

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN
Plaintiff,

vs.

KATHLEEN F VILLARD
2011 Rusk St Apt 2
Madison, WI 53704
DOB: 05/24/1951
Sex/Race: F/W
Eye Color: Green
Hair Color: Brown
Height: 5 ft 03 in
Weight: 160 lbs
Alias: Also Known As Kathy Villard

Defendant,

Ref. Agency: WI Dept of Revenue
DA Case No.: 2023DA000172
Assigned DA/ADA:
Agency Case No.: DOR 422581504
Court Case No.: 2023CF _____
ATN:

CRIMINAL COMPLAINT

For Official Use

The below-named complaining witness being first duly sworn states the following:

Count 1: INTENTIONALLY FAIL TO PAY SALES TAX (>\$2,500, <\$5,000)

The above-named defendant On or Between 10/31/2018 and 12/31/2022, in the City of Madison, Dane County, Wisconsin, as a person who collected tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser who received those tax moneys as trust funds and state property, did intentionally fail or refuse to pay over those tax moneys to the state at the time required by s. 77.60 or fraudulently withheld, appropriated or used any of those tax moneys whose value exceeds \$2,500 but does not exceed \$5,000, contrary to s. 943.20, and s. 943.20 (3) (bf), contrary to sec. 77.60(11), 939.50(3)(i) Wis. Stats., a Class I Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

Count 2: FAIL/FILE INCOME TAX RETURN

The above-named defendant on or about Monday, March 16, 2020, in the City of Madison, Dane County, Wisconsin, as a person required by law make, render, sign or verify any return, did willfully fail or refuse to make a return at the time required in s. 71.03, 71.24 or 71.44 or willfully failed or refused to make deposits or payments as required by s. 71.65 (3) or willfully rendered a false or fraudulent statement required by s. 71.65 (1) and (2) or deposit report or withholding report required by s. 71.65 (3), contrary to sec. 71.83(2)(a)1 Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$10,000 or imprisoned for not to exceed 9 months or both, together with the cost of prosecution.

Count 3: KNOWINGLY SUBMIT FALSE TAX DOCUMENTS

The above-named defendant on or about Friday, February 11, 2022, in the City of Madison, Dane County, Wisconsin, did willfully make and subscribe any return, claim, statement or other

document required by this chapter that that person does not believe to be true and correct as to every material matter or who willfully aided in, procured, counseled or advised the preparation of any return, claim, statement or other document that is false or fraudulent as to any material matter related to, or required by, this chapter, contrary to sec. 71.83(2)(a)2 Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$10,000 or imprisoned for not more than 9 months or both, together with the cost of prosecution.

FACTS:

Your complainant is a Court Officer with the Department of Revenue and for this complaint is relying on the written police report(s) submitted by Department of Revenue Special Agent Paul Libeck. Paul Libeck, CPA is a Special Agent (S/A) with the Office of Criminal Investigation at the Wisconsin Department of Revenue and base this complaint upon my own investigation, relying upon my training and experience. Special Agent Libeck obtained statements from taxpayers and the Defendant. The Defendant’s incriminating statements are presumed truthful and reliable as statements against his penal interest. Statements from taxpayers are believed to be truthful and reliable as victim and witness statements.

THEFT OF SALES TAX

Special Agent Libeck reports **KATHLEEN VILLARD** (the defendant, “Villard” hereinafter), was an officer, member and Secretary and Custodian of Records of Ki Shop LLC. Villard handled Ki Shop LLC’s payments and was the only person who signed checks. The Ki Shop LLC was a CBD sales company which operated in the 800 block of E. Washington Ave. in the City of Madison, Dane County, Wisconsin.

Between on or about September 1, 2018 and on or about June 30, 2019, in the City of Madison, Dane County, State of Wisconsin, Ki Shop LLC collected sales tax money imposed under Wis. Stat. sec. 77.52 and 77.71 from consumers, users or purchasers and Villard did intentionally failed or refused to pay over those moneys to the state at the time required by Wis. Stats. sec. 77.58 or fraudulently withheld, appropriated, or used those monies contrary to Wis. Stats. sec. 77.60(11).

Kathleen Villard filed four sales tax returns with the Wisconsin Department of Revenue for Ki Shop LLC on September 3, 2019. Villard reported Ki Shop collected sales tax from customers totaling \$2,908.50 and that the tax was due for the four quarterly periods from July 1, 2018, to June 30, 2019. The company only operated during these four quarters. It opened in September 2018 and closed around May 2019. The sales tax was reported as follows:

SALES TAX RETURNS FILED

<u>PERIOD ENDING</u>	<u>TOTAL SALES (INCLUDES TAX)</u>	<u>SALES SUBJECT TO</u>		<u>DATE FILED</u>	<u>FILER</u>
		<u>SALES TAX</u>	<u>TAX DUE</u>		
9/30/2018	2,918.00	2,765.88	152.12	9/3/2019	VILLARD
12/31/2018	23,230.86	22,019.77	1,211.09	9/3/2019	VILLARD
3/31/2019	20,202.50	19,149.29	1,053.21	9/3/2019	VILLARD
6/30/2019	9,439.06	8,946.98	492.08	9/3/2019	VILLARD
TOTAL	55,790.42	52,881.92	2,908.50		

According to Special Agent Libeck and DOR Records, DOR reviewed the above returns through December 31, 2022. There were no payments received on the account when the returns were filed or after.

