

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

OAH Docket No. 60-0100-34241

In the Matter of Certified Public Accountant
Certificate of Dexi Zheng

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

CPA Certificate No. 27868

The above-entitled matter came on for a hearing before Administrative Law Judge James E. LaFave ("ALJ") on July 20, 2017. Michele M. Owen, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101, appeared on behalf of the Complaint Committee of the Minnesota Board of Accountancy ("Committee"). Joelle Groshek, Esq., 530 North 3rd Street, Suite 310, Minneapolis, MN 55401, appeared on behalf of Dexi Zheng ("Respondent"). On August 21, 2017, the ALJ issued Findings of Fact, Conclusions, and Recommendation ("Report"). A copy of the Report is attached and incorporated by reference.

On September 11, the Board notified the parties of their opportunity to file written arguments and exceptions to the Report. On October 4, the Committee filed a proposed order as its written argument and Respondent submitted a letter brief as his argument. Oral argument occurred before the Board at its regularly scheduled meeting on October 24, with Ms. Owen appearing for the Committee and Ms. Groshek appearing for Respondent. Based upon all the facts, records, and proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. The Board adopts in its entirety and incorporates as its own all of the Findings of Fact in the Report.
2. The Board adopts the following as Finding of Fact ¶ 32: "Respondent testified that he currently is not using his CPA certificate. Respondent acknowledged that, given his criminal conviction, employment in the field of accounting would be 'nearly impossible.' As

such, Respondent indicated that he wants to maintain his CPA certificate because he believes it will allow him to earn a higher income in the field of academia. Zheng Test.”

3. The Board adopts the following as Finding of Fact ¶ 33: “Respondent entered into an agreement with his probation officer to repay \$300 a month toward restitution. Ex. 104. Respondent testified that he is current with this repayment agreement. Zheng Test.”

4. The Board adopts the following as Finding of Fact ¶ 34: “In November 2016, Respondent filed a motion in federal court requesting a modification of the restitution payment schedule. Respondent reported that both the Internal Revenue Service (“IRS”) and the Department of Justice (“DOJ”) have commenced collection efforts on the restitution balance notwithstanding the repayment agreement he established with his probation officer. Respondent testified that the IRS and DOJ were targeting a universal credit life insurance policy that secured his Small Business Administration (“SBA”) loan. Respondent represented that the termination of that policy would constitute a default on his SBA loan and cause the repossession of collateral securing the loan, including his restaurant. Respondent stated that such an occurrence may cause him to violate the terms of probation and expose him to imprisonment. Ex. 105; Zheng Test.”

5. The Board adopts the following as Finding of Fact ¶ 35: “On March 3, 2017, the federal court denied Respondent’s motion to modify the restitution repayment schedule and reiterated that restitution was due immediately. Judge Montgomery specified as follows:

The interests of justice do not require limiting [Respondent’s] restitution to \$300 per month. Under such an order, it would take [Respondent] approximately 97 years to repay his outstanding restitution. The reason [Respondent] was sentenced to probation, rather than a prison term, was for the purpose of repaying his restitution as soon as possible. The Court intended [Respondent’s] repayment of his restitution to be ‘the main part of the consequence for this offense.’ Stretching the payments out over 97 years does not accomplish this goal. Therefore, [Respondent’s] restitution order will not be modified, his restitution is due immediately, and he shall ‘cooperate with the IRS to pay all outstanding taxes, interest, and penalties.’

Ex. 8 (citations omitted).”

6. The Board adopts the following as Finding of Fact ¶ 36: "Respondent testified at the hearing that he continues to face the prospect of serving time in prison if a probation violation is triggered by a default on his SBA loan. Zheng Test."

7. Any Finding of Fact which should be deemed a Conclusion of Law is adopted as such.

CONCLUSIONS OF LAW

1. The Board adopts and incorporates as its own Conclusions of Law ¶¶ 3-10 in the Report

2. The Board amends Conclusion of Law ¶ 1 as follows: "The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10, 326A.02, subd. 4, and 326A.08 (2016)."

3. The Board amends Conclusion of Law ¶ 2 as follows: "The Respondent was given timely and proper notice of the ~~Prehearing Conference~~ hearing in this matter."

4. The Board adopts the following as Conclusion of Law ¶ 11: "The Criminal Rehabilitation Act, Minn. Stat. ch 364 (2016), applies to this disciplinary action."

5. The Board adopts the following as Conclusion of Law ¶ 12: "Pursuant to Minn. Stat. § 364.03, subds. 1-2 (2016), Respondent's felony conviction for filing a false tax return in violation of 26 U.S.C. § 7206(1) (2012) is directly related to the occupation of a CPA and his CPA certificate."

