

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
Andrew K Janneke
Certificate No. 05737

STIPULATION AND
CONSENT ORDER
Board File 2009-157-

It is hereby stipulated and agreed by Andrew K Janneke ("Respondent"), 4284 Greenhaven Courtt, Vadnais Heights, Minnesota 55127, and the Complaint Committee ("Committee") of the Minnesota 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 of Conference with the Board of Accountancy's Complaint committee was duly served upon Respondent, receipt of which is hereby acknowledged by Respondent.

2. On September 17 2010, Respondent appeared before the Board's Complaint Committee, composed of Board members Michael M. Vekich, Chair, Neil Lapidus and Robert J. Hyde to discuss allegations made in the notice referenced above. Executive Director, Doreen Frost and Board Investigator, Steven Renville were also present. Gregory P. Huwe, Assistant Attorney General, represented the Board at the conference.

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. ch. 14 (2008). Respondent agrees that upon the *ex parte* application of the Committee, the Board may order the remedy specified in paragraph 7 below. Respondent waives the right to any judicial review of the order by appeal, by writ of certiorari, petition for review, or otherwise.

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,

Minnesota Statutes Chapter 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 a contested case hearing is initiated by the Committee pursuant to Minn. Stat. ch. 14 (2008), Respondent agrees not to object to the Board's initiation of the hearing and it hearing the case on the basis that the Board has become disqualified because of to 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 2 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 has been disciplined by American Institute of Certified Public Accountants (AICPA) for failure to comply with the AICPA Code of Professional Conduct, Rule 202, 203 and 501. Respondent agreed to a one year suspension from the AICPA and Minnesota Society of Certified Public Accountant's membership and to complete sixty hours of Continuing Professional Education, as specified in the attached AICPA Agreement dated November 9, 2009.

b. Respondent committed unprofessional acts resulting in Respondent's or firm's right to practice before any federal, state, or other government agency revoked, suspended, canceled, limited, or not renewed for cause, or has committed unprofessional acts for which the person or firm was otherwise disciplined or sanctioned, including, but not limited to, being ordered to or agreeing to cease and desist from prescribed conduct.

c. Respondent violated Minnesota Statutes §§ 326A.08, Subd 5(a)(7) (2008).

STATUTES

7. Respondent admits that the facts and conduct specified in paragraph 2 above constitute violations of Minn. Stat. ch. 326A (2008) and Minn. Rule 1105 (2009) and 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 take disciplinary action against Respondent's 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.

REMEDY

9. Upon this Stipulation and record, as set forth in paragraph 4 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 certificate is **CENSURED AND REPRIMANDED**.
- b. Concurrent with the submission of this Stipulation and Consent Order to the Board for its approval Respondent shall pay a **CIVIL PENALTY** of \$2,000.00.
- c. Respondent will provide the Board with proof of having completed sixty (60) hours of continuing professional education as specified in the AICPA Settlement Agreement dated November 9, 2009 and attached as Exhibit A.
- d. Respondent agrees that Respondent will not violate in the future 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 condition in paragraph 9(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment with out further notice or additional proceedings.

11. Violations of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 326A.08, subd. 5 (a)(1) and (2) (2008). If Respondent violates this Stipulation and Consent Order, Minn. Stat. §§ 326A.01-14 (2008) or Minn. R. Ch. 1105 (2009), the Board may impose additional discipline 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 seven 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 certificate. The Committee shall have the right 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 initiate a proceeding against Respondent pursuant to Minn. Stat. ch. 14 (2008), or (b) the Committee's and the Board's right to temporarily suspend Respondent's certificate pursuant to Minn. Stat. § 326A.08, subd. 6 (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 may, upon application of the Board, enter its decree enforcing the order of the Board.

13. Respondent hereby acknowledges that he 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 he is fully aware that the Stipulation and Consent Order must be approved by the Board. The Board may 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. 5 (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 by the Board chair or designee.

