

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

Matthew Robert Wolfe,		Case No. 14CV-12358
Appellant,		Judge McIntosh
vs.		
Accountancy Board of Ohio,		
Appellee.		

**Decision and Judgment Entry Affirming Adjudication Order Issued by
Accountancy Board of Ohio, Revoking Appellant's Certification as
Certified Public Accountant**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal, by Matthew Robert Wolfe (Appellant), from an Adjudication Order issued by the Accountancy Board of Ohio (Accountancy Board or Board), revoking Appellant's certification as a Certified Public Accountant. The record that the Board has certified to the Court reflects the following facts and procedural history.

Facts and Procedural History

Appellant received his certification as a Certified Public Accountant (CPA) in 2006 and at one time operated his own accounting business, M.R. Wolfe & Associates, LLC. *Transcript of Proceedings, Nov. 7, 2014 (T.) 5, 12-13; State's Exhibit (Ex.) A.*

On April 9, 2013, in the Court of Common Pleas of Delaware County, Ohio, Appellant was found guilty of six counts of Attempted Pandering Sexually Oriented Matter Involving A Minor, in violation of R.C. 2907.322(A)(1), all felonies of the third degree. *T. 11-12; State's Ex. A.* On June 28, 2013, Appellant was sentenced to pay a fine and to serve a term of thirty months of incarceration, which will expire on December 12, 2017. *Id.*

In 2014, Appellant's CPA firm's registration with the Accountancy Board expired. *T. 8.* In the course of an investigation into the firm's registration, the Board's investigator learned of Appellant's felony conviction and that he was incarcerated at the Chillicothe Correctional Institution. *Id.*

Revised Code 4701.16 provides:

§ 4701.16 Discipline of regulated persons.

(A) After notice and hearing as provided in Chapter 119. of the Revised Code, the accountancy board may discipline as described in division (B) of this section a person holding *** a CPA certificate *** for any one or any combination of the following causes:

(5) Conviction of a felony under the laws of any state or of the United States[.]

(B) For any of the reasons specified in division (A) of this section, the board may do any of the following:

(1) Revoke, suspend, or refuse to renew any CPA certificate ***[.]

Revised Code 119.07 provides:

§ 119.07 Notice of hearing; contents ***.

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a

hearing. Notice *** shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice. The notice shall also inform the party that **at the hearing the party may appear in person, by the party's attorney**, or by such other representative as is permitted to practice before the agency, **or may present the party's position, arguments, or contentions in writing** and that at the hearing the party may present evidence and examine witnesses appearing for and against the party. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party. *** (Emphasis added.)

On August 4, 2014, the Accountancy Board mailed a Notice of Opportunity for Hearing to Appellant, in which the Board stated:

The Accountancy Board of Ohio has received a copy of the sentencing order from the Delaware County Court of Common Pleas, regarding Case No. 12CR-I-05-0181, concerning your conviction for violation of Ohio Revised Code Section 2907.322(A)(1) - - Attempted Pandering Sexually Oriented Matter Involving a Minor.

Division 4701.16(A)(5) of the Revised Code states that, after notice and hearing, the Board may take disciplinary action against a certified public accountant for conviction of a felony under the laws of any state or of the United States.

This serves as notice that the Board intends to pursue disciplinary action against your CPA certificate and CPA firm registration. Pursuant to section 119.07 of the Revised Code, you are entitled to request a hearing before the Board within 30 days of the date of this notice. If you do not request a hearing within 30 days, the Board may hold a hearing in your absence. The hearing will be conducted in accordance with section 119.09 of the Revised Code. **You may appear in person at the hearing and be represented by an attorney, and you may present your position, arguments, or contentions in writing before the hearing.** At the hearing, you may present evidence and examine witnesses appearing for or against you. (Emphasis added.) *T. 8-9; State's Ex. A.*

The Notice of Opportunity for Hearing was served on Appellant on August 5, 2014. *Id.*

