

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

In the Matter of  
Steven L. Emery, C.P.A.  
License No. 8615

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson at 1:30 p.m. on January 16, 1998, at 85 East Seventh Place, Suite 125, in the City of St. Paul. Louis Hoffman, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Board of Accountancy ("the Board"). There was no appearance by or on behalf of the Respondent, Steven L. Emery, 105 North Holly Avenue, Apt. 110, Sioux Falls, South Dakota 57104-5814. The record in this matter closed on January 28, 1998, upon receipt of an affidavit filed by the Board.

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 contained herein. Pursuant to 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 Dennis J. Poppenhagen, Executive Secretary, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, Minnesota 55101, (telephone no. (612) 296-7937), to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issues in this contested case proceeding are whether or not Respondent violated a state or rule that the Board is empowered to enforce, committed acts discreditable to the profession, or engaged in negligent conduct by failing to ensure that withheld taxes were submitted to the Revenue Department, failing to appear at a Board conference, and failing to notify the Board of any reason to reschedule the conference, and thereby violated Minn. Stat. § 326.229, subd. 4 (1997), or relevant provisions of the rules promulgated by the Board; and, if so, whether disciplinary action should be taken against the certified public accountant certificate and license of the Respondent on the grounds set out in Minn. Stat. §§ 326.229, subd. 4 (1997).

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

### FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent, Steven L. Emery, by first class mail on November 20, 1997, at 102 Grant Street, Jackson, Minnesota 56143. This was his last known address on file with the Board of Accountancy.

2. The Notice of and Order for Prehearing Conference and Hearing served on November 20, 1997, was returned by the U.S. Postal Service with a notice stating that the Respondent's new address was 105 North Holly Ave., Apt., 100, Sioux Falls, South Dakota 57104-5814.

3. The Notice of and Order for Prehearing Conference and Hearing was then served upon the Respondent by certified mail on December 15, 1997, at 105 North Holly Avenue, Apt. 110, Sioux Falls, South Dakota 57104-5814. The mailing was not claimed by the Respondent or by anyone on his behalf.

4. The Notice of and Order for Prehearing Conference and Hearing mailed to the Respondent included the following notice after the sentence notifying Respondent of the time and location of the Prehearing Conference:

Respondent is hereby urged to attend. Failure to do so may prejudice Respondent's rights in this matter and may result in the allegations contained herein being taken as true and may be the basis for disciplinary action against Respondent's certified public accountant certificate and license.

5. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. The Respondent did not appear at the prehearing conference scheduled for January 16, 1998, or have an appearance made on his behalf.

6. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

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

### CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10, and 326.229 (1997).

2. The Board has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The conduct described in the Notice of and Order for Prehearing Conference and Hearing constitutes a violation of Minn. Stat. § 326.229, subd. 4(1) and (3) (1997), and Minn. R. 1100.0600, 1100.1200, 1100.3700, subp. 2, 1100.4300, and 1100.4700, subps. 2 and 3 (1995).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that disciplinary action be taken against the certified public accountant certificate and license of Steven L. Emery.

Dated this 28th day of January, 1998

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BARBARA L. NEILSON  
Administrative Law Judge

#### NOTICE

Pursuant to 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.

Reported: Default.