

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE DENIAL OF ~  
THE RENEWAL OF THE LICENSES ~  
OF TERRY LYNN GREEN TO PRACTICE ~  
AS A CERTIFIED PUBLIC ACCOUNTANT ~  
AND CPA FIRM IN THE STATE OF UTAH ~

**ORDER**

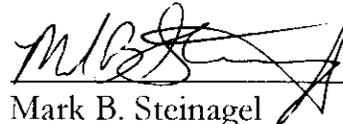
Case No. DOPL-2010-370

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**BY THE DIVISION:**

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 28 day of February 2011.

  
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Mark B. Steinagel  
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63G-4-301 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code.

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IN THE MATTER OF THE DENIAL OF	~	<b>FINDINGS OF FACT</b>
THE RENEWAL OF THE LICENSES	~	<b>CONCLUSIONS OF LAW</b>
OF <b>TERRY LYNN GREEN</b> TO PRACTICE	~	<b>AND RECOMMENDED ORDER</b>
AS A <b>CERTIFIED PUBLIC ACCOUNTANT</b>	~	
<b>AND CPA FIRM</b> IN THE STATE OF UTAH	~	Case No. DOPL-2010-370

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**APPEARANCES:**

Terry Lynn Green on behalf of Applicant

Lenore Epstein for the Division of Occupational and Professional Licensing

**BY THE BOARD:**

A December 1, 2010 hearing was conducted in this proceeding before J. Steven Eklund, Administrative Law Judge, Department of Commerce and the Utah Board of Accountancy. Board members present were Sherman H. Smith, Gordon L. Haycock, MacRay A. Curtis and Linda S. Protzman. The remaining Board member (Michael Blackburn) was absent. Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, was present. Evidence was thus offered and received. The Board took the matter under advisement at the close of the hearing and conducted initial deliberations on that date.

The Board, having concluded its deliberations, now enters its Findings of Fact,

Conclusions of Law and submits the following Recommended Order to the Division for its review and action:

#### **FINDINGS OF FACT**

1. Applicant was initially licensed as a certified public accountant on March 13, 1975. He has been continuously licensed since that date. Applicant's firm became licensed as a CPA firm on August 25, 2009. Applicant submitted a September 17, 2010 request to the Division, seeking a renewal of his individual and firm licenses.

2. The application questionnaire included an inquiry whether Applicant has "pled guilty to, pled no contest to, been convicted of, made a plea in abeyance to or entered into a deferred sentence with respect to any felony or misdemeanor in any jurisdiction." The application also contained an inquiry whether Applicant is "currently under investigation or if any disciplinary, administrative, or criminal action is pending" as to Applicant by any agency.

3. Applicant responded affirmatively as to both of those inquiries. The Division issued a September 29, 2010 letter to Applicant, thus denying his request for renewal of his licenses to practice as a certified public accountant and a CPA firm. That letter recites the applications were denied because Applicant's conviction reflects his lack of good moral character. The letter also recites the conviction establishes unprofessional conduct because the nature of the conduct under review bears a reasonable relationship to Applicant's ability to safely and competently practice his profession

4. Applicant submitted an October 25, 2010 request to the Division for a hearing as to the denial of his license applications. The Division issued a November 4, 2010 notice to Applicant, reciting that the hearing would be conducted on December 1, 2010. The notice also recites Applicant's licenses were conditionally renewed during the pendency of this proceeding.

5. Based on a plea agreement, Applicant pled guilty on October 26, 2009 in United States District Court proceedings to the charge of Conspiracy. That agreement recites Applicant admitted that some taxpayers who bought into an entity known as the Classic Star Mare Lease were being audited by the Internal Revenue Service during 2005 and 2006. The plea agreement also recites Applicant admitted he "assisted them in providing misleading and back-dated documents to the IRS auditors."

6. Classic Star and some of its leasees were Applicant's clients. There is no evidence that Applicant invested in that program or that he solicited others to do so. However, Applicant knowingly provided altered documents to the IRS auditors. Applicant had not been sentenced in the criminal proceeding as of December 1, 2010. That sentencing has been postponed until the federal investigation has been completed. Applicant had entered into a cooperation agreement with the United States Attorney's Office on October 26, 2009.

7. Applicant's conviction constitutes a crime involving moral turpitude. Further, that conviction reflects unprofessional conduct which, when considered with the functions and

duties of Applicant's profession, bears a reasonable relationship to his ability to safely practice as a certified public accountant and his licensure as a CPA firm.