By letter dated August 15, 2014 and received by the Accountancy Board on August 26, 2014, Appellant requested a hearing on the Board's proposed action against Appellant's CPA certificate. *T. 9-10; State's Ex. A.* In the letter, Appellant stated that, due to his incarceration, he would like to participate in the hearing by video conference. *Id.* Appellant further stated:

It is my position that while revocation or suspension of my CPA certificate is a possible action that may be taken by the Board, other sanctions such as monetary fines, temporary suspension or public censure are also available under the OAC which I feel are more appropriate in this matter as the nature of my offense in no way was related to my accounting practice. I am copying my attorney, Sanjay Bhatt, on both your letter as well as this response.

Please copy my attorney, Mr. Sanjay Bhatt at the following address on all future correspondence:

Thank you for your time and consideration. (Emphasis added.) *State's Ex. A.*

By letter dated September 10, 2014, the Accountancy Board notified Appellant that his hearing had been scheduled for September 12, 2014 and that the Board, on its own motion, had continued the hearing to November 7, 2014 at 10 a.m. *T. 10; State's Ex. A.* The notice was served on Appellant on September 11, 2014. *Id.*

By letter dated September 11, 2014, the Accountancy Board provided Appellant's attorney with a copy of the notice scheduling the hearing for November 7, 2014 at 10 a.m. *T. 10; State's Ex. A.*

On November 7, 2014, the Accountancy Board conducted the scheduled hearing on the Board's proposed action against Appellant's CPA Certificate. *T. 1-15.* Appellant did not appear for the hearing, either in person or through his attorney. *T. 2, 6.* The Board's investigator, Faith Ottavi, testified to the facts recited above. *T. 6-14.* In addition, the following portion of Appellant's August 15, 2014 letter was read into the record:

*** "It is my position that while revocation [or] suspension of my CPA certificate is a possible action that may be taken by the Board, other sanctions such as monetary fines, temporary suspension, or public censure are also available under

the OAC, which I feel are more appropriate in this matter as the nature of my offense was in no way related to my accounting practice.

“I am copying my attorney, Sanjay Bhatt, on both your letter as well as this response.” *T. 13-14.*

In an Adjudication Order issued on November 13, 2014, the Accountancy Board notified

Appellant:

The Accountancy Board of Ohio (Board) conducted a formal disciplinary hearing on November 7, 2014 at 10:40 a.m. The purpose of the hearing was to determine what action should be taken against you for a violation of division 4701.16(A)(5) of the Ohio Revised Code pertaining to conviction of a felony under the laws of any state or of the United States. Our records indicate that you requested a hearing in a timely manner, but were not present at that hearing. Section 4701.16(B) of the Revised Code provides that the Board may take action against your CPA certificate for violation of division 4701.16(A)(5). The Board members present voted 9-0 to revoke your CPA certificate.

NOTICE OF RIGHT TO APPEAL

You have the right to appeal this adjudication order. Your right to appeal is controlled by Section 119.02 of the Ohio Revised Code. This section states that if you wish to appeal, you must file the original of your notice of appeal with the Accountancy Board of Ohio within fifteen (15) days from the date of this order. (Emphasis in original.)

On November 26, 2014, Appellant appealed the Adjudication Order to this Court pursuant to R.C. 119.12.

Standards of Appellate Review

Revised Code 119.12(M), which governs this appeal, provides:

*** The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. ***

Pursuant to R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record to determine whether the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Haver v. Accountancy Bd. of Ohio*, 10th Dist. No. 05AP-280, 2006-Ohio-1162, ¶ 6, discretionary appeal not allowed, 110 Ohio St. 3d 1440, 2006-Ohio-3862.

“Reliable” evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992). In order to be reliable, there must be a reasonable probability that the evidence is true. *Id.* “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* “Substantial” evidence is evidence with some weight; it must have importance and value. *Id.*

Analysis

Appellant has set forth two arguments in support of this appeal.