6. The Board adopts the following as Conclusion of Law ¶ 13: "Pursuant to Minn. Stat. § 364.03, subd. 3, Respondent has the burden of proof to 'show competent evidence of sufficient rehabilitation and present fitness' to perform the duties of a CPA. *See also* Minn. R. 1400.7300, subp. 5 (providing that a party asserting an affirmative defense has the burden of proving the defense by a preponderance of the evidence)."

7. The Board adopts the following as Conclusion of Law ¶ 14: “Respondent failed to prove sufficient rehabilitation and present fitness to perform the duties of a CPA and, thus, Minn. Stat. ch. 364 does not preclude the Board from taking disciplinary action against Respondent or his CPA certificate.”

8. The Board adopts the following as Conclusion of Law ¶ 15: “The ALJ correctly excluded from the evidentiary record ¶ 29 and Exhibit N to Exhibit 105, which related to settlement discussions between the Committee and Respondent’s attorney. *See* Minn. R. Evid. 408 (providing that evidence of compromise negotiations is inadmissible).”

9. The Board adopts the following as Conclusion of Law ¶ 16: “‘The purpose of a [regulatory] proceeding concerning the revocation of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable, or incompetent [licensees].’ *Padilla v. Minn. State Bd. of Med. Examiners*, 382 N.W. 2d 876, 887 (Minn. Ct. App. 1986).”

11. The Board adopts the following as Conclusion of Law ¶ 17: “Pursuant to Minn. Stat. § 13.41, subd. 5, 326A.08, subd. 2 (2016), the hearing record, the Report, and this order are public data upon the issuance of this final order.”

12. Any Conclusion of Law herein which should be deemed a Finding of Fact is adopted as such.

13. The following order is in the public interest.

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

ORDER

1. **IT IS HEREBY ORDERED**, pursuant to Minn. Stat. § 326A.08, subd. 5 (2016), that Respondent Dexi Zheng’s CPA certificate and practice privileges are suspended for 8 years.

2. **IT IS FURTHER ORDERED**, pursuant to Minn. Stat. § 326A.08, subd. 5, that Respondent is censured and reprimanded.

3. **IT IS FURTHER ORDERED**, pursuant to Minn. Stat. §§ 14.63-.69, 326A.08, subd. 5, 326A.09, and 364.05, (2016), that:

a. Respondent may seek judicial review of this order within 30 days of receiving it in accordance with Minn. Stat. § 14.63-.69 (2016);

b. Respondent may not apply to reinstate his suspended CPA certificate and practice privileges until he has completed at least one-half the suspension. Any reinstatement application must include proof that Respondent has completed 120 hours of continuing professional education credits that would have been required had he held his certificate and practice privileges continuously, including at least 12 hours in regulatory ethics and 12 hours in behavioral ethics. The Board will consider all relevant evidence in any reinstatement application, including the following: evidence of Respondent's continuing rehabilitation efforts; information related to Respondent's continuing restitution payments and compliance with any approved payment plans; any further developments related to his criminal sentence and probation; evidence concerning whether Respondent has remained law abiding; and, information related to Respondent's work history since the date of this order. Respondent is further notified that the Board reserves its right to place any reasonable conditions or requirements upon his certificate and practice privileges if the Board agrees to any reinstatement.

Dated this 24th day of October, 2017.

**STATE OF MINNESOTA BOARD OF
ACCOUNTANCY**



For :

GREGORY S. STEINER, CPA
Chair

MEMORANDUM

The facts in this case are largely undisputed. Respondent does not contest that he was convicted of a felony for filing a false tax return or that he is required to pay a significant amount of restitution. The main issues in this proceeding relate to whether the Criminal Rehabilitation Act ("the Act"), Minn. Stat. ch. 364 (2016), applies to preclude the Board from taking action against Respondent's CPA certificate and, if not, what are the appropriate sanctions.

I. THE CRIMINAL REHABILITATION ACT.

Respondent argues that the Act precludes the Board from imposing any discipline against him because his crime was not directly related to the occupation of a CPA or his CPA certificate. Alternatively, Respondent claims that, even if his crimes are directly related to the occupation and his certificate, he has shown sufficient rehabilitation and present fitness under the Act to perform the duties of a CPA. The Committee did not address the Act at the hearing or in its written argument to the Board.

