

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE BOARD OF PUBLIC ACCOUNTANCY**

In the Matter of)
)
 EILEEN ZAISER,)
)
 Applicant.)
 _____)

OAH No. 08-0099-CPA
Agency No. 0601-07-002

DECISION AND ORDER

I. Introduction

Eileen Zaiser challenges the Alaska State Board of Public Accountancy’s denial of her application for licensure as a Certified Public Accountant (CPA). The Board denied Ms. Zaiser’s application for licensure because it concluded Ms. Zaiser’s use of the designation CPA after her license had lapsed for over seven years was dishonest, a misrepresentation of herself to the public and disregard for the laws of this State. Ms. Zaiser believes that there were extenuating circumstances and that a reasonable person would find her actions excusable.

At Ms. Zaiser’s request a hearing was held on May 28, 2008. She participated and represented herself. The Division of Corporations, Business and Professional Licensing of the Department of Commerce, Community and Economic Development (the division) defended the preliminary decision of the board to deny the application and was represented by Assistant Attorney General Gail Horetski. The record developed at the hearing consists of testimony from three witnesses and division Exhibits A through H and Ms. Zaiser’s Exhibit 1, admitted in bulk at the hearing without objection.

Ms. Zaiser, because she is requesting review of the Board’s decision, has the burden of proving by a preponderance of the evidence that she meets the requirements to be licensed as a certified public accountant.¹ This means that Ms. Zaiser needs to put evidence in the record or point to evidence already in the record showing that she meets the requirements. Ms. Zaiser has seen and overcome much tragedy in her life; however,

¹ 2 AAC 64.290(e) (“Unless otherwise provided ... the burden of proof and of going forward with evidence is on the party who requested the hearing ..., and the standard of proof is preponderance of the evidence....”). To prove a fact by a preponderance of the evidence, Ms. Zaiser must show that the fact more likely than not is true.

because Ms. Zaiser continued to use the CPA designation after her license lapsed to keep the public from knowing she was no longer licensed and because she wanted the legitimacy that comes with that designation, the Board's denial of her 2008 license application is appropriate.

II. Facts

In this case, the parties do not disagree about the material facts, only about their implications. Ms. Zaiser is a 51 year-old business woman who was licensed as a CPA in Alaska from July 24, 1991, until her license expired on December 31, 2001.² Four months prior to her license expiring, on August 1, 2001, Ms. Zaiser's life was changed in the blink of an eye.

The morning of August 1, 2001, Ms. Zaiser had her house raised and put up on supports to begin an extensive remodel project that she was going to complete with her fiancé, Henry. Later that same day she sent Henry to the store to pick up office supplies. While at the store he attempted to stop a shoplifter. The driver of the getaway car ran him down, dragging him 170 feet and causing severe brain trauma. Ms. Zaiser became severely depressed and was hospitalized shortly after his accident. The driver was convicted and is now in jail. Henry never recovered and now resides in an assisted living facility. His family interfered with her ability to visit and care for him until the matter was resolved in court.

In 2001, in addition to Ms. Zaiser's CPA business, she was a partner with Henry in his tree business. While she was hospitalized Henry's employees broke into the tree business taking client account information and equipment. Bills were mounting. Ms. Zaiser had her own accounting business to run and the tree business was sold. All the while her house was up on blocks, the remodel stopped. She had minimal utilities and testified that she could not even shower in her own home and at times lacked toilet facilities.

For the next several years Ms. Zaiser continued to face life challenges. She had lost her partner and fiancé, her father became ill and she cared for him until he passed away in 2004, she lost a business, she now had a bad credit history, for a year she lived

² Exhibit C at 6.

on a food budget of \$70 per month, and she drove a 20 year-old car.³ Before the crime and the subsequent lapsing of her license she had \$153,000 in annual revenue, but by 2004 her revenue had dropped to \$35,000. She testified that she lacked hope and motivation. Ms. Zaiser couldn't bring herself to write to her clients and tell them that she was no longer a CPA. She was desperate and "desperate people do desperate things."⁴

When her license lapsed on January 1, 2002, with all she was dealing with at the time, her license did not seem that important. Ms. Zaiser's unchallenged testimony is that while unlicensed she never signed her name as a "CPA" nor did she perform any work that required a CPA license. She did not render any opinions or conduct any audits after her license lapsed.

By 2004, Ms. Zaiser began to regain the motivation and hope she had prior to the August 2001 crime.⁵ By 2005, she had completed her application but was unable to write an explanation as to why her license lapsed.

