

**STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR & REGULATION
BOARD OF ACCOUNTANCY**

IN THE MATTER OF

**BRIAN E. MALLIN
Certificate No. 1869**

Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW &
ORDER**

TO: Brian E. Mallin
 2054 Canyon Drive
 Cheyenne, WY 82009-9155

A disciplinary hearing was held on August 15, 2012, before the South Dakota Board of Accountancy in Sioux Falls, South Dakota. Mr. Brian Mallin, Respondent, failed to appear at the scheduled hearing. The South Dakota Board of Accountancy, Board, was represented by attorney Mr. Aaron Arnold, with witness Nicole Kasin, Executive Director of the Board. A majority of the Board was present to receive the evidence and observe the testimony of any witnesses.

Upon receiving the evidence and hearing the testimony presented, the South Dakota Board of Accountancy, by a majority vote, hereby enters the following:

FINDINGS OF FACT:

1. Respondent, Brian Mallin, Certificate No. 1869, was selected for an audit of his continuing professional education (CPE) hours for the three year period July 1, 2008, through June 30, 2011.
2. During that three year time period, Respondent successfully completed the required number of CPE hours for July 1, 2008, through June 30, 2009, and July 1, 2010, through June 30, 2011.
3. Respondent claimed 29 hours of CPE for the time period July 1, 2009, through June 30, 2010.

4. Respondent provided the Board with acceptable documentation proof for five of the twenty-nine hours of claimed CPE.
5. After numerous requests, Respondent failed to submit adequate documentation for the remaining 24 hours of CPE, which consisted of two courses.
6. Respondent submitted an email stating he was going to attend one of the two CPE courses, but provided the Board with no proof that he actually attended the course or that he successfully completed the course.
7. Respondent failed to provide any documentation proof of the second claimed CPE course.
8. In an attempt to circumvent disciplinary action taken against him, Respondent physically surrendered his license in February 2012 and reaffirmed this surrender in a July 16, 2012, letter.
9. To the extent any of the foregoing are improperly designated and are instead conclusions of law, they are hereby re-designated and incorporated herein as conclusions of law.

CONCLUSIONS OF LAW

1. The South Dakota Board of Accountancy has jurisdiction in this matter.
2. Renewal of Certificate No. 1869 of Brian Mallin may be subject to disciplinary action pursuant to the provisions of SDCL 36-20B-40(3) or (6).
3. Mr. Mallin failed to provide sufficient documentary proof of 24 out of the 29 CPE hours claimed for the time period July 1, 2009, through June 30, 2010, thus failing to meet CPE requirements of renewal of a certificate. Thus, Mr. Mallin violated SDCL 36-20B-27, 36-20B-40(3) & (6), ARSD 20:75:04:11, and 20:75:04:15.
4. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby re-designated and incorporated herein as findings of fact.

After reviewing the evidence, taking the findings of fact and conclusions of law into consideration, it is hereby ORDERED:

ORDER

1. That the Board hereby accepts the surrendering of Certificate No. 1869 by Brian Mallin; and

2. That, if Mr. Mallin applies for licensure within the five years from August 15, 2012, that Mr. Mallin shall appear, in person, before the Board prior to the issuance of a certificate.

NOTICE: This is the final decision of the South Dakota Board of Accountancy. Parties are hereby advised of the right to appeal this final order to the circuit court within 30 days of receiving this decision pursuant to the authority of SDCL Chapter 1-26.

Dated this 26 day of August, 2012.

South Dakota Board of Accountancy



John Mitchell, Chairperson