CONSENT:

Andrew K. Janneke
ANDREW K JANNEKE, CPA
Respondent

Dated: October 13, 2010

Counsel for Respondent

**BOARD OF ACCOUNTANCY
COMPLAINT COMMITTEE**

Michael M. Vekich
MICHAEL M. VEKICH, CPA
Chair

Dated: 10/22, 2010

Gregory P. Huwe
GREGORY P. HUWE
Assistant Attorney General

Dated: 10/22, 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 certified public accountant certificate is Censured and Reprimanded, and

2. **IT IS FURTHER ORDERED** that Respondent shall provide the Board with proof of his completion of sixty (60) hours of approved continuing professional education as identified in the Settlement Agreement with the AICPA dated November 9, 2009.

3. **IT IS FURTHER ORDERED** that concurrent with the submission of this Stipulation and Consent Order to the Board for its approval Respondent shall pay a CIVIL PENALTY of \$2,000.00.

4. **IT IS FURTHER ORDERED** that all other terms of this stipulation and consent Order are adopted and implemented this 19th day of November, 2010.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY



NEIL LAPIDUS, CPA
Chair

AFFIDAVIT OF SERVICE BY U.S. MAIL

RE: In the Matter of Andrew K Janneke, CPA Certificate No. 05737

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Steve Renville, being first duly sworn, deposes and says:

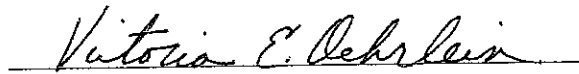
That at the City of St. Paul, County of Ramsey and State of Minnesota, on November 29, 2010, he caused to be served a copy of an executed **STIPULATION AND CONSENT ORDER**, by depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped, with prepaid first class postage and addressed to:

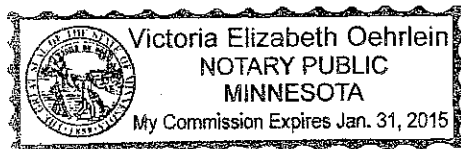
PERSONAL AND CONFIDENTIAL

Andrew K Janneke
4284 Greenhaven Ct
Vadnais Heights, MN 55127


Steven Renville

Subscribed and sworn to before me
on November 29, 2010.


NOTARY PUBLIC



Member

Andrew K. Janneke of Vadnais Heights, MN, effective July 7, 2009

Information came to the attention of the Ethics Charging Authority ("ECA") (comprised of the AICPA Professional Ethics Executive Committee and the Minnesota State Society of CPAs ("MNSCPA") Professional Ethics Committee), alleging a potential disciplinary matter with respect to Andrew K. Janneke's performance of professional services in the audit of the financial statements of an employee benefit plan ("Plan") as of and for the year ended April 30, 2001.

After an investigation, Mr. Janneke ("the auditor"), with the firm of Olsen.Thielen, Certified Public Accountants and Consultants, was charged with violating the AICPA and the MNSCPA *Codes of Professional Conduct* as follows:

Rule 202 - Compliance with Standards

1. The auditor failed to gain an understanding of the internal controls that relate to the payroll and personnel functions of the plan sponsors. No consideration was given to the information (computer) system of the plan sponsors. (SAS 55, AEBP ¶ 6.01)
2. Although a lack of segregation of duties was considered a reportable condition and a material weakness in the Independent Auditors' Report on Internal Control issued, as a result of the audit, with a date of June 26, 2001, the auditor failed to document a concern with segregation of duties in the working papers. In addition, the working papers failed to document the impact of the lack of segregation of duties on the audit approach. (SAS 55, AEBP ¶ 6.01)
3. The auditor failed to obtain a sufficient understanding of the controls at the service organizations and the effectiveness of such controls. Specifically, the auditor failed to obtain a SAS 70 report for several of the service organizations used by the Plan. Additionally, the auditor failed to document the relationship of the service organizations to the Fund, the control procedures in place at the service organizations, how the

internal control structures of these service organizations were considered and how the information (computer) system of these entities relates to the Fund. Further, the auditor did not examine the original service provider statements or other evidence of service rendered. (AEBP ¶ 6.07, 9.03a, 9.04)

