew the PAC's money and kept it for over two months.

Mr. Shah alleges that on September 26, 2009, he went to a branch of Wells Fargo Bank for the purpose of withdrawing money from one of his bank accounts. He alleges further that he did not fill out a withdrawal slip ahead of time. When Mr. Shah approached a teller window inside the bank and told the teller that he wanted to withdraw funds from one of his accounts, he maintains he did not specify a particular account from which he wanted to withdraw the funds.

Mr. Shah alleges further that he then swiped his personal debit card into a machine at the teller window and entered his own Personal Identification Number (PIN) into a key pad. He maintains that the debit card swiped was not a debit card for the account maintained at Wells Fargo by the CPA Society's Political Action Committee (PAC). Shah maintains further that the teller then handed him a blank withdrawal slip, which he signed and handed back to the teller.

According to Mr. Shah, the teller filled out the remaining portions of the withdrawal slip, adding the account number from which the funds were to be withdrawn, and, unknown to Shah, the teller wrote down the PAC account number.

Mr. Shah testified that he is a signatory on more than one account at Wells Fargo, including savings accounts, business checking accounts, personal checking accounts and his brother's business account. He admits he was a signatory on the PAC's account as well, as of September 2009.

Mr. Shah maintains he was not able to view the computer screen in front of the teller, from which the teller wrote down the account number, but that he did not request withdrawal of funds from the PAC account and did not intend to do so. Mr. Shah

maintains, therefore, that at that point in time, he did not know the funds were being withdrawn from the PAC account. Mr. Shah notes further that he did not make any representations, false or otherwise, regarding the PAC account to the bank teller.

Mr. Shah alleges he was unaware that the PAC account on which he was an authorized signatory would link to his name and appear on a list of personal and business accounts in his name at Wells Fargo Bank.

Failure by Shah to Respond to Committee's Requests for Admissions

On December 7, 2010, Counsel for the Committee served Shah with Requests for Admissions in this matter.¹⁸ The most significant requests for the purposes of this proceeding are Request 11, asking the Respondent to admit he violated his fiduciary duty to the PAC, and Request Number 12, requesting him to admit that his conduct justifies the Board's taking disciplinary action against his CPA Certificate.

Both the cover letter and the requests notify Mr. Shah that, under Minnesota Rules, he was required to provide a written response to the requests within ten days, and added that his failure to respond would result in the Requests being deemed admitted unless he could show that he had a justifiable excuse for such failure.¹⁹ Mr. Shah did not respond to the requests within ten days, and has not responded to them.

The Committee served Shah with the same requests a second time on April 1, 2011, as one of the potential exhibits attached to its proposed Exhibit and Witness Lists.

Mr. Shah presented no evidence regarding the Requests, or his failure to respond to them, at the May 3 Hearing. Nor did he mention them, or his failure to respond, in his written closing argument on May 13, 2011.

The record contains evidence that Mr. Shah was properly served with the Requests for Admissions in this matter. Mr. Shah has not shown that there was a justifiable excuse for his failing to respond.²⁰ Therefore, it is appropriate to rule that Mr. Shah is deemed to have admitted that his conduct constitutes grounds justifying the Board's taking disciplinary action against his Certificate.

Relevant Legal Standards Support Discipline

Even if the Requests for Admission did not exist, there are ample factual and legal bases for the Board to impose professional discipline on Mr. Shah. Regarding the question of whether Mr. Shah has engaged in conduct or acts that are fraudulent, deceptive or dishonest,²¹ Mr. Shah notes that the terms "fraudulent, deceptive, or dishonest" are not defined in the statute. That may be correct, but the entire contents of Minn. Stat. § 326A.08, subds. 5(a)(2) and (10) are defined in Minnesota Rules.

¹⁸ Committee Exhibits 13, 14 and 15.

¹⁹ Minn. R. 1400.6800.

²⁰ *Id.*

²¹ Minn. Stat. § 326A.08, subd. 5(a)(2).

Specifically, Minn. R. 1105.5600(D) provides:

“Conduct reflecting adversely upon the Licensee’s fitness to perform services, within the meaning of Minn. Stat. §§ 326A.08, subd. 5(a), Clauses (2) and (10), includes:

[. . .]

