JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-08-31-04
ID: JM-03-014-K
DATE: AUGUST 31, 2004
DISPOSITION: DISBARRED
TAX TYPE: DISBARMENT PROCEEDING
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A *Petition for Disbarment* of Respondent from further practice before the Tax Commission was filed with the Office of the Administrative Law Judges of the Tax Commission by the Office of the General Counsel of the Tax Commission on August 18, 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.

Notices of the hearing on the *Petition* were served on Respondent in accordance with 68 O.S. 2001, §§ 236 and 208. The first *Notice of Hearing on Petition for Disbarment* was sent by certified mail on September 16, 2003, to Kenny Rice, ADDRESS. The first notice was returned September 30, 2003, "unclaimed". At the request of the General Counsel's Office, OTC ATTORNEY, whom advised of an additional address for the Respondent, a second *Notice of Hearing on Petition for Disbarment* was sent by certified mail on September 25, 2003, to Kenny Rice, 2ND ADDRESS. The second notice was returned September 29, 2003, "refused, September 26, 2003".

At the hearing on November 24, 2003, it was noted for the record that Respondent did not appear although notice of the hearing was forwarded to him in accordance with Section 208 of the Uniform Tax Procedure Code, 68 O.S. 2001, § 201 et seq. and that Respondent had not contacted either the Office of the Administrative Law Judges or the Office of the General Counsel in regard to the hearing. The Office of the General Counsel, at the direction of the undersigned Administrative Law Judge to present its case, 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, OTC WITNESS, 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.

On December 12, 2003, the undersigned Administrative Law Judge issued a *Recommendation of Disbarment* based on the evidence presented and the law of the case, which evidence proved Respondent had violated the provisions of 68 O.S. 2001, § 236. The *Recommendation of Disbarment* was forwarded by certified mail to the two addresses to which the *Notice of Hearing on Petition for Disbarment* was mailed. The domestic return receipts show delivery of the *Recommendation of Disbarment* was accepted at both addresses.

On January 9, 2004, Respondent through his representative filed a *Motion for Rehearing or Reconsideration out of Time or in the Alternative Application for a Hearing En Banc*. Respondent's *Motion* was granted by *Order Granting Motion for Rehearing, Withdrawing Recommendation of Disbarment, and Scheduling Matter for Rehearing* dated February 2, 2004. The *Order* as reflected by the title also withdrew the *Recommendation of Disbarment* from further consideration and scheduled the matter for rehearing. The rehearing was originally scheduled for March 3, 2004, but due to conflicts, was continued to and held on March 11, 2004.

At the rehearing of March 11, 2004, the Division was not required to retry its case against Respondent, over Respondent's request to strike the evidence because "it is rife hearsay" which was

denied, based on the findings of the undersigned Administrative Law Judge that the Division had put on its evidence in the hearing held on November 24, 2003, that such evidence was part of the record in this cause, that Respondent was served notice of the hearing in accordance with Section 208 of the Uniform Tax Procedure Code and should have been present at the hearing, and that Respondent was fully aware of the allegations laid against him as those allegations had been recited in the *Petition for Disbarment* and the *Recommendation of Disbarment.*

Two witnesses were called to testify at the rehearing. OTC WITNESS, was called by Respondent. Respondent, Kenny Rice, was called by the Office of the General Counsel of the Tax Commission. No further exhibits were offered into evidence

FINDINGS OF FACT

Upon review of the file and records, including the transcript of the hearings held on November 24, 2003 and March 11, 2004, the exhibits received into evidence at the hearing of November 24, 2003, and the respective proposed findings of fact and conclusions of law of the parties, the undersigned finds:

1. That from at least 1997 to the spring of 2002 when the rules of Tax Commission regarding an "established place of business" for purposes of the International Registration Plan ("IRP") were declared valid, Respondent was a registration or service agent in the business of assisting and representing trucking companies in obtaining their licenses and registrations for purposes of the IRP and their interstate operations. Tr. 31-33; Tr. 8.

2. That Respondent's IRP service agent business was operated under the name of Rice Transportation Services, Inc., located at 2ND ADDRESS. Tr. 31.

3. That Respondent is not currently acting as a service agent, but does perform title work for other people. Tr. 33.

4. That beginning in September 2002 through the first four months of 2003, OTC WITNESS was assigned to the Motor Vehicle Division to assist the Pro-rate Section of the Division and administer the more stringent rules put in place by the Tax Commission with respect to the IRP. Tr. 7-8.

5. That OTC WITNESS also handled complaint calls and reviewed IRP applications in the ordinary course of business during this time. Tr. 8-11.

6. That OTC WITNESS testified she received an oral complaint by telephone in June, 2003, from GEORGIA SERVICE AGENT, a service agent in the State of Georgia, concerning Respondent's handling of the 2003 IRP registration renewal of a trucking firm by the name of TRUCKING CO. Tr. 8-9; 20.

7. That TRUCKING CO. is based in the State of Illinois. Tr. 9.

8. That the expiration date of TRUCKING CO's IRP registration was April, 2003. Tr. 11.

9. That Respondent had acted as the service agent for TRUCKING CO. for the 1999 and 2000 IRP registration years and had filed applications for proportional registration of TRUCKING CO.'S trucks with the State of Oklahoma for those years. Tr. 58-59.

