

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0588**

In the Matter of Shah & Company, Ltd, Firm Permit No. 01282,
Ramanik Shah, CPA Certificate No. 09193,
and Ronak Shah, CPA Certificate No. 17738.

**Filed February 8, 2021
Affirmed
Connolly, Judge**

Office of Administrative Hearings
File No. 60-0100-36058

Ronak Shah, Shah & Company, Ltd., New Brighton, Minnesota (pro se relator)

Keith Ellison, Attorney General, Allen C. Barr, Assistant Attorney General, St. Paul,
Minnesota (for respondent Minnesota Board of Accountancy)

Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Pro se relator challenges respondent-board's disciplinary action, arguing that respondent (1) erred in applying collateral estoppel as a basis for finding that relator withheld his clients' tax documents in violation of Minn. Stat. § 326A.13(b) (2018), and (2) abused its discretion when imposing discipline. We affirm.

FACTS

The following reflects the administrative-law judge's (ALJ) memorandum, which was adopted by respondent Minnesota Board of Accountancy (board); the order which relator Ronak Shah challenges. Minn. Stat. § 326A.13 (2018) states, in relevant part:

(b) A licensee shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

The board issued a Certified Public Accountant (CPA) certificate to relator in June 1996. Relator is the managing principal of his father's company, Shah & Company (Shah & Co.), which received a CPA firm permit in 2002. In 2002, the Beeuwsaerts hired Shah & Co. to provide accounting and tax preparation services for themselves individually as well as for their company, Thunder Blades Inc. (Thunder Blades).

In April 2016, the Beeuwsaerts and relator had a heated exchange when the Beeuwsaerts requested the return of all their tax documents, so they could go to a different accountant. Relator refused to provide the Beeuwsaerts with these documents until the Beeuwsaerts paid all alleged balances due on the accounts. In August 2016, relator told his clients that an invoice would be coming "within the next few weeks." But the Beeuwsaerts never received any paperwork or invoices. Lacking the necessary documents,

Thunder Blades was unable to timely file its 2015 tax returns. The Internal Revenue Service (IRS) subsequently assessed Thunder Blades a penalty of \$2,730.

Thereafter, the Beeuwsaerts initiated an action in conciliation court, seeking return of their tax paperwork. Shah & Co. counterclaimed, alleging that the clients owed the company \$15,000. Two days before the hearing, Shah & Co. provided an invoice to the Beeuwsaerts for over \$44,000. This invoice did not include an hourly rate, nor a calculation of actual time spent on services. In December 2016, the conciliation court ordered Shah & Co. to return the requested documents, and awarded Shah & Co. \$1,000 for unpaid accounting fees and \$250 for compiling the documents. Shah & Co. timely removed the case to the Ramsey County District Court. The district court found that Shah & Co. violated Minn. Stat. § 326A.13(b) by failing “to return all tax return and supporting accounting information to [the Beeuwsaerts, despite] having stated in its letter it had done so.” In addition, the district court found that as a result of Shah & Co.’s failure to return the documents in a timely manner, Thunder Blades was unable to timely file their 2015 tax returns. The district court ordered Shah & Co. to pay \$2,730 for damages to the Beeuwsaerts; the sum of the late penalty assessed by the IRS. The district court also ordered them to “produce and furnish” copies of all reasonably requested accounting documents, including all related work papers.

Shah & Co. appealed part of the district court’s decision. Shah & Co. did not appeal the district court’s conclusion that it violated Minn. Stat. § 326A.13(b) by retaining a

client's tax materials due to lack of payment.¹ This court concluded that the district court erred in ordering Shah & Co. to pay the Beeuwsaerts \$2,730 as damages for violation because Thunder Blades failed to prove that it actually paid, or will be required to pay, the IRS penalty. *Beeuwsaert v. Shah & Co., Ltd.*, No. A18-0527, 2019 WL 1006974, at *3 (Minn. App. Mar. 4, 2019).

In May 2018, the board received a written complaint regarding Shah & Co. and relator individually from Thunder Blades. During the investigation, relator stated that “[w]e did not withhold their client-provided records; we only withheld our work product.” Relator defined “work product” as “tax returns, etc.” The board then filed a Notice and Order for Prehearing Conference in April 2019, alleging that “[b]y refusing to furnish to a client or former client a copy of its working papers and accounting and any other records the client provided to it, [relator] violated Minn. Stat. § 326A.13(b) and is subject to discipline pursuant to Minn. Stat. § 326A.08, subd. 5 (2018).” The board later filed a summary-disposition motion.

The ALJ recommended a finding in favor of the board. The ALJ concluded that collateral estoppel applied to the issue of whether relator violated Minn. Stat. § 326A.13 because the exact issue was already heard, decided, and a final judgment was entered when relator failed to bring the issue on appeal. The board adopted the ALJ's recommendation in an order issued on March 11, 2020. The board imposed a joint-and-several penalty of \$4,000, suspended the CPA certificates of relator and his father, and suspended the firm

¹ The district court's decision that relator violated Minn. Stat. § 326A.13, by retaining the tax materials, became final when relator failed to raise the issue on appeal.

permit of Shah & Co. The suspensions were for two years, or until the \$4,000 civil penalty is paid in full, “whichever is longer.”