Ms. Zaiser testified that she continued to use letter head and business cards with the CPA designation. Initially she did not change her stationary or cards because she had a large inventory. She moved her office in July 2005, and subsequently had new stock printed to reflect her new address; however she kept the "CPA" designation.⁶ This occurred after she had obtained an application for reinstatement.⁷ When she contacted the phone company regarding her change of address, she did not ask that they no longer list her as a CPA. A certificate of continuing professional education for a professional ethics course she completed in March 2005, is addressed to Eileen Zaiser, CPA.⁸ On the tax returns she prepared, her name was printed on returns as "Eileen Zaiser, CPA."⁹ At the hearing Ms. Zaiser was adamant that she could not have her name in the phone book without the designation CPA behind it.

She finally filed her application for reinstatement on August 22, 2007 explaining:

The application I'd prepared in 2005 has been sitting on my desk, for lack of the letter explaining to the Board the upheaval of my

³ Zaiser Testimony.

⁴ Zaiser Testimony.

⁵ Zaiser Testimony.

⁶ Zaiser Testimony.

⁷ Zaiser Testimony.

⁸ Exhibit A at 9.

⁹ Zaiser Testimony.

life, and the substantiating legal document. Unfortunately for me, it has taken me till now to write this letter and pore through court filings that ripped me apart. I hope the Board can understand my apprehension about writing about this period of my life. It amounts to a dredging up of specific details that I haven't thought about recently. It makes me re-live the raging anger and resentments I felt on a daily basis for about four years, for injustices that Henry and I will never be made whole for.

The other component to the letter writing procrastination is fear. I know that no matter how much effort I put into conveying the adversities I've faced as a result of the crime upon Henry, I might not be very convincing. The injuries sustained by me are only psychological and financial in nature and therefore not as real as those sustained by Henry, who is living out his life in an Assisted Living Home.¹⁰

On October 5, 2007, she received a Notice of Investigation and Request for Response from the Board informing Ms. Zaiser that it had been informed she had been advertising or practicing as a CPA without a license.¹¹ The Notice informed Ms. Zaiser that either of these actions, if true, was a violation of AS 08.04.500(a) and she had 30 days to respond or take corrective measures. She testified that she did not respond to the notice because she had her application for reinstatement pending and she believed it would be approved.

The Board met on November 8 and 9, 2007. Ms. Zaiser was informed by the Board on November 15, 2007, that it could not act on Ms. Zaiser's application for reinstatement because she had allowed her license to lapse for more than five years and she needed to re-apply for a license.¹² Ms. Zaiser spoke with several division employees and was left with the impression that her "re-application" would be approved.¹³

Her application was received in Juneau by the division on January 8, 2008, and was considered by the Board at its January 10-11, 2008 meeting.¹⁴ It was noted that Ms. Zaiser had been using the CPA designation since her license lapsed on December 31,

¹⁰ Exhibit C at 20.

¹¹ Exhibit H at 1, 2.

¹² Exhibit C at 2.

¹³ Zaiser Testimony.

¹⁴ See generally Exhibit A; Exhibit E (The January Board Minutes contained in the record are marked "Draft." However, evidence was received that they are in the process of being finalized and that any changes to not affect the portions relevant to Ms. Zaiser).

2001, which is a violation of AS 08.04.500, .520, and .600 and that by doing so she had “demonstrated misrepresentation of [herself] and disregard for the laws of this state.”¹⁵ The Board denied the application on the ground that Ms. Zaiser lacked good moral character as defined by regulation.

On January 15, 2008, the division issued a temporary cease and desist order ordering Ms. Zaiser to immediately cease and desist from representing herself as or practicing as a CPA without a license in the State of Alaska.¹⁶ Ms. Zaiser had 15 days to request a hearing on the cease and desist order or it would become permanent by its terms. As with the prior Notice, Ms. Zaiser did not challenge the allegations nor did she comply with the order.¹⁷ At some point after receiving the order, Ms. Zaiser contacted the division to ask about those things which she had no control over such as the yellow pages listings. She was instructed to write a letter to the phone company informing them to no longer list her as a CPA with their next printing. Ms. Zaiser would not do so explaining that if she did not get her license she would disconnect her phone.

Ms. Zaiser was notified on February 4, 2008, that her request for licensure was denied. On February 26, 2008, the division received Ms. Zaiser’s notice of defense and request for hearing which she signed and dated February 18, 2008. In support of her notice and request, Ms. Zaiser wrote:

I do not deny that since my license expired on December 31, 2001, I continued to use the CPA designation. While I admit this I respectfully disagree that this in itself proves me to be a person not of good moral character. I continued to use the CPA designation out of desperation, all the while meaning to take the steps to be reinstated. I never held an attitude of disregard for the law. I felt shame, almost ever day that my license was lapsed. My intentions were always to get reinstated, but I’ve had a difficult time holding my life together. The circumstances that befell my family are written in a letter to the Board, attached. I have been in survival mode since the turn of events in 2001. It left me in such a position that I could hardly afford to pay for CPE credits. For a whole year I limited my grocery budget to \$70 a month.

