

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

**In the Matter of the Application of
Daniel J. Fuhrman for a Certificate
to Practice as a Certified Public
Accountant**

**STIPULATION AND
CONSENT ORDER**

Board File No. 2009108

It is hereby stipulated and agreed by Daniel J. Fuhrman ("Respondent") and the Complaint Committee ("Committee") of the Board of Accountancy ("Board") that without trial or adjudication of any issue of fact or law and without any evidence or admission by any party with respect to any such issue:

1. A Notice and Order for Hearing and Prehearing Conference before the Office of Administrative Hearings was duly served upon Respondent, receipt of which is hereby acknowledged by Respondent.

2. On September 22, 2009, Respondent appeared at a prehearing conference at the Office of Administrative Hearings to discuss allegations made in the notice referenced above. Gregory P. Huwe, Assistant Attorney General, represented the Board at the conference. Respondent and the Committee have agreed to terms that would resolve this matter with a written Stipulation and Consent Order to be presented to Respondent for his review and signature and to the Board for its approval.

3. For the purpose of this stipulation, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the United States and Minnesota constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent and to dispute the appropriateness of discipline in a contested case hearing pursuant to Minn. Stat. § 14 (2008). Respondent agrees that upon the ex parte application of the Committee, the Board may order the remedy specified in paragraph 9 below. Respondent waives the right to any judicial review of the order by appeal, by writ of certiorari, or otherwise. Although Respondent was informed of the opportunity for counsel, Respondent voluntarily waived such right, stating that the Respondent understood that right and the waiver.

4. This Stipulation shall constitute the entire record of the proceedings herein upon which the Consent Order is based. All documents in the Board's files shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (2008). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

5. In the event the Board in its discretion does not approve this Stipulation or a lesser remedy than specified in this Consent Order, this Stipulation and Consent Order shall be null and void and shall not be used for any purpose by either party. If this Stipulation is not approved and the contested case proceeding is resumed by the Committee pursuant to Minn. Stat. ch. 14 (2008), and the Notice and Order for Hearing dated August 20, 2009, Respondent agrees not to object to the Board's resumption of the hearing and its hearing the case on the

basis that the Board has become disqualified because of its review and consideration of this Stipulation or of any records relating hereto.

FACTS

6. Respondent admits the facts referred to below and grants that the Board may, for the purpose of reviewing the record in paragraph 4 above, consider the following as true without prejudice to the Respondent in any current or future proceeding of the Board with regard to these or other allegations:

a. Respondent passed the CPA examination in November, 2004.

b. Respondent submitted an application for a certificate to practice as a Certified Public Accountant on December 12, 2008.

c. Respondent's application responded affirmatively to the question, "Have you ever been convicted of any crime, misdemeanor or any other discreditable act."

d. Respondent enclosed a letter in explanation of his affirmative answer to the above question. The letter indicated that Respondent had entered two guilty pleas, the first in 1997 for three counts of criminal sexual conduct in the 2nd degree and the second in 2006 for one count of solicitation for "making an inappropriate comment." Respondent further stated that he was incarcerated and completed a sex offender treatment program and after-care program in connection with the first guilty plea. In connection with the second plea, Respondent states that he has advanced to the post-residential phase of the Alpha Human Services program. Respondent asserted that his criminal record should not prevent him from consideration for being licensed.

e. On March 27, 2009, Committee, sent Respondent a letter requesting additional information it needed to evaluate the application. In particular, since there was a second offense after the first incarceration and treatment, the Committee requested more specific information as to the nature and circumstances of the offenses, a description of any ongoing treatment or supervision Respondent is receiving at the present time, any restrictions to which he remain subject, and for how long he would continue to be involved with the post-residential phase of the Alpha Human Services program.

f. In a letter dated April 15, 2009, Respondent indicated that the 2006 plea was in connection with an inappropriate conversation with sexual overtones with a minor child who was Respondent's neighbor at the time. Respondent also indicated that he remains under a partially stayed sentence and supervised parole, which may last for several years.

g. In a letter dated May 12, 2009, the Executive Director of the Board informed Respondent that the Committee had determined to deny his application for a certificate to practice as a CPA. Among other information, the letter notifying Respondent of this action included the reasons for the Committee's decision and a notification of Respondent's rights under Minnesota Statutes Chapter 364, and specifically, Respondent's right to have any

complaint or grievance concerning violations of Chapter 364 adjudicated under the procedures set forth in Chapter 14, the Administrative Procedures Act.

h. As stated in the May 12, 2009 letter, in considering whether the crimes to which Respondent pled guilty directly relate to the occupation of Certified Public Accountant, the Committee considered: 1) the nature and seriousness of the crimes; 2) the relationship of the crimes to the purposes of regulating the occupation of Certified Public Accountant; and 3) the relationship of the crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a Certified Public Accountant.

STATUTES

7. For purposes of this Stipulation and Consent Order, Respondent admits that the facts and conduct specified in paragraph 6 above constitute violations of Minn. Stat. ch. 326A (2008) and Minn. Rules ch. 1105 (2009); are sufficient grounds for the remedy specified in paragraph 9 below; and that proof at hearing of any one or more of the allegations set forth would empower the Board to deny Respondent's application for a CPA certificate.

