

NORTH CAROLINA
DARE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 CPA 04488

<p>N. C. STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS Petitioner</p> <p>v.</p> <p>LINDA R. SHARP, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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Having presided over a hearing in the above-captioned contested case on November 20, 2015, the undersigned Administrative Law Judge issues the following Proposal for Decision against Linda R. Sharp (“Sharp” or “Respondent”), pursuant to N.C. Gen. Stat. § 150B-40.

APPEARANCES

For Petitioner: Anna Baird Choi, Esq.
Allen, Pinnix & Nichols, P.A.
510 Glenwood Ave., Suite 301
Raleigh, NC 27602

For Respondent: Linda R. Sharp, *pro se*
3003 N. Croatan Hwy
Kill Devil Hills, NC 27948

**ISSUES AND
APPLICABLE STATUTES AND RULES**

Whether Respondent Sharp violated any of the provisions of N.C. Gen. Stat. § 93-1 *et seq.* or any of the rules and regulations of the N.C. State Board of Certified Public Accountant Examiners (“Board” or “Petitioner”), as set forth in 21 N.C.A.C. 08, subchapters A through N. Specifically, whether Respondent Sharp:

1. Failed to disclose litigation on renewal applications in violation of:
 - 21 N.C.A.C. 08J .0101; and
 - 21 N.C.A.C. 08J .0108.

2. Failed to cooperate with and/or respond to the Board regarding matters related to a Board investigation in violation of:

- 21 N.C.A.C. 08N .0206

Further, if Respondent Sharp is found to have committed the acts or omissions described above, the ALJ shall determine whether her conduct constitutes a violation of:

- 21 N.C.A.C. 08N .0201 regarding integrity;
- 21 N.C.A.C. 08N .0202 regarding deceptive conduct; and
- 21 N.C.A.C. 08N .0203 regarding discreditable conduct.

If Respondent Sharp is found to be in violation of the above-referenced statutes and rules, the ALJ shall determine:

- What disciplinary action should be imposed under N.C. Gen. Stat. § 93-12(9); and
- What amount of civil penalty should be imposed under N.C. Gen. Stat. § 93-12(9)

Finally, if the Board has a conflict of interest in this matter.

PRELIMINARY MATTERS

Respondent Sharp produced a written Motion to Dismiss which she submitted to the Court for consideration after the call of the case. After careful consideration and open discussion by the respective parties, the Respondent's Motion to Dismiss was DENIED.

FINDINGS OF FACT

1. Petitioner Board is established pursuant to N.C. Gen. Stat. § 93-1 *et seq.* and is charged with protecting the health, welfare and safety of the public by overseeing the licensing of certified public accountants in North Carolina.
2. Respondent Linda Rouse Sharp is the holder of a certificate of qualification admitting Respondent Sharp to practice as a Certified Public Accountant in North Carolina. Respondent Sharp was issued a certificate of qualification, number 11285, on January 3, 1979. Respondent Sharp's certificate is currently active. Respondent Sharp also holds a CPA firm registration, number 534401. The firm registration is currently active.

Prior Complaint History

3. On or about June 30, 2008, the Board received a complaint against Respondent Sharp (case C20085846). The complaint alleged failure to timely refund a tax preparation fee of \$80.00. Respondent had correctly prepared the income tax return. The complaint was closed with a Letter of Warning issued by the Board on December 19, 2008. This was more than 7 years ago.

Complaint C2011283

4. On or about November 17, 2011, the Board received a consumer complaint against Respondent. In that complaint, it was disclosed that the consumers had previously sued

Respondent Sharp in District Court in Dare County, North Carolina in matters related to tax preparation and purported negligence. The Board subsequently conducted an investigation. The Board issued no disciplinary sanctions at that time.

5. In May 2008, Respondent Sharp was sued in small claims court in Dare County, North Carolina (08 CVM 285). The Complaint for Money Owed alleged “incorrect tax preparation.” At the hearing in this matter, the Magistrate ruled in Respondent’s favor. On July 7, 2008, the plaintiff in the above-referenced matter appealed the Magistrate’s decision to District Court in Dare County (08 CVD 575). Upon Respondent Sharp’s motion, the case was dismissed on September 21, 2009.
6. On or about August 13, 2009, the same Plaintiffs as in the suit described above filed another lawsuit in District Court in Dare County, North Carolina (09 CVD 677). The complaint alleged that the plaintiffs had been damaged as a result of Respondent Sharp’s purported negligence. The case was dismissed on June 27, 2011.
7. On her 2009 firm renewal, which she submitted to the Board on December 22, 2008, Respondent Sharp failed to affirmatively answer the following question: “Has your firm or any firm owner/Have you or your firm been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your firm’s last renewal?”
8. On her 2009 firm renewal, Respondent Sharp failed to notify the Board of 08 CVM 285 and 08 CVD 575.
9. On her 2009-2010 individual certificate renewal, which she submitted to the Board on June 8, 2009, Respondent Sharp responded “No” to the following question: “Have you been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your last renewal?”
10. On her 2009-2010 individual certificate renewal, Respondent Sharp failed to notify the Board of 08 CVM 285 and 08 CVD 575.
11. On her 2010 and 2011 firm renewals, which she submitted to the Board on December 22, 2009 and December 29, 2010 respectively, Respondent Sharp failed to affirmatively answer the following question: “Has your firm or any firm owner/Have you or your firm been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your firm’s last renewal?”
12. On her 2010 and 2011 firm renewals, Respondent Sharp failed to notify the Board of 08 CVM 285, 08 CVD 575, and 09 CVD 677. Respondent’s contention that all of these cases were dismissed in favor of Respondent is factually correct; however, that does not address the issues raised in this contested case.