4. The auditor did not document the authenticity of a fax obtained as evidence of the existence of the Fund's investments. (SAS 41, AU ¶338 AEBP ¶ 6.27)
5. The auditor failed to obtain sufficient competent evidential matter to ensure investments were properly valued and investment transactions were accurately recorded. Specifically, the auditor did not test investment transactions by examining documentation for historical cost or selling price, quantity, identification, and dates of acquisition and disposal of the investments nor did the auditor compare the prices at which purchases and sales were recorded with published market price ranges on the trade dates. Additionally, the auditor did not test the fair value of investments by reference to market quotations or other evidence of fair value. (SAS No. 31, AEBP ¶ 7.15e & h)
6. The auditor failed to obtain sufficient competent evidential matter to determine whether contributions were accurately valued and determined in accordance with the provisions of the plan. Specifically, the auditor did not test the contribution reports to determine that the reports were arithmetically correct and that the contribution rate specified in the plan was used nor did the auditor test postings from the employer contribution reports to the participant employee or employer record and from participant records to contribution reports. Additionally, the auditor did not agree contributions received to the Fund's cash receipts records and bank statements. (SAS No. 31, AEBP ¶ 8.03c-e)
7. The auditor failed to obtain sufficient competent evidential matter to verify the accuracy of participant data and participant eligibility. Specifically, the auditor failed to test for compliance with the plan instrument that a participant must work a minimum of 300 hours per quarter, and failed to test the accuracy of computer reports used in the participants' accumulated eligibility (hour bank liability) calculation. (SAS No. 31, AEBP ¶ 10.02, 10.06-10.15, 10.36)
8. The auditor failed to ensure the population of benefit payments, from which she chose a sample for testing, was complete. Specifically, the check register used to select health care payments was not agreed to the entire listing of payments made for the year; nor was the check register agreed to the general ledger or trial balance. The auditor failed to obtain the entire listing of payments. Lastly, the auditor failed to review the criteria used by the plan to record benefit payments. (SAS 39, AU ¶ 350.24, AEBP ¶ 9.03a & f, 10.34a)
9. Computer reports used in the stop loss calculation and in the calculation of IBNR for health care and dental were relied upon without being tested. (AEBP ¶ 10.15c and AEBP ¶ 10.34)
10. The auditor relied upon actuarial information without consideration by the auditor of the professional qualifications, reputation and independence of the actuary. (SAS No. 73, AEBP ¶ 10.21, 10.22, 10.23a, 10.23d)
11. Sufficient procedures were not performed to determine whether subsequent events existed that required disclosure or adjustment of the financial statements. (SAS 1, AU ¶560, AEBP ¶12.12)
12. The auditor failed to obtain sufficient competent evidential matter by failing to verify the authenticity of a faxed confirmation from the Plan's actuary. (SAS No. 31, AEBP ¶ 10.24, 10.38)
13. The auditor failed to obtain sufficient competent evidential matter that the actuarial assumptions and methods used for 2001 were reasonable. The detailed census data submitted to the actuary was not tested for reliability nor was it tested for completeness. The auditor also did not consider the impact of incorrect data provided to the actuary on the audited financial statements. (AEBP ¶ 10.11a, 10.11b, 10.16, 10.22, 10.23b, 10.23e, 10.23f)
14. The auditor did not document why participant data, investments and related investment income were not considered significant audit areas. (SAS 41, AU ¶338)
15. The auditor did not properly document the basis for their conclusions about assessing the level of control risk below maximum. (SAS 55, AEBP ¶ 6.17) There were inconsistencies in the workpapers related to the calculation of the sample sizes and the development of appropriate audit procedures. (SAS 39, AU ¶350)

16. The auditor tested claim payments by relying on the internal controls. The testing that was done of the internal controls in the claims payment area was not appropriate, as the testing was substantive in nature. In addition the auditor did not document the internal controls related to claim payments. (SAS 55, AEBP ¶ 6.01, 6.17)
17. The auditor did not obtain sufficient competent evidential matter in the areas of dental claims paid and IBNR, nor was there documentation as to why procedures in this area were omitted. (SAS 41, AU ¶338)
18. The auditor did not document how they complied with EBSA's rules on independence with regard to the calculations they helped to prepare for the participants' accumulated eligibility credit and the claims payable. (IBNR) (SAS 41, AU ¶ 338)
19. The auditor did not review the criteria used by the Fund in accruing employer contributions receivable and determining that the accruals had been recorded in accordance with generally accepted accounting principles. (AEBP ¶ 8.03g)
20. The auditor did not modify the audit report for the departures from generally accepted accounting principles, as set forth under Rule 203.