10. That TRUCKING CO. contacted the Respondent regarding its 2003 IRP renewal application, but because of the rule changes, Respondent advised TRUCKING CO. to contact REFERRAL AGENT, a service agent in the State of Georgia, whom would assist TRUCKING CO. in registering their trucks in the State of Georgia. Tr. 59-60.

11. That according to Respondent, TRUCKING CO. wire transferred $5,000.00 to Respondent for its 2003 registration, because TRUCKING CO. did not know REFERRAL AGENT and did not want to send it to him and "[Respondent] would try to get the stuff from REFERRAL AGENT and forward it on to them or have him send it directly to them". Tr. 61-62.

12. That Respondent did not assist TRUCKING CO. or REFERRAL AGENT in obtaining TRUCKING CO.'S 2003 temporary permits. Tr. 60.

13. That Respondent initially retained $50.00 per truck as compensation for TRUCKING CO.'S 2003 registration, but later refunded the full amount to TRUCKING CO. Tr. 62 and 67.

14. That according to OTC WITNESS, TRUCKING CO. contacted GEORGIA SERVICE AGENT after it found out the temporary permits were issued showing TRUCKING CO. as the owner of the trucks, but the trucks were registered in the name of LEASING CO. Tr. 12.

15. That GEORGIA AGENT assisted TRUCKING CO. in registering their trucks in Illinois, which according to the opinion of OTC WITNESS, is where they should have been registered all along. Tr. 12.

16. That regarding an additional complaint received concerning Respondent, OTC WITNESS testified that the State of Alabama had sent her a copy of a letter and postcard they had received from an anonymous party on March 18, 2003, advising the party had received the card in the mail from Respondent soliciting business and stating Respondent would provide everything necessary to meet Oklahoma licensing requirements, including an office suite, a secretary to answer the telephone, and a mailing address for the trucking company. Tr. 13-15.

17. That OTC WITNESS testified that the postcard was mailed March 12, 2003. Tr. 14 and 23-24.

18. That in response to the question "And why is Kenny Rice's letter a problem", OTC WITNESS testified:

> Kenny Rice's postcard is a problem because at that time the rules would not allow a service agent to provide an established place of business. And Mr. Rice's postcard indicates that he will be providing a telephone number, an office suite and a secretary.
>
> In my opinion, that's a circumvention of the IRP rule for motor carriers.

19. That OTC WITNESS testified she does not have any independent verification that Respondent sent the postcard in question, Tr. 26; nor has she seen an application since March, 2003, wherein Mr. Rice provided an address or phone number for an out-of-state registrant. Tr. 30.

20. That Respondent admitted at the hearing that the postcard in question is a copy of a postcard prepared by him "a long time ago" and that it is a copy of a postcard he has sent out "[a]nd it met all the requirements for Oklahoma when it was sent out." Tr. 46.

21. That Respondent does not believe it is the responsibility of a service agent to double-check or verify any information received from a registrant which looks questionable. Tr. 53.

22. That Respondent does not believe it is his duty to investigate the information that a client submits to him to determine its accuracy, Tr. 68-69; nor does he ever question the accuracy of the numbers that are sent to him with respect to mileage. Tr. 69.

23. That Respondent has never submitted an application to the Tax Commission that he knew was incorrect. Tr. 68.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. 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.

2. 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).

3. That the grounds for suspension or disbarment include: (1) incompetence; (2) disreputableness; (3) refusal to comply with the rules and regulations of the Tax Commission; (4) willfully and knowingly deceiving, misleading, or threatening, with intent to defraud in any manner, any taxpayer or prospective client by words, circular, letter, or by advertisement; (5) advising a taxpayer to file a fraudulent or false report or return; or (6) preparing a false or fraudulent report or return in any particular whatsoever. 68 O.S. 2001, § 236.

4. That here the evidence proves that Respondent has violated the provisions of Section 236, in particular; (1) Respondent has been shown to be disreputable - Respondent accepted a fee for performing the registration services of TRUCKING CO., but performed no services for said fee and admitted to later refunding the fee; (2) Respondent has been shown to be incompetent - Respondent failed to advise TRUCKING CO. that they should be registered in the State of Illinois and assisted TRUCKING CO. in registering in the State of Oklahoma, Respondent failed to see that TRUCKING CO. was properly registered after accepting a fee for said service and Respondent admitted to failing to verify or investigate information obtained from a client to determine its accuracy; and (3) Respondent has been shown to either refusing to comply with the rules of the Tax Commission or willfully and knowingly attempting to deceive or mislead registrants by advertisement - although there is no direct evidence that Respondent mailed the postcard in question, as owner of the business, Respondent was responsible for seeing that such postcards were not sent by his company and the fact that the postcard was sent after the rules were adopted either Respondent was intent on circumventing the rules or Respondent was willfully and knowingly attempting to deceive or mislead trucking companies into believing he could circumvent the rules.

DISPOSITION

THEREFORE, it is ORDERED that Respondent, Kenny Rice, 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 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.