13. On her 2010-2011 and her 2011-2012 individual certificate renewals, which she submitted to the Board on June 2, 2010 and June 17, 2011 respectively, Respondent Sharp responded “No” to the following question: “Have you been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your last renewal?”
14. On her 2010-2011 and 2011-2012 individual certificate renewals, Respondent Sharp failed to notify the Board of 09 CVD 677. Respondent’s contention that this case was dismissed in favor of Respondent is factually correct; however, again, that does not address the issues raised in this contested case.

Complaint C2014057

15. On or about March 6, 2014, the Board received a complaint from a consumer, alleging that Sharp failed to return tax-related documents that had been requested by the client. The Board subsequently commenced an investigation.
16. During the course of the investigation, the Board contacted Respondent Sharp via telephone, letter, and email on multiple occasions. Specifically, the Board sent Respondent Sharp letters dated March 7, 2014, and April 4, 2014, both letters giving Respondent approximately three weeks to respond.
17. Respondent failed to respond to the letters, and the Board’s followed up with emails on June 9, 2014, and June 16, 2014. Additional requests were made to Respondent Sharp and/or her staff via phone calls. Sharp requested extensions of time to respond and the extensions were granted. She ultimately did respond, but not by the time allowed in the extension.
18. On June 19, 2015, the Board filed a Petition for a Contested Case Hearing with the N.C. Office of Administrative Hearings (“OAH”). By Notice of Rescheduled Hearing dated November 20, 2015, the parties were notified of the hearing to be conducted in Elizabeth City, North Carolina on November 20, 2015. Both parties appeared at the hearing.
19. Respondent contends that the delay by the Board in filing with OAH was because of an on-going conflict of interest. That is not correct. Petitioner had lodged complaints against a member of the Board, and, therefore, the Board decided to wait until that Board member was no longer on the Board in order to avoid even the appearance of a conflict of interest. The Board member at issue was due to leave the Board relatively soon.
20. Petitioner Board presented evidence that Respondent Sharp failed to submit complete individual and firm renewals to the Board for the applicable renewal periods described above when Respondent Sharp failed to notify the Board of the aforementioned small claims and district court complaints.

21. Respondent Sharp did not deny that she failed to notify the Board in multiple renewal applications of the small claims and district court complaints described above. She testified that the reason she chose not to notify the Board was because an attorney had instructed her that she did not need to do so. Respondent provided no written documentation of this attorney's opinion, nor did the attorney testify at hearing on Respondent Sharp's behalf.
22. Respondent Sharp also acknowledged that while she did not notify the Board of the consumer Hanson Complaint for Money Owed on her 1989-1990 renewal application, she had previously notified the Board of a Complaint for Money Owed that had been filed by Mr. Shane against her in Dare County Small Claims Court in 1989. This action also had been dismissed.
23. Respondent Sharp testified that she never received letters and emails sent to her by Board staff regarding the Frank complaint. However, the Board presented evidence that its letters and emails were sent to Respondent Sharp's email and address of record maintained by the Board. Additionally, the Board's letters and emails were sent to the same physical and email addresses that were printed on Respondent Sharp's professional letterhead. Further Respondent Sharp provided the same physical and email addresses in her Prehearing Statement filed with OAH on July 8, 2015, as well as at the conclusion of this contested case hearing. Respondent has a duty and responsibility to keep the Board informed of its current address and contact information. There is no indication that the Respondent did not get the mail. Despite her contentions concerning the emails, she actually answered one of them by calling the Board.
24. The excuses and justifications offered by Respondent Sharp, including but not limited to the emails, the letters, and the tardiness in response, lack credibility.