Reviewing taxpayer's accounts for payments made is a routine job duty and area of expertise of Special Agent Libeck, given his nearly 15 years as an Auditor and Special Agent. He determined that no sales tax payments have been made on the Ki Shop LLC sales tax account since the sales tax returns were filed.

The sales tax payments were due quarterly on, October 31, 2018, January 31, 2019, April 30, 2019 and July 31, 2019. No payments have been received on the sales tax account and \$2,908.50 in tax remains unpaid. With interest and penalties, the balance is \$5,829.60 as of February 2, 2023.

When the WI DOR attempted to establish who the responsible party was to pay the past due tax, Villard stated she paid whatever tax was paid, that she initiated the payments, or told someone to write a check. Villard made a false statement when she denied being a signer on the company bank account.

Kathleen Villard, a Certified Public Accountant, stated that she did not have check "signing authority on the accounts at all." In fact, Villard was an authorized signer on the Associated Bank account, was listed as the company Secretary and custodian of records, and received the bank statements at her CPA Firm. Kathleen Villard signed every check written out of the company bank account.

Villard also denied being a member of the LLC at two different times to the Wisconsin Department of Revenue. In fact, Villard signed the Operating Agreement of Ki Shop LLC as a member as of September 12, 2018, and an LLC Unanimous Consent of Members resolution agreement on December 10, 2020, spanning the entire time the LLC reported sales subject to sales tax.

FAILURE TO FILE A TAX RETURN

Villard on or about March 16, 2020, for the tax year January 1, 2019 to December 31, 2019, in Dane County, State of Wisconsin, as a member of an LLC required by law to make, render, sign or verify any return, did willfully fail or refuse to make a return at the time required in Wis. Stat. sec. 71.03(6), 71.24 or 71.44 contrary to Wis. Stats. sec. 71.83(2)(a)1.

Ki Shop LLC was originally formed as a partnership, according to the Application for Employer Identification Number (EIN) of SS-4. According to the Wisconsin Department of Revenue Form 3 instructions for filing a partnership return, every partnership and limited liability company treated as a partnership with income from Wisconsin sources, regardless of the amount, must file Form 3. The instructions continue, a partnership must file a return if it has income from business transacted in Wisconsin.

The Form 3 instruction state a partnership must file its return with the department by the 15th day of the 3rd month following the close of its taxable year. There is no information available that indicates the entity elected a tax year different than the calendar year of January 1 to December 31. Therefore, the partnership was required to file a return by March 15th, 2019 for

the 2018 tax year and March 16th, 2020 for the 2019 tax year (15th day of 3rd month). March 15, 2020 fell on a Sunday, so the return was due the following business day.

Special Agent Libecky reviewed the Wisconsin Department of Revenue processing database (WINPAS), as recently as February 2, 2023, to determine if the proper partnership income tax returns had been filed for Ki Shop LLC. Special Agent Libecky determined that no partnership returns were ever filed on the Ki Shop LLC account. The returns were past due, since March 15th, 2019 for the 2018 tax year and March 16th, 2020 for the 2019 tax year.

Special Agent Libecky reports Kathleen Villard reported that Ki Shop LLC had sales of \$24,785.65 in 2018 and \$28,096.27 in 2019 on the quarterly sales tax returns. The sales reported on the sales tax returns closely match the total quarterly bank deposits shown on the Ki Shop Associated Bank account (account ending 7866). These sales are reportable gross receipts for Wisconsin income tax purposes and should have been reported on the 2018 and 2019 partnership returns. Ki Shop LLC was operating and had income from Wisconsin sources and, as such, it was required to file a 2018 and 2019 Wisconsin income tax return for the partnership, according to the Form 3 Partnership return instructions.

LLC documents refute the claim that Villard was not a member of the Ki Shop LLC. Villard is a CPA, member of the LLC, was generally aware of the gross income and deductions of the Ki Shop LLC, received the mail for the LLC, was listed as the custodian of records and Secretary of the LLC, stated other employees were not aware of the tax filing requirements, and stated that other members of the LLC were no longer involved in the company. Villard also had an exclusion from a non-compete agreement that allowed her to provide tax and accounting work to the Ki Shop LLC. Villard failed to file a tax return for the partnership as a member of an LLC that was required to file.