(2) Fiscal dishonesty of any kind;

[. . .]

Fiscal Dishonesty

The record establishes the following facts, which are either admitted to or not disputed by Mr. Shah:

1. He withdrew \$1,000 from a CPA-PAC bank account on September 26, 2009;
2. He withdrew an additional \$6,000 from the same PAC account on September 30, 2009;
3. He had no authorization from the PAC for either withdrawal;
4. In mid October of 2009, Shah admitted making the withdrawals and conceded that the money he had withdrawn did not belong to him;
5. The PAC demanded that he return the money;
6. Shah promised, on at least two occasions, to do so within a few days;
7. Shah later changed his mind and decided not to return the money that soon;
8. The PAC served him with a civil Complaint in order to retrieve the money, which cost the PAC thousands of dollars in legal fees;
9. Shah refused to reimburse the PAC for the fees they incurred because of his refusal to return the PAC’s money; and
10. One or more of the above acts constituted a violation of the fiduciary duty he owed to the PAC.

In light of the list of uncontested and/or admitted facts, Shah cannot maintain credibly that he was not engaged in “fiscal dishonesty of any kind”, particularly since he was taking thousands of dollars that did not belong to him and then refusing to return the money to its rightful owner for more than two months.

Shah argues that dishonesty requires a showing of intent. The Administrative Law Judge does not agree.

Shah notes that the ordinary dictionary definition of "dishonest" is a "lack of truth, honesty, or trustworthiness" . . . a willful perversion of truth in order to deceive, cheat, or defraud."

The Administrative Law Judge does not agree with Mr. Shah's argument that "fiscal dishonesty" must include an element of intent or willfulness. Rather, "lack of truth, honesty or trustworthiness" is something that can be practiced or demonstrated without intent, and a lack of trustworthiness can be shown by mere negligence or recklessness. It is noted that Shah has admitted that he violated his fiduciary duty to the PAC, whether that was intentional or not, and it is reasoned that that violation demonstrates "a lack of trustworthiness."

Mr. Shah's rendition of the September withdrawals that he related at the hearing is found by the Administrative Law Judge to be incredible, but even if true, it demonstrates recklessness, especially for a licensed accountant, particularly in his allegation that he made no effort whatsoever to determine which account he was withdrawing thousands of dollars from. The Administrative Law Judge concludes that such behavior shows a lack of trustworthiness.

Even if evidence of intent were required, the Administrative Law Judge is persuaded that the record demonstrates that Mr. Shah's behavior was intentional. Intent does not need to be proved by direct evidence. Because intent and premeditation are states of mind, they are generally proved circumstantially – by drawing inferences from the actor's words and actions in light of the totality of the circumstances.²² In *State v. Bowman*, 328 N.W.2d 703, 705 (Minn. 1982) the Minnesota Supreme Court noted that:

Direct evidence as to the fact of intent is usually impossible because of the subjective nature of this element What a person intends lies within the recesses of that individual person's mind In determining this question, inquiry is made under an objective standard, namely, the standard that people operate within the broad boundaries of what is deemed normal The law presumes . . . people are responsible for their acts, i.e., that they have the capacity to intend what they do.

Evidence regarding the nature of the September 2009 withdrawals is particularly relevant here. Committee's Exhibits 8 and 9 are copies of bank slips documenting withdrawals of \$1,000 and \$6,000, respectively, from the same account, made on September 26 and 30, 2009. Each slip bears Mr. Shah's signature. The Administrative Law Judge notes that bank customers (particularly professional accountants) do not routinely withdraw money from a bank account without intending to do so. Bank tellers even less often facilitate window withdrawals from a checking account without being

²² *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997), citing *State v. Andrews*, 388 N.W.2d 723, 728 (Minn. 1986).

instructed to remove the money from that particular account. If the extremely rare circumstance occurs that both customer and teller happen to make the same "inadvertent" mistakes during the same transaction, a coincidence of that sort is even more highly unlikely to happen twice in five days, particularly in a manner directly enriching the party claiming inadvertence. That noted, the evidence presented at the May 3, 2011, hearing supports strongly the proposition that Mr. Shah made two intentional and unauthorized withdrawals totaling \$7,000 from the CPA-PAC's account in September 2009.