¹⁵ Exhibit A at 2.

¹⁶ Exhibit H at 3 – 7.

¹⁷ Zaiser Testimony.

By 2005 I had all the CPE's I needed paid for. I just couldn't write the letter of explanation for lapse. It was psychologically too painful, and so I procrastinated, and I find myself now begging.¹⁸

Ms. Zaiser admits that failing to renew her license while continuing to use the CPA designation resulted in misrepresentation to the public.¹⁹ The unchallenged testimony of Ms. Zaiser is that she was “haunted” and “ashamed” by her actions over the past seven years; she never intended to let her license lapse, let alone lapse for so long.²⁰ She was too embarrassed to tell to her clients that she was no longer licensed and she was concerned with what it would do to what little business she had left. Keeping the CPA designation gave Ms. Zaiser an anchor, it gave her credibility.²¹ She explained that this is why when she had new cards and paper stock printed after she moved; she did not remove the CPA designation.

III. Discussion

Ms. Zaiser believes that “a reasonable person having knowledge of all the facts and circumstances, and being aware of the heavy burden on my conscience would have some doubts about my honesty, fairness and respect for the rights of others and for laws, but not substantial doubt.”²² Ms. Zaiser argues that she has the same knowledge as she did before her license lapsed and that to deny her a license would deny the public a good accountant.

The statute is unambiguous; the Board shall issue Ms. Zaiser to a license to engage in the practice of public accounting if she is at least 19 years old and of good moral character, meets the educational and experience requirements, and passes the prescribed examination.²³ “Good moral character” in this context is a term of art defined by regulation. It means:

the absence of conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States, including

¹⁸ February 19, 2008, letter from Zaiser to Jennifer Strickler.

¹⁹ Zaiser Exhibit 1 at 2.

²⁰ Zaiser Testimony.

²¹ Zaiser Testimony.

²² Zaiser Exhibit 1 at 1. *See generally* Zaiser Testimony.

²³ AS 08.04.105.

- (A) illegal conduct;
- (B) conduct involving dishonesty, fraud, deceit, or misrepresentation, including misconduct in the licensing application process; and
- (C) conduct that adversely reflects on the individual's fitness to perform as an accountant or ability to comply with the requirements of AS 08.04 and this chapter;....²⁴

Only persons who are licensed by the Board may use the abbreviation "CPA" or call themselves a certified public accountant.²⁵ A person who does not hold a current license may not use "CPA" on "any sign, card, letterhead, or in any advertisement or directory, without indicating that the individual...does not hold a current license...."²⁶ A person who does so is guilty of a misdemeanor.²⁷

Ms. Zaiser admits that since her license lapsed on January 1, 2002, she knowingly continued to use the designation "CPA" because it gave her legitimacy. Ms. Zaiser brought herself to the division's attention when she filed her application for reinstatement. She failed to present evidence that she made a good faith attempt to comply with the cease and desist order. Ms. Zaiser knew what she was doing was wrong and she attempts to minimize the impropriety of her actions because she was not performing work that required a CPA license; she only performed bookkeeping and tax preparation.

While Ms. Zaiser has expressed remorse for her actions, she has not accepted responsibility for the wrongfulness of her conduct. She believes she has harmed no one because she performed her work using the same knowledge she had prior to her license lapsing as she did after it lapsed. This argument is off the mark. Licensure as a CPA indicates not only a minimum level of knowledge but that the person has agreed to be bound by certain rules and promises to act in a certain way. It is not Ms. Zaiser's knowledge that is found to be lacking; it is her ability to be bound by and work within the rules of her chosen profession and the laws of the State.

²⁴ 12 AAC 04.990(12).

²⁵ AS 08.04.200; AS 08.04.500(a); 08.04.560.

²⁶ AS 08.04.600.

²⁷ AS 08.04.640.

Ms. Zaiser's unfortunate circumstances explain her actions but they do not excuse them. Given her continued use of the designation "CPA" in her business activities since her license lapsed, a reasonable person could have substantial doubt about her honesty, fairness, and respect for the rights of others and for the laws of this State and the United States.

IV. Conclusion

A reasonable person could have substantial doubt about Ms. Zaiser's honesty, fairness, respect for the rights of others and the laws of this State and the United States because of her continued use of the CPA designation and her actions after receipt of the cease and desist order. Ms. Zaiser's application for licensure as a CPA filed January 8, 2008, is denied. This decision does not preclude Ms. Zaiser from reapplying for licensure at some future date.

DATED this 20th day of June, 2008.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Adoption

On behalf of the Alaska State Board of Public Accountancy, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of August, 2008.

By: Signed
Signature
Max E. Mertz
Name
Chair, AK Board of Accountancy
Title

[This document has been modified to conform to technical standards for publication.]