Kathleen Villard, as a member of the Ki Shop LLC willfully failed to file the 2019 Wisconsin Partnership return by March 16, 2020. No partnership returns, or other income tax returns, have been filed on the account, as of February 2, 2023.

Kathleen Villard had a responsibility, as a member and officer of the Ki Shop LLC, to ensure proper income tax returns were filed in 2018 and 2019.

FALSE STATEMENTS

On February 11, 2022 Villard was interviewed as part of the WI DOR's investigation into her role and responsibilities with operating the company. Villard stated on a recorded phone call "I didn't own any part ownership of the Ki Shop LLC. I was not a member of the LLC."

Kathleen Villard made false statements that she was not a member of the LLC and misrepresented who the other members were. Villard's false statements are evidence of an intent to conceal her role in the company and an attempt to avoid responsibility in filing Wisconsin income tax returns for the partnership.

Villard was member of the LLC. She signed bank documents reporting to be the Secretary of the LLC and she certified the bank documents for Ki Shop. She used her business address in the 2400 block of Atwood Ave, City of Madison, Dane County, Wisconsin for the mailing address for the business. She signed an Associated Bank document stating, "I certify that I am the custodian of records of the Depositor." The custodian of records is the person responsible

keeping records in the ordinary course of business. Villard also was the only individual to ever write a check out of the account.

Kathleen Villard made false statements in a recorded telephone call regarding whether she was a member of the Ki Shop LLC, who the other members of the Ki Shop LLC were, who authorized signers were on the account, tax that was paid, and whether preferential payments to certain creditors were made.

Villard also denied being a member in an email to Special Agent Libeck, when she stated, "I was not a member of the Ki Shop" and again "actually you cannot verify if I was a member or not from the Articles, and I was not." Villard advised the only person who was the owner of the Ki Shop was an individual whose name forms the initials BR.

Villard lied when she said "I didn't have signing authority on the accounts at all" after she was asked about paying the sales tax. She repeated the lie when she stated in an email "I did not have signing authority on the checking account." In fact, Villard was an authorized signer on the bank account and signed every check written on the Ki Shop account. She was listed as a "member," "Secretary," and signed as the "Custodian of Records" on the corporate bank account applications. Her CPA firm address was used as the mailing address with the bank.

Villard was asked if she ever signed any returns or paid any Ki Shop LLC taxes. She responded: "I probably signed the sales tax returns. And I paid the sales tax. Whatever was paid, that's what I paid. I initiated the payments. I told him to write a check and he signed it, or something like that, because I didn't have signing authority on the accounts at all."

Kathleen Villard filed 5 quarterly sales tax returns for the Ki Shop LLC on September 3, 2019. The returns covered the periods July 1, 2018, through September 30, 2019. She reported sales subject to state and county sales tax totaling \$52,881.92 and sales tax due totaling \$2,908.50. She acknowledged she filed the sales tax returns in the phone interview and WI DOR records confirm this.

Villard acknowledged that she filed the sales tax returns, and she knew that there was a balance due on the account. Villard used a WI DOR program called My Tax Account (MTA) to file the Ki Shop LLC sales tax returns. This is an online program that allows taxpayers to login, file returns, pay tax due, review notices and perform other activities to maintain their accounts. The WI DOR has the ability to view a replay of a taxpayer's session in MTA. This shows keystrokes and where the taxpayer clicked. The sessions were reviewed to verify the MTA activity. Villard referenced the confirmation number from MTA on the interview call.

Villard submitted the returns on MTA, but never paid the tax through MTA. She created vouchers, which need to be mailed with a check. She never "initiated the payments." She never entered company bank account information, never entered a credit card number, and never signed a check for the sales tax held in trust. There have been no payments on the sales tax account for Ki Shop LLC, even after she learned the tax was not paid.

Villard said she "didn't have signing authority on the accounts at all." The bank account was held at Associated Bank under the account ending in "7866." The Business Account Application shows Villard is a signer on the account. Her signature is the third signature and clearly lists her name. There was no reason to have "told him to write a check" as Villard could

have written the check herself. Not only did Villard have authority to write checks, but she was the only person to ever write checks out of the company account.

****THIS COMPLAINT IS BASED ON** the information and belief of your complainant, who is a Court Officer for the Department of Revenue, and who learned of the above offense from the reports of Department of Revenue Special Agent Paul Libecky, which report your complainant believes to be truthful and reliable inasmuch as they were prepared during the course of the officer(s) official duties.

Further, your complainant believes the information furnished by witness(es) to be truthful and reliable inasmuch as they are citizen informant(s) and witnessed the events described.

Your complainant believes the statements of the Defendant(s) to be truthful and reliable insofar as they are admissions against penal interest.

Subscribed and sworn to before me on
02/03/23

Electronically Signed By:

Will R. Davis

Assistant District Attorney

State Bar #: 1116115

Electronically Signed By:

Paul Libecky, Special Agent

Complainant