In 2009 and 2010, Mr. Shah's rendition of events was that he intended to withdraw the money in question from his brother's business account, and he should have been more diligent about which account the teller used, but was distracted on one occasion by a conversation with a bank manager about a different subject and did not pay attention to what the teller was doing or what account she had written on the withdrawal slip. This version of the events does not square with the simple fact that Mr. Shah made two withdrawals, four days apart. Mr. Shah's account of the events changed in his testimony at the May 3, 2011 Hearing, where he made no mention of the conversation with the bank manager, but introduced to the record for the first time the notion that he had identified himself to the Wells Fargo teller by running a debit card through the bank's card reader.

Mr. Shah's new rendition of events (related in his May 3 testimony) is not credible. At the hearing, Mr. Shah testified that the debit card was connected only to his personal checking, personal savings and business accounts. If that is true, it would explain his surprise that use of the debit card led to a withdrawal from an account other than one of those three. However, in his Exhibits 1 and 2, Shah stated that he intended the September 2009 withdrawals to come out of his brother's account, which was not one of the three he initially testified were connected to the debit card he used. When confronted with that contradiction on cross-examination, Shah noted that his brother's account is also connected to the debit card, because the bank associates that account with his (the Respondent's) social security number. If such is the case, Mr. Shah was aware in 2009 that his debit card was connected to accounts other than his personal ones.

Mr. Shah also testified on May 3 that neither he nor the teller did anything to communicate which of his accounts Shah wanted the money withdrawn from. The Administrative Law Judge finds that aspect of Mr. Shah's rendition to be not credible. Mr. Shah is alleging that neither he nor the teller even tried to establish which of Shah's accounts (according to his rendition, there were at least four options) the money should be withdrawn from. This is different from his earlier allegation that he and the teller randomly happened to make an account choice mistake at the same time. Notably, it is an obvious breach of bank protocol on the teller's part not to try to establish which of Shah's accounts the money should be withdrawn from. If Mr. Shah intended in fact to withdraw money from his brother's account, and not from one of his, the Administrative Law Judge does not know how he would have been able to achieve that without explaining to the teller that he had brother's account in mind.

On cross-examination, Mr. Shah added a new assertion that he never even saw the withdrawal slip after the teller had written the PAC's account number on it, which contradicts the email message he sent to the PAC two weeks after the withdrawals, in which he stated:

I should have been more diligent which account the teller used, but was speaking to her supervisor about various sports and stuff . . . I was not paying attention to what she was doing and what account she wrote onto the withdrawal slip.²³

It is extremely puzzling how Shah possibly could have "paid attention" to "what account the teller wrote onto the withdrawal slip" when, according to the new information he provided on cross examination, he never even saw the slip after she had written the account number on it. The inconsistency between these accounts calls the Licensee's credibility into question further.

Shah's Retaining of the \$7,000 Withdrawn

Shah contended at the hearing that one reason he did not repay the PAC's money quickly was that he did not have the money to pay back. This allegation is not credible for several reasons, including:

- As Committee counsel noted at the hearing, it fits poorly with Shah's statement on page 4 of Shah's Exhibit 2 that he could have "gone to friends to borrow the money, or clients to collect on invoices, or could have sold any number of personal items by which he would have received" \$7,000 – and thus that he no reason to steal the funds from the PAC. If all such options were viable, why did he not exercise any of them to return the money after he recognized he had taken it from the PAC?
- The fact that he withdrew \$7,000 that did not belong to him in September, and then did not have any such amount available to pay back two weeks later, suggests that he had expenses that provided him for a motive to take the PAC's money in the first place.
- If Shah's story about intending to withdraw the money from his brother's account is true, then the brother's account would have had \$7,000 more in it than Shah intended as of September 30, 2009, so why did he not use that \$7,000 to reimburse the PAC?