Appellant's first argument is that the Adjudication Order issued on November 13, 2014 is not in accordance with law because the Accountancy Board did not afford Appellant due process of law. Specifically, Appellant contends that the Board violated Appellant's due process rights by not arranging for Appellant to attend the hearing on November 7, 2014 by video conference. The Court does not find this argument to be well taken.

Due process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings. *Lonergan v. State Med. Bd. of Ohio*, 10th Dist. No. 06AP-800, 2006-Ohio-6790, § 9. The fundamental requirement of procedural due process is notice and an opportunity to be heard. *Id.* Due process requires that an individual be given an opportunity for a hearing before being deprived of a significant property interest. *Id.* However, an incarcerated person does not have an absolute right to be present in a civil action such as an administrative

proceeding. *Loneragan*, ¶ 10. Consequently, Appellant did not have an absolute right to be present at the administrative hearing on November 7, 2014.

The Accountancy Board satisfied Appellant’s due process rights by providing him with an opportunity to be heard. Pursuant to R.C. 119.07, the Board notified Appellant that he had the right to appear at the hearing in person or through his attorney, and that he had the right to present his position, arguments, or contentions in writing before the hearing. Pursuant to R.C. 119.07, the Board mailed the Notice of Opportunity for Hearing to Appellant’s attorney.

Appellant submitted his position to the Accountancy Board in writing prior to the hearing on November 7, 2014. At the hearing, the Board read Appellant’s written position statement into the record. Appellant’s attorney, who was copied on the Board’s notices, could have appeared at the hearing to present argument in support of Appellant’s position but did not. The Court concludes that the Board did not violate Appellant’s due process rights by not arranging for Appellant to attend the hearing by video conference.

Appellant’s second argument in support of this appeal is that the Accountancy Board should have imposed a lesser penalty than license revocation upon Appellant, because the crimes of which Appellant was convicted were not related to his profession as a Certified Public Accountant. The Court does not find this argument to be well taken.

Appellant admits that, in 2013, he was found guilty of six counts of Attempted Pandering Sexually Oriented Matter Involving A Minor, in violation of R.C. 2907.322(A)(1), all felonies of the third degree. Revised Code 4701.16(A)(5) and (B)(1) authorize the Accountancy Board to revoke a CPA certificate for “[c]onviction of a felony under the laws of any state or of the United States[.]” The statute does not require that the felony conviction be related to the practice of accounting.

Furthermore, in a Revised Code 119.12 administrative appeal, “the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.” *Henry’s Café, Inc. v. Bd. of Liquor Control*, 170 Ohio St. 233, paragraph three of the syllabus (1959). This Court has no authority to modify the penalty imposed on Appellant by the Accountancy Board.

Conclusion

Upon consideration of the entire record that the Accountancy Board has certified to the Court, the Court finds that the Adjudication Order issued by the Board on November 13, 2014, revoking Appellant’s CPA certificate, is supported by reliable, probative, and substantial evidence and is in accordance with law. The Adjudication Order is therefore **AFFIRMED**.

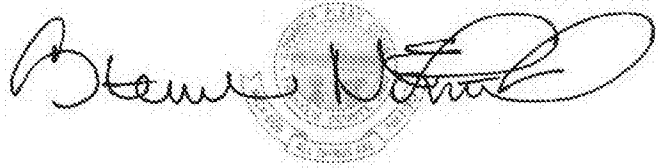
This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 05-17-2016
Case Title: MATHEW ROBERT WOLFE -VS- OHIO STATE BOARD
ACCOUNTANCY
Case Number: 14CV012358
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular, embossed seal. The seal is partially obscured by the signature and contains some illegible text around its perimeter.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 14CV012358

Case Style: MATHEW ROBERT WOLFE -VS- OHIO STATE BOARD
ACCOUNTANCY

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes