JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2002-12-05-005 / NOT PRECEDENTIAL**
ID: **JM020003**
DATE: **12-05-02**
DISPOSITION: **DISBARMENT OF DANIEL F. KIPLINGER**
TAX TYPE: **PRACTICE AND PROCEDURE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 18th day of November, 2002, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. 2001, § 236 and Oklahoma Administrative Code 710:1-5-200, on September 26, 2002. Respondent, Daniel F. Kiplinger, appears pro se. The Tax Commission is represented by the Office of the General Counsel.

A Petition for Disbarment of Respondent from further practice before the Tax Commission was filed by the Office of the General Counsel on August 20, 2002. The Petition duly set forth the particular allegations against Respondent and the requested relief should the burden of proof of the allegations be met.

Notice of the hearing on the Petition was served on Respondent in accordance with 68 O.S. 2001, §§ 236 and 208. The notice was received on August 22, 2002, as reflected by signature of Respondent and date stamp affixed by the postal service on the return receipt card. Respondent neither appeared at the hearing on September 26, 2002, nor responded to the notice.

At the hearing, the Office of the General Counsel made a brief opening statement which mirrored its Petition for Disbarment, including the particulars it intended to prove and its pray of relief. One witness, THE Administrator of the IRP/IFTA Section of the Motor Vehicle Division of the Tax Commission, was called. Exhibits were identified, offered and received into evidence. Upon conclusion of the hearing, the record was closed and the matter was submitted for decision.

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. Respondent owned XYZ, and acted as a registration agent.

2. XYZ was in the business of assisting trucking companies in obtaining their licenses and registrations for purposes of their interstate operations.

3. As a registration agent of these trucking companies Respondent prepared and filed license and registration forms and returns with the Tax Commission and remitted the resulting registration fees.

4. MR C, an employee of XYZ described during his testimony in the bond hearing of ABC, Case No. CF-02-3168, In and For The District Court of Oklahoma County, State of Oklahoma, a scheme through which the original bill of approximately $176,000.00 for truck tags of REGISTRANT A, a customer of XYZ was reworked to lower the fees to approximately $76,000.00. MR C testified that he and Respondent charged REGISTRANT A the higher amount, leaving $100,000.00 to be divided among four individuals, one of which was Respondent.

5. As a part of this scheme, Respondent either caused to be prepared, assisted in the preparation of, or had knowledge that a false report or return was filed on behalf of his client, REGISTRANT A, with the Oklahoma Tax Commission.

6. The audit records of the Tax Commission indicate a similar situation where another client of XYZ was defrauded either directly by Respondent or with his assistance and knowledge.

7. In this case, an original bill for registration fees was generated and subsequently the bill was recalculated to show a lesser amount due. XYZ invoiced and collected from its client the amount reflected on the original bill, but remitted the lesser amount to the Tax Commission

8. The records of the Tax Commission show several instances where XYZ as registration agent for various clients, paid fraudulent bills for reduced registration fees to the Tax Commission.

9. In each of these instances, an original IRP application was processed generating a bill for registration fees. The original bill would be deleted and a new bill generated. The significant changes made on the new bill related to the percentage of miles calculated for each jurisdiction. Specifically, the percentage of miles for the jurisdictions of Oklahoma and New Mexico were significantly increased, which resulted in reduced registration fees. Upon review of Division records, no documentation was discovered to support the change in registration fees. The lesser fees were remitted by XYZ to the Tax Commission.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction over the parties and subject matter of this cause, 68 O.S. 2001, § 236 and Oklahoma Administrative Code 710:1-5-200; that an agent, accountant, attorney or other person representing taxpayers before the Tax Commission may be disqualified from practice before the Commission for a stated period of time, or indefinitely, Oklahoma Administrative Code 710:1-5-200(g); that the grounds for suspension or disbarment include incompetence or disreputableness,

68 O.S. 2001, § 236; that any such individual who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any taxpayer or prospective client by words, circular, letter, or by advertisement, or who shall prepare a false or fraudulent report or return in any particular whatsoever, may also be suspended and disbarred, Id.; and that here the Office of the General Counsel has shown by a preponderance of the evidence that Respondent has violated the provisions of Section 236, in particular, Respondent acted in a disreputable manner with regard to his clients and the State of Oklahoma and Respondent, with intent to defraud, willfully and knowingly deceived his clients and prepared or caused to be prepared false or fraudulent reports and returns.

DISPOSITION

THEREFORE, it is recommended that Respondent, Daniel F. Kiplinger, be indefinitely suspended and disbarred from further practice before the Tax Commission, and prohibited from the preparation or filing on behalf of or as an agent for any other person any report, return or application required or provided for under the provisions of the tax laws or motor vehicle registration laws of this state.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.