Rule 203 – Accounting Principles

1. The notes to the financial statements do not disclose the nature of the relationship between the Fund and Benefits Incorporated, the Plan's administrator. (FAS 57, ¶ 2)
2. Note 2 to the financial statement states "Investments are recorded at fair value" but does not disclose how fair value was determined. (AEBP ¶ 4.30)
3. The financial statements as originally issued had no employer contributions receivable recorded as required. (AEBP ¶2.15)
4. The liability for dental claims paid in April 2001 by service providers was not recorded. (AICPA Audit and Accounting Guide, Audits of Employee Benefit Plans ("AEBP") ¶ 10.34b)

Rule 501 – Acts Discreditable, Interpretation 501-5 Failure to Follow Requirements of Governmental Bodies, Commissions, or Other Regulatory Agencies

Interpretation 501-5 Failure to Follow Requirements of Governmental Bodies, Commissions, or Other Regulatory Agencies

The "Assets Held for Investment" schedule did not contain information required by the U.S. Department of Labor's Employee Benefits Security Administration (DOL regulation 29 CFR2520.103-10). Specifically, the schedule did not include the rate of interest as required by column (c).

Agreement

In consideration of the ECA forgoing further investigation of Mr. Janneke's conduct as described above and in consideration of the ECA forgoing any further proceedings in the matter, Mr. Janneke agrees as follows:

- a. To waive his rights to a hearing under AICPA bylaws section 7.4 and Article XIV of the MNSCPA bylaws.
- b. To neither admit nor deny the above specified charges.
- c. To comply immediately with professional standards applicable to the professional services he performs and to submit evidence of such compliance.
- d. To a one-year suspension from membership in the AICPA and MNSCPA.
- e. To complete sixty hours of specified continuing professional education (CPE) courses within eighteen months of the effective date of this agreement and to submit evidence of satisfactory completion (e.g., attendance sheets, course completion certificates, etc.):

Small Business Accounting and Auditing Update	20 hours
Audit Workpapers, Forms and Checklists: Avoid the Documentation Trap	10 hours
*Employee Benefit Plans: Audit and Accounting Essentials	12 hours
*SAS 70 Reports and Employee Benefit Plans	6 hours
Internal Control Essentials for Financial Managers, Accountants and Auditors (formerly Internal Partner's Audit Engagement Documentation and Review	<u>9 hours</u>
TOTAL	73 hours

- f. * If he's no longer performing Employee Benefit Plan audits, Mr. Janneke may substitute this CPE with CPE of his choice that meets the needs of his current practice and that is pre-approved by the Ethics Division.
- g. To submit six months after the completion of the sixty hours of CPE, a list of the highest level (audit, review, compilation) of engagements that he performed in the period between the date of completion of the CPE courses and the end of the six-month period following completion of the courses. The following information should be included regarding the engagements listed: number of hours spent on the engagement; level of professional services rendered; type of organization; and if it was an initial engagement. The AICPA Technical Standards Subcommittee ("Subcommittee") will select one engagement for review. He will be informed of this selection and will be asked to submit a copy of the report, the financial statements, and working papers related to that engagement for a review by the Subcommittee.
After an initial review of such report, financial statements, and working papers, the Subcommittee may decide he has substantially complied with professional standards and close this matter. Or, the Subcommittee may decide an ethics investigation of the engagement he submitted is warranted. If at the conclusion of the investigation the Subcommittee finds that professional standards have in fact been violated, the Subcommittee may refer the matter to the trial board for a hearing or take such other action as it deems appropriate.
- h. To be precluded from performing peer reviews until all terms and conditions of the settlement agreement are completed, and he agrees to submit a copy of this agreement to the AICPA Peer Review Program so that they can monitor his compliance with this requirement.
- i. That the ECA shall publish his name, the firm's name, the charges, and the terms of this settlement agreement.
- j. That the ECA shall monitor his compliance with the terms of this settlement agreement and initiate an investigation where the ECA finds there has been noncompliance.