#### CONCLUSIONS OF LAW

Applicant contends the Board should consider his guilty plea and ongoing cooperation with the federal investigation. Applicant also asserts any adverse action on his renewal applications should await the entry of a sentence in the criminal proceeding. The Division contends the denial of Applicant's request for license renewal should be upheld as the means to adequately protect the public. The Division also asserts such action should not be postponed pending Applicant's criminal sentencing.

Utah Code Ann. §58-1-401(2)(a) provides the Division may refuse to renew the license of any licensee who has "engaged in unprofessional conduct, as defined by statute or rule under this title." §58-1-501(2)(c) generally defines unprofessional conduct to include a conviction "with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license...is to be issued, bears a reasonable relationship to the...applicant's ability to safely...practice the occupation or profession".

The Board also notes §58-26a-302, which requires each applicant for licensure as a certified public accountant "to show evidence of good moral character." The Board readily finds and concludes Applicant has been convicted of a crime involving moral turpitude and

that conviction establishes unprofessional conduct which bears a reasonable relationship to Applicant's ability to safely engage in the practice of public accountancy and as a CPA firm. Accordingly, a factual and legal basis exists to determine whether Applicant's licenses should be renewed and, if so, whether those licenses should be subject to any terms and conditions.

Applicant has engaged in serious misconduct which arose over time. Although he may not have initially been aware of the falsity of the documents which he provided to the IRS auditors, Applicant failed to take the necessary remedial action properly expected of all certified public accountants when he learned of that fact. Applicant prepared tax returns for clients which were tainted by their falsity and Applicant was not consistently diligent in efforts to properly discharge his duties.

It may well be Applicant did not intend to defraud and he become unavoidably immersed in his client's problems due to their dubious conduct. Nevertheless, those clients pursued a fraudulent tax scheme which was aided by Applicant's failure to steadfastly adhere to those principles governing his practice. While Applicant's role was substantial, he did not instigate the scheme under review and, in that sense, Applicant is not a threat to the public.

Certain aggravating circumstances exist which should be considered in this case. Applicant engaged in a pattern of misconduct. Moreover, Applicant has substantial experience as a certified public accountant and he should have clearly understood the inappropriate nature of his actions now under review. Applicant has also engaged in illegal

conduct.

There are various mitigating factors which should be recognized. Applicant has not been subject to prior disciplinary action during his lengthy licensure. Applicant has made timely good faith efforts to rectify the consequences of his misconduct. Specifically, Applicant has cooperated with the Division in its investigation of this case. He has also entered into a cooperation agreement relative to the federal criminal investigation, albeit that agreement was incident to Applicant's guilty plea. Further, Applicant acknowledges the wrongful nature of his conduct.

The Board also finds and concludes that action in this proceeding should not be held in abeyance pending Applicant's sentencing in the related criminal case. Based on the foregoing, the Board further finds and concludes Applicant's request for the renewal of his licenses should be granted, subject to certain terms and conditions. The Board is persuaded that the safety of the public will be maintained by continued compliance with the following

Recommended Order:

**RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Applicant's October 25, 2010 request to renew his license to practice as a certified public accountant and his license to practice as a CPA firm is granted and shall be placed on probation for up to three (3) years, subject to the following terms and conditions:

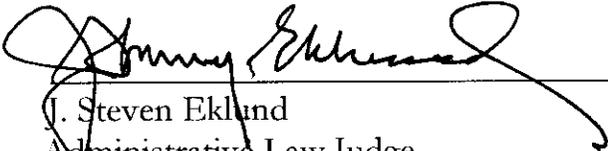
1) Applicant's practice shall be subject to random review conducted by a certified public accounting firm. Applicant shall bear the costs of that review process and he shall submit the name of a proposed reviewing firm to the Division by April 1, 2011 for review to the Board during its April 6, 2011 meeting.

2) Applicant shall initially meet with the Board during its April 6, 2011 meeting and every three (3) months thereafter. The initial written report from the reviewing firm shall be submitted to the Division no later than July 1, 2011 for review by the Board on July 6, 2011. That report shall identify the number of cases reviewed and set forth any practice deficiencies noted by the reviewing firm in those cases.

It is further ordered the Board shall determine whether the probationary status of Applicant's licenses should remain in effect when those licenses are next scheduled for renewal.

Should Applicant fail to comply with the terms and conditions set forth herein or violate any statute or rule governing his licenses to practice as a certified public accountant or CPA firm, further proceedings shall be conducted and a determination made whether a sanction of greater severity than that set forth herein is warranted.

On behalf of the Utah Board of Accountancy, I hereby certify the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was submitted to Mark B. Steinagel, Director of the Division of Occupational and Professional Licensing, on the 28<sup>th</sup> day of February 2011.

  
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J. Steven Eklund  
Administrative Law Judge  
Department of Commerce