

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

In the Matter of
Barry Divine, C.P.A.
License No. 4202

**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 2:45 p.m. on February 29, 2000, at 125 Golden Rule Building, 85 East Seventh Place, in the City of St. Paul. Bobby J. Champion, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the Board of Accountancy ("the Board"). There was no appearance by or on behalf of the Respondent, Barry Divine, Suite 3000, 222 South Ninth Street, Minneapolis, Minnesota 55402. The record in this matter closed on March 30, 2000, upon receipt of a letter 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 failed to return the complete tax file for an estate to the personal representative of the estate after she requested that he do so, failed to respond to communications from the Board, and failed to appear at a conference with the Board's Complaint Committee, and thereby engaged in conduct or acts that are negligent, in violation of Minn. Stat. § 326.229, subd. 4(a)(3); failed to observe all of the Code of Professional Conduct, in violation of Minn. R. 1100.0650; failed to furnish information to the client in violation of Minn. R. 1100.5300; failed to respond to communications from the Board, in violation of Minn. R. 1100.0600; committed acts discreditable to the profession, in violation of Minn.

R. 1100.4300; and/or violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. § 326.229, subd. 4(a)(1); 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.

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

FINDINGS OF FACT

1. The Board of Accountancy issued the Respondent, Barry Divine, a certificate and license to practice public accounting on November 14, 1999.

2. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent by first class mail on January 28, 2000, at Suite 3000, 222 South Ninth Street, Minneapolis, Minnesota 55402.

3. 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:

A hearing in this matter will be scheduled by the Administrative Law Judge following the prehearing conference, if necessary. You are urged to attend both the prehearing conference and hearing, if there is one. Failure to do so may prejudice your rights in this matter, may result in the allegations being taken as true, and may be the basis for disciplinary action against your certificate and license to practice public accounting.

4. 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 February 29, 2000, or have an appearance made on his behalf.

5. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. R. 1400.6000, 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.

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(a)(1) and (3), and Minn. R. 1100.0600, 1100.0650, 1100.4300, and 1100.5300.

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 Barry Divine.

Dated: April 4, 2000

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.