A. Respondent's crime was directly related to his CPA certificate.

In general, if a criminal conviction is not directly related to a licensee's occupation, the licensee may not be disqualified by a state regulator from engaging in his or her occupation. Minn. Stat. § 364.03, subd. 1 (2016). Whether a crime is directly related to an occupation requires an evaluation of three factors:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Id. subd. 2.

The first factor, the nature and seriousness of the crime, weighs heavily against Respondent's argument because filing a false tax return, a felony, implicates financial fraud against the government by one of its citizens. Further, Respondent's crime was not a one-time occurrence and, instead, related to a knowing and willful scheme to substantially understate income over five years between 2009 and 2013. Ex. 2; *see also* IRC § 6662(b)(2) (referring to substantial understatement of taxes). Respondent argues that his "crime was serious only in the amount of tax loss sustained by the U.S. Government over the course of five years." Respondent's Argument 4 (Oct. 4, 2017). The Board rejects Respondent's limited analysis and concludes that filing a false tax return is a very serious crime and violates 1.400.040.01.a of the AICPA Code of Professional Conduct, which is incorporated by reference in Minn. R. 1105.0250B(1), .7800A.

The second factor requires the Board to evaluate the relationship of the crime to the purposes of regulating CPAs as an occupation. Respondent does not address the purposes underlying the regulation of CPAs. The Board understands that the purposes of regulating CPAs include ensuring that CPAs conduct their professional and personal affairs in an ethical, competent, honest, and trustworthy manner. Indeed, CPA certificates are only granted to "persons of good moral character" who meet certain education, experience, and education requirements. Minn. Stat. § 326A.03, subd. 1 (2016). The legislature defined "good moral character" to mean "the propensity to provide professional services in a fair, honest, and trustworthy manner and a lack of history of dishonest and felonious acts." *Id.* In contrast, Respondent's crime, a felony, implicates a propensity to engage in dishonesty by knowingly defrauding the federal and state governments. Consequently, while Respondent's conviction related to filing his own false tax return (as opposed to one of his clients), the Board concludes

that a strong relationship exists between the crime of filing a false tax return and the purposes of regulating CPAs to ensure they act in a fair, honest, and trustworthy manner.

The third factor requires the Board to evaluate the relationship of the crime to the ability, capacity, and fitness required to perform the duties of a CPA. Respondent argues “the fact that a CPA certificate is not required to file tax returns and the fact that [his] *private fraud* was unrelated to his ability, capacity, or fitness to provide attest services militate against [his] conviction being directly related to the licensed profession.” Respondent’s Argument 5 (emphasis added). Respondent’s argument lacks merit. The legislature authorized the Board to take an enforcement action against a CPA who commits *any* fraudulent, deceptive, or dishonest acts—regardless of whether the misconduct relates to performing professional services—or who violates *any* standards of conduct related to the filing of the CPA’s own income tax returns. *Id.* § 326A.08, subd. 5(a)(2)-(3), (10) (2016); *see also* Ex. 101 (admission by Respondent that his “actions and guilty plea show that [he] violated the AICPA Code of Professional Conduct by dishonestly filing a false tax return”). Respondent’s misconduct is unquestionably an act of fiscal dishonesty. *See* Minn. R. 1105.5600, subp. 1.D(5). Respondent acknowledges that he “cheated and lied” and that he understood his actions were “illegal and unethical,” particularly in light of his accounting background. Ex. 3. Respondent also recognizes that his prospects of finding employment in the accounting field with this conviction will be “nearly impossible.” Zheng Test. Finally, while a CPA certificate is not required to file tax returns, Respondent signed at least one of the fraudulent tax returns as “Dexi Zheng, CPA.” Ex. 3. The Board concludes that a strong relationship exists between Respondent’s fraudulent misconduct and the ability, capacity, and fitness required to perform the duties of a CPA.

Respondent’s felony conviction for filing a false tax return directly relates to his occupation as a CPA and his CPA certificate for purposes of Minn. Stat. § 364.03.

B. Respondent has not established sufficient rehabilitation and present fitness to act as a CPA.

Respondent may not be disqualified by the Board “if [he] can show competent evidence of sufficient rehabilitation and present fitness” to perform the duties of a CPA. Minn. Stat. § 364.03, subd. 3. As an initial matter, Respondent does not appear to rely on any of the factors identified in Minn. Stat. § 364.03, subd. 3(a) relating to custodial release orders and documents showing completion of probation. The record does not reflect that Respondent was incarcerated for his crime and, thus, the factors in Minn. Stat. § 364.03, subd. 3(a)(1)-(2) are not on point. In contrast, because Respondent remains on probation until January 2020, the factor set forth in Minn. Stat. § 364.03, subd. 3(a)(3) weighs against his argument that he is rehabilitated and presently fit to perform the duties of a CPA.