8. This Stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this stipulation and that is not directly related to the specific facts and circumstances set forth herein, and that is not known by or disclosed to the Board.

REMEDY

9. Upon this Stipulation and record, as set forth in paragraph 7 above, and without any further notice of proceedings, the Committee and Respondent agree that the Board may, in its discretion, issue an order to Respondent requiring compliance with the following:

- a. Respondent's application for a certificate to practice as a CPA is **DENIED** at this time, subject to the right to reapply as provided below.
- b. Respondent may not reapply for a certificate to practice as a CPA until May 1, 2014. Upon reapplication, Respondent shall comply with the requirements of Minn. Rule 1105.3800, subp. (F) (1).
- c. Beginning June 30, 2010, and until such time as Respondent reapplies for a certificate to practice, Respondent shall annually complete and report to the Board his completion of at least 40 hours of qualifying Continuing Professional Education for, together with supporting documentation. At the time of reapplication, Respondent shall have completed at least 120 hours of qualifying CPE during the three calendar years immediately preceding his reapplication.
- d. Concurrent with his reapplication Respondent shall pay to the Board a **CIVIL PENALTY** of \$1,000.

e. Should the requirements of paragraphs 9. b., c., d. or f. not be met; or should Respondent violate the terms or conditions of his partially-stayed sentence or supervised parole; or if Respondent re-offends under the criminal sexual conduct or solicitation statutes; or if Respondent is convicted of, pleads guilty or nolo contendere to, or is sentenced as a result of the commission of a felony or crime, an element of which is dishonesty or fraud; or if Respondent is shown to have or admitted to having engaged in acts or practices tending to show that Respondent is incompetent; or engages in conduct reflecting adversely on the Respondent's ability or fitness to provide professional services, whether or not a conviction was obtained or a plea was entered or withheld and whether or not dishonesty or fraud was an element of the conviction, Respondent's reapplication shall be denied.

f. Respondent agrees that the Respondent will not in the future violate any statute, rule or order that the board has issued or is empowered to enforce. Respondent shall immediately notify the Board of any violation of the terms of this stipulation and consent order, or of any statute, rule or order that the board has issued or is empowered to enforce.

10. In accordance with Minn. Stat. § 16D.17 (2008), in the event this order becomes final and Respondent does not comply with the requirements in paragraph 9 d. above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

11. Violation of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 326A.08, subd 5 (a) (1) (2008). If Respondent violates this Stipulation and Consent Order, Minn. Stat. §§ 326A.01-14 (2008) or Minn. Rules ch. 1105 (2009), the Board may impose additional discipline or conditions for licensure pursuant to the following procedure:

a. The Complaint Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Service of notice on Respondent is complete upon mailing the notice to Respondent's last known address. Within ten days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's permit.

The Committee shall have the right, in its sole discretion, to attempt to resolve an alleged violation of the Stipulation and Consent Order through the procedures of Minn. Stat. § 214.10 (2008). Nothing herein shall limit (a) the Committee's right to resume or initiate a proceeding against Respondent pursuant to Minn. Stat. ch. 14 (2008), or (b) the Committee's and the Board's right to initiate an action for injunctive relief and/or issue a Cease and Desist Order pursuant to Minn. Stat. § 326A.08, subds. 3 and 4 (2008), based on a violation of this Stipulation and Consent Order or based on conduct of Respondent before or after the date of this stipulation which is not specifically referred to in paragraph 6 above.

12. Any appropriate court of law may, upon application of the Board, enter its decree enforcing the order of the Board.


13. Respondent hereby acknowledges that the Respondent has read, understands, and agrees to this Stipulation and Consent Order and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Respondent acknowledges that the Respondent is fully aware that the Stipulation and Consent Order must be approved by the Board. The Board may either approve the Stipulation and Consent Order as proposed, approve the order subject to specified change, or reject it. If the changes are unacceptable to Respondent or the Board rejects the stipulation, it will be of no effect except as specified herein.

14. This Stipulation and Consent Order is public data pursuant to Minn. Stat. § 13.41, subd 4. (2008).

15. This Stipulation contains the entire agreement between the parties. Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.


16. If approved by the Board, a copy of this Stipulation and Consent Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed.

CONSENT:


Daniel J. Fuhrman
Respondent

Dated: January 22, 2010

BOARD OF ACCOUNTANCY
COMPLAINT COMMITTEE


Michael M. Vekich, CPA
Chair

Dated: 2/8, 2010

Gregory P. Huwe
Gregory P. Huwe
Assistant Attorney General

Dated: Feb. 4, 2010

ORDER:

Upon consideration of the foregoing stipulation and based upon all the files, records and proceedings, herein,

1. **IT IS HEREBY ORDERED** that Respondent's application for a certified public accountant certificate is DENIED, and

2. **IT IS FURTHER ORDERED** that all other terms of this stipulation and consent Order are adopted and implemented this 11th day of February, 2010.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

Neil Lapidus
Neil Lapidus, CPA
Chair