JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-10-30-08 / NOT PRECEDENTIAL**
ID: **JM030012**
DATE: **10-30-03**
DISPOSITION: **DISBARMENT OF FERN BENNETT**
TAX TYPE: **PRACTICE AND PROCEDURE**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now on this 26th day of September, 2003, the above styled and numbered cause comes on for decision pursuant to a hearing held in accordance with 68 O.S. 2001, э 236 and *OAC*, 710:1-5-200, on September 4, 2003. Fern Bennett (hereinafter "Respondent") appears pro se. The Tax Commission is represented by the Office of the General Counsel of the Tax Commission.

A *Petition for Disbarment* of Respondent from further practice before the Tax Commission was filed by the Office of the General Counsel on June 11, 2003. The *Petition* duly sets 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, ээ 236 and 208. Service of the notice was accepted. Respondent did not appear at the hearing on September 4, 2003.

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 prayer of relief. One witness, THE DEPUTY DIRECTOR of the Motor Vehicle Division of the Tax Commission, was called to testify. 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. That Respondent is a registration agent in the business of assisting trucking companies in obtaining their licenses and registrations for purposes of the International Registration Plan ("IRP") and their interstate operations.

2. That concerning the account of CLIENT X (hereinafter "X"), THE DEPUTY DIRECTOR testified as follows:

> a. That in October 2000, Respondent submitted an IRP Renewal Application and supporting documentation on behalf of CLIENT X for the 2000 year, reporting estimated mileage.

b. That upon review of the 2000 renewal application by the Tax Commission, it was determined that X was not a new registrant and, therefore, not entitled to claim estimated mileage.

c. That upon contacting Respondent, the Tax Commission reviewer was told to change the submitted mileage to actual miles.

d. That in March 2001, Respondent submitted an IRP Renewal Application and supporting documentation on behalf of CLIENT X for the 2001 year, reporting actual miles in all 48 contiguous states.

e. That the State of Virginia performed an audit of the business records of X for the 1999 through 2002 registration years. The audit records were provided by X.

f. That the audit resulted in a determination that X had not traveled in all jurisdictions as reported by Respondent.

g. That as a result of the audit findings, the Tax Commission, by letters dated October 2, 2002, issued assessments of net registration fees for the 2000 and 2001 registration years against X in the amounts of $524.64 and $2,398.91, respectively.

h. That by letter dated October 31, 2002, X filed a protest to the proposed assessments, stating that the mileage they reported to Respondent for the 2000 and 2001 registration years did not reflect in any way the miles reported by Respondent to the State of Oklahoma which caused great concern to X.

3. That concerning the account of CLIENT Z (hereinafter "Z"), THE DEPUTY DIRECTOR testified as follows:

a. That in March 2001, Respondent submitted an IRP Renewal Application and supporting documentation on behalf of CLIENT Z for the 2001 year, reporting actual mileage in the operating jurisdictions.

b. That the Tax Commission performed an audit of the business records of Z for the 2001 registration year. The audit records were provided by Z.

c. That the audit resulted in a determination that mileage reported by Respondent was inconsistent with how the fleet actually operated during the audit period, resulting in additional net fees due in the amount of $1,131.28.

d. That the auditor reported that Z stated that they had been advised by Respondent to manipulate the reported mileage to obtain a cheaper tag. The auditor further noted that Z is no longer a client of Respondent and no longer registers in the State of Oklahoma.

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 *OAC*, 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, *OAC*, 170:1-5-200(g); that for purposes of the Uniform Tax Procedure Code[1] "person" is defined to include "an individual, trust, estate, fiduciary, partnership, limited liability company, or a corporation, and shall include any municipal subdivision of the state", 68 O.S. 2001, ϶ 202(e); that the grounds for suspension or disbarment include incompetence or disreputableness, or preparation of a false or fraudulent report or return in any particular whatsoever, 68 O.S. 2001, ϶ 236; and that here the evidence proves that Respondent has violated the provisions of Section 236, in particular, Respondent prepared or caused to be prepared falsified and fraudulent documents submitted with an IRP registration application.

DISPOSITION

THEREFORE, it is recommended that Respondent, Fern Bennett, 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.

[1] 68 O.S. 2001, ϶ 201 et seq.