Respondent focuses his rehabilitation argument on the factors set forth in Minn. Stat. § 364.03, subd. 3(b), which provide as follows:

(b) In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

- (1) the nature and seriousness of the crime or crimes for which convicted;
- (2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;
- (3) the age of the person at the time the crime or crimes were committed;
- (4) the length of time elapsed since the crime or crimes were committed; and
- (5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

Respondent cites 21 “mitigating factors” to support his claim that he has been rehabilitated.

Respondent’s Argument 6-9.

1. The nature and seriousness of the crime for which convicted.

Respondent's evidence and argument on rehabilitation do not directly address the nature and seriousness of his crime. Instead, Respondent attempts to minimize the severity of his fraudulent misconduct by claiming that he was not engaged in a complex scheme. This argument incorrectly conflates complexity with severity. As discussed above, the Board considers Respondent's felony conviction for filing a false tax return to be very serious. Respondent knowingly and willfully engaged in fraudulent misconduct over a five year period notwithstanding that he possessed an accounting background and CPA certificate for at least a portion of that time.

2. All circumstances relative to the crime, including mitigating circumstances or social conditions surrounding the commission of the crime.

The evidence Respondent presented largely relates to circumstances and social conditions related to his family life causing him great stress and clouding his judgment. Respondent indicates as the eldest son in a traditional Chinese family, he is responsible to provide financial support to his extended family. He also notes that he was the main caretaker for his two special needs children. While these facts add context to his misconduct, the Board does not believe they establish that Respondent is rehabilitated or presently fit to be trusted to work as a CPA.

He also acknowledges that it would be nearly impossible to find work as an accountant due to his felony conviction. Respondent thus "intends to use his CPA certificate on an off-label use that does not require [him] to provide the attest services on which the public trust depends." Respondent's Argument 9. But Respondent's intent to use his CPA certificate as a means to a higher salaried teaching position does not establish rehabilitation or present fitness to perform the duties of a CPA.

Respondent further argues that his plea agreement constitutes a mitigating factor. Respondent's acceptance of responsibility and agreement to pay restitution are positive factors that show he is on the path toward rehabilitation. But he is not there yet, particularly when his probation for willfully defrauding the government does not end until January 2020. In addition, Respondent's admitted potential inability to remain in compliance with probation casts additional doubt that he is rehabilitated or presently fit to act as a CPA.

3. The age of the person at the time the crime was committed.

Respondent's misconduct started when he was 26 years old and continued until his fraud was discovered when he was 32 years old. Respondent was old and sophisticated enough at the time these crimes occurred to know better. The Board does not consider this factor to be particularly probative in this case.

4. The length of time elapsed since the crime was committed.

Respondent's misconduct was discovered in 2014 and he pleaded guilty to the felony of filing a false tax return in 2015. Given the nature and seriousness of Respondent's knowing and willful misconduct, the Board does not consider the intervening time lapse to be compelling at this juncture.

5. All other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

The record contains numerous letters from the community in support of Respondent during the sentencing phase of the federal criminal proceedings. *See* Ex. 103. These letters seek leniency from the federal court in advance of it imposing Respondent's criminal sentence. The Board also notes that none of these letters of reference are from persons discussing their interactions with Respondent since his sentencing as described in Minn. Stat. § 364.03(b)(5).

The Board has reviewed them and does not consider them to be dispositive on the issue of whether Respondent is rehabilitated and presently fit to act as a CPA.

The Board has carefully reviewed the entire hearing record, including Respondent's testimony. The Board commends Respondent for taking steps to accept responsibility for his actions and encourages him to continue making restitution payments. These are obviously important measures to resuming the responsibilities of citizenship. The Board nevertheless does not believe at this time that Respondent has established that he is rehabilitated or presently fit to perform the duties of a CPA. Minn. Stat. § 364.03, subd. 3.

II. SANCTIONS.

The Committee argues that Respondent's CPA certificate should be revoked for the *longer* of ten years or until he pays full restitution as imposed as part of his criminal sentence. The record reflects that the court ordered Respondent to pay \$420,446 in restitution, that he paid \$69,398 toward restitution at the time of sentencing, and that he reached an agreement with his probation officer to repay \$300 every month toward restitution. As of April 18, 2017, Respondent owed a balance of \$345,048. Ex. 104. But as the court observed in denying Respondent's motion to modify his restitution repayment schedule, it will take him over 90 years to repay his outstanding restitution at this rate. Ex. 8. Revoking Respondent's license until he completes restitution payments under these circumstances is inappropriate because it would effectively bar him from ever having the opportunity to seek reinstatement of his license.

Respondent argues that any discipline imposed by the Board should not be conditioned on the full repayment of restitution. Respondent proposes the Board suspend his license for the duration of his probation, with termination of the suspension conditioned on any additional ethical continuing education of the Board's choosing. Respondent also suggests conditioning the

possession of his CPA certificate on his compliance with the probationary restitution agreement of \$300 a month and requiring the peer review of any attest services during this time.

The Board does not believe that limiting the suspension of Respondent's certificate to coincide with the termination of his probation in January 2020 would adequately deter future misconduct or protect the public from a CPA who employed a fraudulent scheme to his economic advantage. The Board is concerned about the status of Respondent's criminal sentence because developing events may trigger a probation violation and cause him to be imprisoned for an unknown period of time. The Board is also concerned that Respondent may lose his incentive to remain law abiding once he is discharged from probation and once again succumb to the stress that contributed to his knowing and willful misconduct. Against these concerns, the Board acknowledges that Respondent claims to have accepted responsibility and appears to be sincere with his remorse. Under these circumstances, the Board believes that an 8 year suspension of Respondent's CPA certificate and practice privileges is appropriate. The Board also believes that a censure and reprimand are justified under these circumstances.

Respondent may petition the Board to reinstate his certificate after completing half the suspension. Minn. Stat. § 326A.09. The Board agrees with and accepts Respondent's proposal that he should pursue ethical training as a condition to any reinstatement. Consequently, any reinstatement application Respondent submits must include proof that he has completed 120 hours of continuing professional education credits, including at least 12 hours in regulatory ethics and 12 in behavioral ethics.

Finally, the Committee requested the Board to impose a \$5,000 civil penalty against Respondent. While a civil penalty is justifiable under these circumstances, the Board refrains from imposing a civil penalty in this case because public interest favors Respondent focusing his financial resources on his substantial restitution obligation. The Board nevertheless believes that

it will be appropriate to evaluate and consider Respondent's continuing restitution payments and compliance with any approved payment plans if he applies to reinstate his certificate.

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

In the Matter of the Certified Public
Accountant Certificate of Dexi Zheng

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

This matter came before Administrative Law Judge James E. LaFave for an evidentiary hearing on July 20, 2017. The record closed on that date.

Michele M. Owen, Assistant Attorney General, appeared on behalf of the Minnesota Board of Accountancy (Board). Joelle Groshek, Groshek Law, appeared on behalf of Respondent Dexi Zheng.

STATEMENT OF THE ISSUES

1. Did Respondent's conduct, filing a false federal tax return, constitute grounds for discipline under Minn. Stat. §§ 326A.08, subd. 5(a)(1), 5(a)(2), 5(a)(3), 5(a)(4), and 5(a)(10) (2016); and Minn. R. 1105.5600, subp. 1.D(2), and 1.D(5), (2017)?
2. Did Respondent's conviction for filing a false tax return constitute grounds for discipline under Minn. Stat. §§ 326A.08, subd. 5(a)(1) and 5(a)(4); and Minn. R. 1105.5600, subp. 1.D(2), and 1.D(5)?

SUMMARY OF RECOMMENDATION

After a careful review of the record, the Administrative Law Judge concludes that Respondent's conduct of filing a false tax return and his conviction for filing a false tax return violated the laws and rules governing accountants. The Administrative Law Judge recommends that the Board take disciplinary action against Respondent's license.

FINDINGS OF FACT

Background

1. Respondent is 35 years old and was born in China.¹ He immigrated to the United States with his parents when he was eleven.²

2. The family lived in Indiana for two years, followed by six months in Wisconsin before finally settling in Minnesota in 1997.³

3. By his sophomore year in high school, Respondent was fluent in English.⁴ Before and after that achievement, Respondent spent a good deal of time translating for his parents who only spoke Mandarin Chinese.⁵

4. In 1999, while still in high school, Respondent began assisting his father in running the family's China Inn restaurant in St. Michael, Minnesota.⁶

5. Respondent graduated from high school in Pipestone, Minnesota, in 2001.⁷

6. In 2002, Respondent opened his own China Inn restaurant in Big Lake, Minnesota.⁸ Respondent was working at the restaurant in St. Michael, as well as his own restaurant in Big Lake.⁹

7. From at least 2009 through 2013, Respondent was the sole proprietor of both the Big Lake and St. Michael China Inn restaurants.¹⁰

8. Respondent also continued with his education. He obtained a Bachelor of Science, magna cum laude, in computer science, business administration and accounting from Southwest Minnesota State University in 2004.¹¹

9. The Board issued Respondent a Certified Public Accounting certificate on July 15, 2013.¹²

10. Respondent also received a Master of Business Administration from Southwest Minnesota State University in 2014.¹³

¹ Testimony (Test.) of Dexi Zheng.