The above implausibilities and contradictions strengthen the Committee's case that the withdrawals were intentional and cut against Shah's trustworthiness and credibility as a witness. As noted in *State v. Jackson*, 655 N.W.2d 828, 36 (Minn. App.

²³ Shah Ex. 1.

2003), "when a witness has made two contradictory declarations..., that raises doubt not only as to the veracity of one statement over the other, but as to the witness's personal credibility as well."

Mr. Shah's allegation that the same inadvertent mistake made by himself and the bank tellers, resulting in withdrawals from the same account, occurred four days apart is not credible. The far more likely explanation of what happened is that Mr. Shah intended to "borrow" money by withdrawing some from the PAC's account in the belief that, when (or before) the withdrawals were discovered, he would have re-deposited the money, or if he had not, PAC staff and PAC Board members would accept his story of inadvertence and allow him to return the funds without further incident. Unfortunately for Mr. Shah, the staff and Board members rejected his explanation and expelled him from the PAC Board.

Regarding whether Mr. Shah's decision to retain the PAC's money constitutes "fiscal dishonestly", Shah argued in his May 13 Brief that the Committee's allegation regarding retention of the money fails because the Committee did not call an ethics expert to testify that Shah's decision to keep the money for more than two months was unethical. The Administrative Law Judge is not persuaded by this argument. Mr. Shah cites *Reyburn v. Minnesota State Board of Optometry* and *In re Thompson*,²⁴ cases involving the Minnesota Boards of Optometry and Chiropractic Examiners, for the proposition that expert testimony is necessary in order to establish that his decision to keep the money for more than two months was unethical. However, neither decision states a rule that state disciplinary boards alleging ethical violations are automatically required to submit expert testimony finding that a licensee's behavior was unethical. Also, neither case has any connection to Minn. R. 1105.5600(D) or its simple and broad "fiscal dishonesty of any kind" standard. Rather, both cases examine the question of whether the acts of licensees Reyburn and Thompson constituted "unprofessional conduct". Those cases required the submission of expert opinion because what constitutes "unprofessional conduct" is defined by expert opinion, as noted by the Minnesota Supreme Court in *Reyburn*:

"'Unprofessional conduct' is conduct which violates those standards of professional behavior which through professional experience have become established by the consensus of expert opinion of the members, as reasonably necessary for the protection of the public interest".²⁵

While the ethical questions raised in *Reyburn* and *Thompson* are fit subjects for expert testimony because it was necessary in those instances to establish through a witness with extensive professional qualifications what is and is not "unprofessional", the ethical standard raised in this case, whether it is dishonest to keep property that you have taken from someone else, is so basic that expert testimony is not needed to establish the proposition one way or the other.

²⁴ 247 Minn. 520, 78 N.W.2d 351 (1956); and 203 WL2223 0912 (Minn. Off. Admin. Hrgs.) 7/21/03.

²⁵ 78 N.W.2d at 355.

In this case, Shah conceded the money did not belong to him, the PAC demanded that he return the money, and he promised to do so. It is not necessary to call an expert to establish that it is dishonest to refuse to return promptly property (money) that one has acquired illegitimately. Even if Mr. Shah's excuse of being ill from October 20 on, and not recovering his health for another three weeks, is accepted, that explanation does not explain why he did not repay the money taken from the PAC between October 13, 2009 and October 20, 2009. If he was recovered from his illness by November 12, why did he not repay the money promptly after that, rather than waiting until the PAC threatened to file its suit in District Court on December 7, 2009?

Among Mr. Shah's explanations for waiting so long to repay the PAC are the fact that he was under deadline pressure to finish up with all 2009 personal tax returns on or before October 15, that he got severely sick from swine flu and dropping his medications for diabetes on doctor's orders resulting from the flu, and that he was upset that his fellow Board members on the PAC had not accepted his allegation that the withdrawals were simply honest mistakes. The Administrative Law Judge views those reasons as explanations, not adequate excuses, for failure to adhere to a promise made to the PAC on or about October 13, 2009, that he would repay the \$7,000 immediately. In fact, he did not repay for several more weeks, until he was under further duress, a delay that suggests further fiscal dishonesty on his part.

R. C. L.

