

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MICHAEL SIMIC)	CASE NO. CV 12 782489
)	
Plaintiff-Appellant,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
ACCOUNTANCY BOARD OF OHIO)	<u>JOURNAL ENTRY AFFIRMING THE</u>
)	<u>ADMINISTRATIVE REVOCATION OF</u>
)	<u>CPA CERTIFICATE AND FIRM</u>
)	<u>REGISTRATION</u>
Defendant-Appellee.)	

John P. O'Donnell, J:

This case is an appeal by plaintiff Michael Simic from the accountancy board of Ohio's decision to revoke his personal certified public accountant certificate and firm registration.

STATEMENT OF FACTS

Michael Simic is an accountant who owns and operates Simic CPA & Company, an accounting firm in Parma. Both Simic and his firm are subject to the regulations and requirements of the accountancy board of Ohio, the state's overseer of the accounting profession.

The board recognizes two professional accounting credentials: the certified public accountant certification and the public accountant registration.¹ To obtain either of these designations, candidates must complete a series of examinations and meet certain educational and experience thresholds. Due to both the professional prestige and public trust invested in those who obtain such certification, the use and display of both titles is strictly controlled. In order to use either designation, whether to perform or advertise regulated accounting services, an

¹ Simic was licensed as a CPA before the board revoked his certificate.

accountant must obtain an Ohio permit or an Ohio registration. Both are subject to triennial renewal, beginning on the date of original issuance.

Separate from these individual licenses, Ohio requires that all accountants practicing under the designation of CPA or PA register their accounting firms with the state and obtain a firm registration. Section 4701.04(B) of the Ohio Revised Code requires a certified public accounting firm's registration to be renewed triennially. Simic's firm registration had to be renewed by July 31, 2011, and he was reminded of that deadline by a letter from the board in early May. Simic did not renew his firm registration by July 31. Hence, as of August 1, 2011, he was violating R.C. 4701.04 by operating an unregistered firm.

The board sent Simic a letter dated September 29, 2011, notifying him that his firm registration had expired, and granting an extension until October 28 to renew his firm registration (subject to a late fee). Simic was instructed that failure to renew by October 28 would result in disciplinary proceedings against both the firm and the CPA certificates of the firm's owners, including him. He was also told to stop using the CPA designation. Despite the extension and the accompanying warning, Simic once again failed to renew his firm registration by the required date, and he continued to publicly advertise as a CPA.

On November 10, 2011, the board sent Simic a letter that notified him of its intent to pursue disciplinary action against him and repeating the demand to discontinue using the CPA designation. The letter also advised him of his right to request a hearing within 30 days of receipt. Upon receiving this notice of intended disciplinary action, Simic mailed a completed firm registration renewal form and a check in the amount of \$180 to the board on December 2, 2011. In a letter dated December 20, the board returned Simic's check and informed him that it could not complete his firm registration renewal because his "materials arrived too late to

process due to pending disciplinary action.”² Despite this rejection, Simic once again submitted a completed renewal form and check to the board. On January 11, 2012, the board again denied Simic’s request for renewal and returned his check.

Simic appeared at a hearing before the board on February 4, 2012. At the hearing, Simic acknowledged that he had failed to renew his firm registration by the extended October renewal date. He additionally admitted to publicly holding himself and his firm out with the CPA designation despite receiving multiple cease and desist orders. At the conclusion of the hearing, the board voted unanimously to revoke Simic’s firm’s registration and CPA certificate and to disallow him from applying for reinstatement for a period of one year. Simic was informed of the decision on May 1, 2012, and on May 11 he appealed the decision of the accountancy board to this court. Simic’s suspension was then stayed pending the outcome here.³

STANDARD OF REVIEW

Appeals from the accountancy board are governed by R.C. 119.12, which provides, in pertinent part:

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.

In its review of the order, a trial court is limited to a finding of whether the order is supported by reliable, probative and substantial evidence, and is in accordance with the law.

Henry’s Café, Inc. v. Board of Liquor Control, 170 Ohio St. 233 (1959); *Andrews v. Board of*

² Attached as Exhibit B to Simic’s brief in support of administrative appeal.

³ See journal entry of May 30, 2012.

Liquor Control, 164 Ohio St. 275 (1955); *Arlen v. State*, 61 Ohio St.2d 168 (1980). If some evidence is found to support the order, a reviewing court may not substitute its own judgment for that of the agency. *Arlen*, supra; *State ex rel Ogan v. Teeter*, 54 Ohio St.2d 235 (1978).

LAW AND ANALYSIS

Simic is representing himself. Although he doesn't label them as such, he asserts two assignments of error. First, he argues that the decision is not in accordance with law because the law entitled him to a renewal period of one year from the expiration of the certificate and he renewed during that time. Second, he claims the board denied him due process of law by failing to follow its own rules.

First assignment of error

R.C. 4701.04(B) says “[a]ll public accounting firms shall renew their registration triennially.” Failure to timely renew a firm registration constitutes a violation of R.C. 4701.16(A)(11), which states:

(A) After notice and hearing as provided in Chapter 119 of the Revised Code, the accountancy board may discipline in division (B) of this section a person holding an Ohio permit, an Ohio registration, a firm registration, a CPA certificate, or a PA registration or any other person whose activities are regulated by the board for any one or any combination of the following reasons:

* * *

(11) Failure of a public accounting firm to comply with section 4701.04 of the Revised Code.