² *Id.*

³ Ex. 2 (Plea Agreement) at 8.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 10.

⁸ *Id.* at 8.

⁹ Test. of D. Zheng.

¹⁰ Ex. 10 (Respondent's Response to Committee's Request for Admissions) at 2-3.

¹¹ Ex. 2 (Plea Agreement) at 10.

¹² Ex. 10 (Respondent's Response to Committee's Request for Admissions) at 1.

¹³ *Id.*

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11. Law enforcement received information regarding Respondent and his restaurant businesses from a confidential source (CS).¹⁴

12. In 2010, the CS reported that Respondent did not deposit proceeds of cash sales from either the St. Michael or Big Lake China Inn locations into business bank accounts.¹⁵ In addition, the CS reported that Respondent routed business proceeds into his personal account through electronic transfers.¹⁶

13. From 2011 to January 2014, records confirm that Respondent:

- deposited large sums of cash into his personal bank account;
- transferred over \$400,000 from the China Inn business accounts into his personal checking account;
- purchased a \$60,000 Land Rover; and
- used his personal checking account to pay creditors and to make routine payments for utilities, insurance and mortgage.¹⁷

14. The CS also reported that Respondent regularly wired cash to China in amounts from \$4,000 to \$6,000.¹⁸

15. On November 18, 2014, the Internal Revenue Service (IRS) executed search warrants at Respondent's home and businesses.¹⁹ Among other items, agents seized handwritten ledgers documenting the cash receipts from both restaurants.²⁰ The ledgers show over \$1,500,000 in cash was received by the restaurants between January of 2010 and November of 2014.²¹

16. The ledgers document that of the over \$1,500,000 cash received by the restaurants, Respondent failed to report \$1,273,155, resulting in a federal tax obligation of \$420,446.²²

¹⁴ Ex. 3 (Presentence Investigation Report) at 1.

¹⁵ *Id.* at 1-2.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

17. On November 18, 2014, as part of the search, IRS agents also seized \$69,398 in cash from Respondent's home.²³

18. During the tax years 2009 through 2013, Respondent and his wife filed self-prepared federal tax returns and signed them "Dexi Zheng, cook" and "Lingsu Zheng, cook".²⁴ In 2013, Respondent became a CPA and prepared his and his wife's 2013 tax returns as "Dexi Zheng, CPA".²⁵

19. According to the U.S. Individual Income Tax Returns, Forms 1040, Respondent did not receive any wages from either China Inn location during the tax years 2009 through 2013.²⁶ The only income reported on Respondent's federal income tax returns consisted of the business income (net profit) from the China Inn, Big Lake location reported on Schedule C.²⁷

20. On July 6, 2015, a one-count Information was filed in the District of Minnesota charging Respondent with Filing a False Tax Return on or about April 16, 2011, in violation of 26 U.S.C. § 7206(1)(2012).²⁸

21. On August 21, 2015, Respondent agreed to pled guilty to filing a false individual tax return in violation of 26 U.S.C. § 7206(1).²⁹

22. The maximum term of imprisonment for filing a false individual tax return in violation of 26 U.S.C. § 7206(1) is three years.³⁰ Given Respondent's criminal history, the guideline imprisonment range is 18 months to 24 months.³¹ The guidelines also call for one year of supervised release, a fine between \$4,000 and \$40,000, plus costs of imprisonment or supervised release, and restitution in the amount of \$420,446.³²

23. On January 22, 2016, Respondent appeared for sentencing before the Honorable Ann D. Montgomery, United States District Judge.³³ Judge Montgomery accepted Respondent's guilty plea and sentenced him four years' probation and ordered Respondent to pay restitution to the IRS in the amount of \$420,446.³⁴

24. The sentence issued by Judge Montgomery was a downward departure from the sentencing guidelines.³⁵ Part of Judge Montgomery's rationale for reducing

²³ Ex. 4 (Government's Position With Respect to Sentencing) at 3.

²⁴ Ex. 3 (Presentence Investigation Report) at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 1.

²⁹ Ex. 2 (Plea Agreement and Sentencing Stipulations) at 1.

³⁰ Ex. 3 (Presentence Investigation Report) at 13.

³¹ *Id.*

³² Ex. 7 (Sentencing Transcript) at 4.

³³ Ex. 7 (Sentencing Transcript).

³⁴ *Id.* at 29.

³⁵ *Id.* at 30-31.

Respondent's sentence was to allow Respondent to work in the restaurants to pay back the ordered restitution.³⁶

The Complaint Committee

25. Doreen Frost is the Executive Director of the Board's Complaint Committee.³⁷ As the Executive Director, Ms. Frost is authorized to file complaints on the behalf of the Complaint Committee.³⁸

26. On February 22, 2016, Respondent's attorney submitted a letter to the Board on Respondent's behalf, self-disclosing that Respondent pleaded guilty in Minnesota Federal District Court to a felony of Filing a False Tax Return.³⁹ The letter included supporting documentation, including the Presentence Investigation Report, Defendant's (Respondent's) Position Paper, and Statement of Reasons by Judge Ann D. Montgomery (Jan. 22, 2016).⁴⁰

27. For the Complaint Committee, the letter disclosure raised serious concerns. In addition to the felony, the supporting documents detailed continuing conduct from 2009 to 2013 of failing to deposit cash receipts and properly handle the cash receipts for the two restaurants.⁴¹

28. Ms. Frost verified that Respondent has been granted a CPA license in July of 2013.⁴²

29. On February 25, 2016, Ms. Frost, on behalf of the Complaint Committee, filed a Statement of Complaint against Respondent.⁴³ Respondent's attorney filed a response to the Statement of Complaint.⁴⁴

30. The Complaint Committee continued its investigation and obtained all the public documents related to Respondent's criminal case in addition to other documents provided by Respondent's attorneys.⁴⁵

31. On March 6, 2017, the Complaint Committee issued a Notice and Order for Hearing and Prehearing Conference. The contested case was initiated to determine whether Respondent's conduct and conviction for filing a false tax return are grounds for discipline.⁴⁶ This proceeding ensued.

³⁶ *Id.* at 26-27 (Judge Montgomery: "So I'm going to give you a probationary sentence ... I'm doing that because I want you working at those restaurants as hard as you can to get that restitution paid back.").

³⁷ Test. of Doreen Frost.

³⁸ *Id.*

³⁹ *Id.*; see Ex. 100 (Self-Reporting Letter, Feb. 22, 2016).

⁴⁰ Test. D. Frost, Ex. 100 (Self-Reporting Letter, Feb. 22, 2016).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ex. 9 (Statement of Complaint).

⁴⁴ Test. of D. Frost.

⁴⁵ *Id.*

⁴⁶ Notice and Order for Hearing and Prehearing Conference (Mar. 6, 2017).

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10 and 326A.08 (2016).

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Board has complied with all legal and procedural requirements of rule and law.

4. Under Minn. Stat. § 326A.08, subds. 5(a)(1), (2), (3), (4) 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 statement; [or] limit the scope of practice of any license ... 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:

- (1) has violated a statute, rule, or order that the board has issued or is empowered to enforce;
- (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;
- (3) has engaged in conduct or acts that are negligent or otherwise in violation of the standards established by board rule, where the conduct or acts relate to providing professional services; including in the filing or failure to file the licensee's income tax returns;
- (4) has been convicted or, has pled guilty or nolo contendere to, or has been sentenced as a result of the commission of a felony or crime, an element of which is dishonesty or fraud; has shown to have or admitted to having engaged in acts or practices tending to show that the person or firm is incompetent; or has engaged in conduct reflecting adversely

on the person's or firm's ability or fitness to provide professional services, whether or not a conviction was obtained or a plea was entered or withheld and whether or not dishonesty of fraud was an element of the conduct;

[...]

- (10) has engaged in any conduct reflecting adversely upon the person's or firm's fitness to perform services while a licensee, individual granted privileges under section 326A.14, or a person registered under 326A.06, paragraph (b);

5. Clauses (2) and (10) of the above statute are further defined in Minn. R. 1105.5600(D)(2017), 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: ... fiscal dishonesty of any kind ..."⁴⁷

6. The Board has the burden of proof and must establish its claims by a preponderance of the evidence.⁴⁸

7. The Board established by a preponderance of the evidence that Respondent filed a false tax return and that constitutes grounds for discipline under Minn. Stat. §§ 326A.08, subd. 5(a)(1), 5(a)(2), 5(a)(3), 5(a)(4), and 5(a)(10); and Minn. R. 1105.5600, subp. 1.D(2), and 1.D(5).

8. The Board established by a preponderance of the evidence that Respondent was convicted of a felony for filing a false tax return and that constitutes grounds for discipline under Minn. Stat. §§ 326A.08, subd. 5(a)(1) and 5(a)(4); and Minn. R. 1105.5600, subp. 1.D(2), and 1.D(5).

9. Respondent's filing false tax returns and pleading guilty to a felony of filing a false tax return constitute "fiscal dishonesty", as those terms are used in Minn. R. 1105.5600(D).

10. An Order by the Board taking disciplinary action against the Respondent's license is in the public interest.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁴⁷ Minn. R. 1105.5600(D)(2).

⁴⁸ Minn. Stat 326A.08, subd. 5(a); Minn. R. 1400.7300, subp. 5 (2017).

RECOMMENDATION

Based upon these Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that the Board take disciplinary action against the license of Respondent Dexi Zheng.

Dated: August 21, 2017


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

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.

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

There is no dispute that Respondent's actions in filing false tax returns and pleading guilty to a felony of filing a false tax return violate the laws and rules governing accountancy. Respondent admits it. Respondent argues, however, that under the unique facts of this case that the Board should not take disciplinary action against him.

Respondent had a series of settlement negotiations with the Complaint Committee prior to the evidentiary hearing. He believes that those negotiations have, at a minimum, tainted the Board's outlook on sanctions. Respondent maintains that discipline against his license will thwart his ability to pay restitution. Further, Respondent argues he will be denied due process if he is deprived of a "trial-type forum to contest the appropriateness of sanctions."⁴⁹

In *Padilla v. State Bd. Of Med. Examiners* the Court noted that "Boards and commissions are appointed because of their special expertise regarding the standards of their own professions."⁵⁰ The Court reasoned that when a member of a profession must be disciplined for breaching the standards of professional conduct "the nature and duration of the discipline is best determined by his or her fellow professionals."⁵¹

The Minnesota Legislature specifically empowered the Board to enforce the professional standards of certified public accountants in the State of Minnesota.⁵² In so doing, the "legislature has conferred upon the Board and not upon the ALJ, a discretion to determine the type of discipline to impose."⁵³ The Court in *Padilla* held that "[t]o hold that the ALJ should make a recommendation as to the type of discipline would be to usurp the power delegated to the Board."⁵⁴

The Board, as part of its duties, must also protect the public from dishonest, disreputable or incompetent practitioners.⁵⁵ When fulfilling its mandate, the Board must not only 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."⁵⁶

At the evidentiary hearing, Respondent was allowed to introduce evidence of mitigating factors regarding his conduct. Evidence introduced by the Department also contain facts that go to mitigation of a later penalty. For example, Judge Montgomery's sentencing transcript includes a careful balancing of the public and private interests that

⁴⁹ Respondent's Notice of Motion and Motion to Expand Scope of Hearing to Include Appropriateness and Reasonableness of Sanctions at 4 (Jul. 19, 2017).

⁵⁰ *Padilla v. State Bd. Of Med. Examiners*, 382 N.W.2d 876, 886 (Minn. Ct. App. 1986).

⁵¹ *Id.* at 887.

⁵² See Minn. Stat. §§ 326A.01-.14 (2016).

⁵³ *Padilla*, 382 N.W.2d at 886.

⁵⁴ *Id.*

⁵⁵ See, *Id.* at 887.

⁵⁶ *Id.*

the Board would do well to review.⁵⁷ Respondent may include all those facts and make those arguments when he is given the opportunity to file exceptions and arguments with the Board. The Board, in turn, is urged to give those facts and arguments serious consideration. However, for the reason set forth above and based on the holding in *Padilla*, the Administrative Law Judge declines to make findings as to the appropriateness of the type and duration of the available sanctions.

J. E. L

⁵⁷ See Ex. 7 (Sentencing Transcript).

AFFIDAVIT OF SERVICE BY MAIL

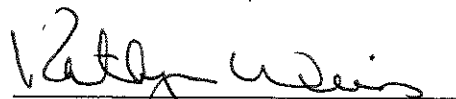
RE: In the Matter of Certified Public Accountant Certificate of Dexi Zheng
OAH 60-0100-34241

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

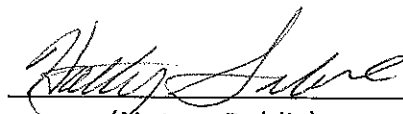
Kathryn Weiss, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 25th day of October, 2017, she served the attached **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Ms. Joelle Groshek
Groshek Law
530 N Third St. Ste. 310
Minneapolis, MN 55401


Kathryn Weiss

Subscribed and sworn to before me on
this the 25th day of October, 2017.


(Notary Public)