This certiorari appeal follows.

DECISION

An administrative agency’s decision enjoys a presumption of correctness; the appellate court defers to the agency’s expertise and special knowledge in its field. *In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513-14 (Minn. 2007). “We presume the agency’s decision . . . is correct, but the court may reverse an agency decision if the decision was affected by an error of law.” *N. States Power Co. v. Minn. Pub. Utils. Comm’n*, 344 N.W.2d 374, 377 (Minn. 1984). “If an administrative agency engages in reasoned decision making, the court will affirm, even though it may have reached a different conclusion had it been the factfinder.” *Cable Commc’ns Bd. v. Nor-W. Cable Commc’ns P’ship*, 356 N.W.2d 658, 669 (Minn. 1984).

Collateral Estoppel

Relator argues that the board erred in giving collateral-estoppel effect to the Ramsey County District Court decision because (1) the damages award in that decision was reversed on appeal and (2) relator’s attorney advised him not to appeal any findings or conclusions regarding withholding documents. Neither argument is persuasive.

“Collateral estoppel precludes parties from relitigating issues that were determined in a prior action.” *Miller v. Nw. Nat’l Ins. Co.*, 354 N.W.2d 58, 61 (Minn. App. 1984). Collateral estoppel applies where the issues are identical in the two actions, there was a final judgment on the merits in the prior action, the party against whom collateral estoppel

is now asserted was a party or in privity with a party to the first action, and the estopped party had a full and fair opportunity to be heard on the adjudicated issue in the prior action. *Id.* Privity exists where the party to be estopped had a controlling participation and active self-interest in the original litigation. *Id.* at 62. Collateral estoppel applies to both issues of fact and issues of law. *In re Trusts Created by Hormel*, 504 N.W.2d 505, 510 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993).

Here, all requirements for collateral estoppel are met. The issues decided by the district court included what documents relator and his firm were obligated to provide to the Beeuwsaerts and whether they had provided the required documents. Relator only appealed the damages award. Thus, the district court's judgment as to relator's violation of Minn. Stat. § 326A.13 remained final when relator failed to appeal it. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that an appealable order is final after the time for appeal has expired). Moreover, Shah was in privity with Shah & Co. as its managing principal. In that role, relator had a "controlling participation and active self-interest in the original litigation." *Miller*, 354 N.W.2d at 62. He was also "so identified with the party in interest as to be affected with the party by the litigation." *Id.* As relator makes clear, he was the individual receiving advice from counsel and making litigation decisions on behalf of the company. Finally, relator had a full and fair opportunity to be heard in the prior action. *See Beeuwsaert*, 2019 WL 1006974, at *1-2 (describing the procedure afforded to Shah & Co.). Relator could have appealed the issues to which collateral estoppel applies, but he chose not to do so. Furthermore, relator made litigation decisions based on the advice of his attorney. The fact that relator was told he

should not appeal the court's findings of fact or conclusions of law is not a basis for ignoring collateral estoppel when the requirements for its application are met. We conclude that the board did not err in applying collateral estoppel to the issue of whether relator violated Minn. Stat. § 326A.13(b).

The Board's Disciplinary Action

Relator also challenges the discipline imposed, arguing that the board imposed a more severe sanction on him than it has imposed on others in previous cases. This argument fails. Importantly, this assertion is not supported by any citation to similar past cases. The Minnesota Supreme Court has held that “[w]e will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.” *State v. Reek*, 942 N.W.2d 148, 165 (Minn. 2020) (quoting *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008)). Under this reasoning, an issue is forfeited when it is not adequately argued or explained. *State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016). Thus, relator has forfeited this argument by making unsupported assertions rather than citing any caselaw or providing any relevant legal argument.

Relator further argues that the board did not properly weigh the circumstances in this case. Specifically, relator poses two statements of the issue: (1) “Did the [board] err in relying too much on the District Court Order in assessing the disciplinary action against Relator?” and (2) “Did the [board] not take into consideration the definitions of client records and work product provided in the AICPA code of professional conduct?” But, “the assessment of penalties and sanctions by an administrative agency is not a factual finding but the exercise of a discretionary grant of power.” *In re Haugen*, 278 N.W.2d 75, 80 n.10

(Minn. 1979). Therefore, this court may not interfere with the decision of the board absent an abuse of that discretion. *In re Qwest's Wholesale Serv. Quality Standards*, 678 N.W.2d 58, 65 (Minn. App. 2004).

The memorandum provided by the board evidences an exercise of sound discretion. The board weighed relator's conduct in the present case, as well as relator's previous instances of misconduct and discipline by the board, when it suspended relator's CPA certification. In determining the civil penalty, the board considered the criteria required by Minn. Stat. § 14.045, subd. 3 (2018). Relator subjected his clients to potential financial harm; specifically a \$2,730 IRS penalty. We conclude that the board did not abuse its discretion in imposing the sanction or fine.

Affirmed.