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings ("OAH"), which has both personal and subject matter jurisdiction. This matter is before OAH due to a conflict of interest of the N.C. State Board of Certified Public Accountant Examiners, caused by their Professional Standards Chairman, Barton Baldwin. The parties were properly noticed for hearing. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. N.C. Gen. Stat. § 93-12(9) provides that:

The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this State and persons exercising the practice privilege authorized by this Chapter. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or any practice privilege authorized by the provisions of this Chapter or to censure the holder of any such certificate or person exercising the practice privilege authorized by this Chapter. The Board also shall have

the power to assess a civil penalty not to exceed one thousand dollars (\$1,000) for any one or combination of the following causes:

- a. Conviction of a felony under the laws of the United States or of any state of the United States.
 - b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
 - c. Fraud or deceit in obtaining a certificate as a certified public accountant.
 - d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
 - e. Violation of any rule of professional ethics and professional conduct adopted by the Board.
3. Thus, in N.C. Gen. Stat. § 93-12(9) the only sanctions available to the Board are revocation and censure. Reprimand is not an allowable sanction.
 4. 21 N.C.A.C. 08I .0101(a) provides that “[a]ny person may petition the Board for appropriate disciplinary action against a CPA.” Paragraph (d) provides that “[t]he Board may publish or announce the disciplinary action against a CPA in such manner and for such period as it deems appropriate.”
 5. 21 N.C.A.C. 08J .0101(b) provides that “[t]o renew a certificate a CPA shall submit to the Board . . . a completed certificate renewal application form; . . .”
 6. 21 N.C.A.C. 08J .0108(i) provides that all CPA firms file a complete registration with the Board.
 7. 21 N.C.A.C. 08N .0101 identifies that subchapter 8N of the Board’s rules constitute the rules of professional ethics and conduct referenced in N.C. Gen. Stat. §93B-12(9)(e).
 8. 21 N.C.A.C. 08N .0102 provides that the Board rules in section .0200 subchapter 08N are generally applicable to all certificate holders. No exemption applies to Respondent Sharp.
 9. 21 N.C.A.C. 08N .0201 provides that a CPA “shall at all times maintain independence of thought and action, hold the affairs of clients in strict confidence, strive continuously to improve professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.”
 10. 21 N.C.A.C. 08N .0202 provides that a CPA shall not engage in deceptive conduct.
 11. 21 N.C.A.C. 08N .0203 provides that a CPA shall not engage in discreditable conduct.
 12. 21 N.C.A.C. 08N .0206 provides that “[a] CPA shall fully cooperate with the Board in connection with any inquiry it shall make.” Further, “full cooperation” is defined as responding “within 21 days to all inquiries of the Board or representatives of the Board or representative of the Board . . .”

13. Respondent Sharp failed to disclose litigation on multiple renewal applications in violation of:
 - 21 N.C.A.C. 08J .0101; and
 - 21 N.C.A.C. 08J .0108.
14. Respondent Sharp failed to cooperate with and/or respond to the Board regarding matters related to a Board investigation in violation of 21 N.C.A.C. 08N .0206.
15. Respondent Sharp's conduct constitutes a violation of:
 - 21 N.C.A.C. 08N .0201 regarding integrity;
 - 21 N.C.A.C. 08N .0202 regarding deceptive conduct; and
 - 21 N.C.A.C. 08N .0203 regarding discreditable conduct.
16. Respondent Sharp was reluctant to accept that the issue in this contested case was merely whether or not she had been named as a party in a law suit—not whether she won or lost. She was extremely reluctant to accept that whether or not she had prevailed at each of the civil suits against her was not the issue. She tried, without merit, to assert that she did not have to report because of an extremely literal translation of the factors involved in those suits. While she contends that much of this may have been due to the bad advice she received from an attorney, that too is without merit because ultimately it is her license on the line and the reporting is her responsibility. If the lawyer gave her bad advice, then that is between Ms. Sharp and the lawyer.
17. At the conclusion of this hearing, the undersigned did articulate that a reprimand would be appropriate; however, the law does not allow that sanction. This Tribunal is without any authority to re-write the Administrative Code or General Statutes. This contested case hearing is conducted pursuant to Article 3A of N.C.G.S. 150B, and, therefore, the Administrative Law Judge only has the authority vested in the Board itself. For conduct of this hearing, the ALJ stands in the shoes of the Board.
18. Respondent Sharp's contention that the sanction provided in this recommended decision should not be published is without merit and is not what the undersigned articulated at the conclusion of this hearing.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby proposes that Respondent Sharp be CENSURED by the Board and that she be ordered to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) within 30 days of the Board's issuance of a final decision.

NOTICE

The undersigned's Proposed Decision in this contested case will be reviewed by the agency making the final decision. Pursuant to N.C. Gen. Stat. §150B-40(e), the agency may make its final

decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. The North Carolina State Board of Certified Public Accountant Examiners will make the final decision in this contested case, pursuant to N.C. Gen. Stat. § 150B-42. The Board has had an ongoing conflict of interest in this matter.

This the 29th day of January, 2016.

Donald W. Overby
Administrative Law Judge