In the event a violation of 4701.16(A) is established, the board is authorized to impose one or more of the disciplinary measures described under R.C. 4701.16(B). That section includes the options to “revoke, suspend, or refuse to renew any CPA certificate or PA registration or any Ohio permit, Ohio registration, or firm registration.”

Simic argues that he was statutorily entitled to a one-year late renewal period following the expiration of his firm registration, and that he could not be subjected to disciplinary action until the conclusion of that period. Further, he asserts that he was entitled to a renewal of his firm registration at any time, so long as he paid all required fees, including any applicable late fees. In support of these assertions, he cites to R.C. 4701.10(F), which states, in part:

Failure of a *CPA certificate holder* to apply for either an Ohio permit or an Ohio registration within one year from the expiration date of the Ohio permit or Ohio registration last obtained or renewed, or one year from the date upon which the CPA certificate holder was granted a CPA certificate, shall result in suspension of the CPA certificate or PA registration until all fees required under divisions (D) and (E) of this section have been paid, unless the board determines the failure to have been due to excusable neglect.
(Emphasis in italics added.)

But this provision applies to an individual's personal CPA certificate, not the firm registration, and the basis for the board's disciplinary action against Simic in this case is the failure to timely renew his *firm* registration. Consequently, Simic cannot avail himself of R.C. 4701.10(F)'s one-year extension of the deadline to renew since it is his firm registration that expired, not his CPA certificate. Since no statute confers an automatic one-year extension to file the firm registration, the board's decision to suspend less than a year after Simic's failure to renew the firm registration is in accordance with law.

Second assignment of error

Simic's argument that he was denied due process is also predicated on his claim of an automatic one-year late renewal period. But in support of this assertion he relies on the board's enforcement and disciplinary policy manual.⁴ That manual outlines how the board handles the

⁴ Portions of the manual are in the record as attachments to Simic's brief. However, that brief omits relevant sections of the manual. Hence, through judicial notice, the entire manual, which as of September 13, 2013, could be found at <http://acc.ohio.gov/Portals/0/PDF/aboem.pdf>, is made part of the trial court record.

investigation, and eventual discipline, for certain categories of complaints. The complaint against Simic falls under category four: a non-attest firm's failure to comply with firm registration requirements. The manual describes the first step as sending notices to firms in early May that registration expires, and must be renewed by, July 31. The next step sets forth late fees where firms fail to register by the July 31 deadline, with the late fee increasing if registration is not complete until after January 31. This late fee schedule is similarly outlined at the top of the 2011 firm registration late renewal application that the board sent to Simic.

Simic argues, in essence, that the imposition of a late fee gives him a substantive right to be as late as he wants as long as he pays the fee. He is wrong. The late fee serves as an incentive to renew on time and, presumably, to cover extra administrative expense in handling late registrations. But the late fee is not a surcharge for registering late, no questions asked. Once he failed to renew on July 31, Simic was in violation and became subject to the possibility of discipline at the discretion of the board.

Moreover, after Simic didn't register by July 31, the board complied to the letter with the steps outlined in the manual. Step five describes an early October cease-and-desist letter: that was done. Where a firm complies within three weeks with the board's demands as outlined in the cease-and-desist letter (essentially, registering and paying a late fee within 15 days) the case is dropped. But Simic didn't comply and the board proceeded to steps seven – a formal hearing notice – and eight – the hearing. Simic was given an extension until October 28 to renew, conditioned on a late fee, but by establishing a schedule of late fees the board did not create a scheme giving Simic's firm unlimited time to renew.

But Simic also alleges that he had the absolute right to renew during the 30 days between the notice of violation and his deadline to request a hearing. In support of this argument he says

that step eight of the policy manual, which says that “[a]fter the expiration of the 30-day period, hearings will be held for firms that are still not in compliance with the accountancy law,” implies a right to renew late. He claims that “[b]y refusing to process the application, sent and received within the 30 day period, they prohibited Michael Simic from complying with the accountancy law.”⁵ But Simic makes this argument while ignoring steps six and seven, which make it clear that a firm must come into compliance – by, in Simic’s case, ceasing to advertise the firm as a CPA firm – to avoid the hearing. The evidence of record is clear that Simic did not come into compliance, as requested by the cease and desist letter, because he continued to use the CPA designation for the firm. Because Simic was never in compliance, the board moved forward with the hearing and acted within its discretion by rejecting the attempted renewals.

The evidence

Although Simic doesn’t suggest in his brief that the board’s decision is not supported by reliable, probative, and substantial evidence, it is worth examining the record to be sure it is.

During the hearing, Simic readily acknowledged that he had failed to file for renewal of the firm registration by the July 31 deadline.⁶ He also conceded that he never applied for renewal by October 28, instead waiting until the end of November, after being alerted to pending disciplinary action, to submit a renewal form.⁷ Finally, Simic admitted that throughout this entire period, he willfully ignored all cease and desist orders from the board and continued to use the CPA designation.⁸ Those admissions, and the rest of the record evidence, provide reliable, probative and substantial support for the board’s order.

⁵ Simic’s brief, p. 2.

⁶ Transcript, p. 8.

⁷ *Id.*

⁸ Tr., p. 14.

CONCLUSION

The May 1, 2012, decision of the accountancy board of Ohio to revoke Simic's CPA certificate and firm registration is in accordance with the law and is supported by reliable, probative and substantial evidence. Therefore, that order is affirmed and Simic's appeal is overruled.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this journal entry was sent by regular U.S. mail, this _____ day of October 2013, to the following:

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Judge John P. O'Donnell