

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

In the Matter of Daniel G. Kelly

**STIPULATION AND
CONSENT ORDER**

Certificate No. 12926

Board File No. 2008-209

It is hereby stipulated and agreed by Daniel G. Kelly ("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 August 17, 2009, Respondent appeared at a prehearing conference before Administrative Law Judge Manuel J. Cervantes to discuss allegations made in the notice referenced above. Gregory P. Huwe, Assistant Attorney General, represented the Board at the conference. Respondent agreed to appear at the September 4, 2009 meeting of the Committee to discuss resolving the matter by means of a Stipulation and Consent Order. The terms herein were agreed upon during subsequent discussions between Respondent and the Committee.
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 9 below. Respondent waives the right to any judicial review of the order by appeal, by writ of certiorari, or otherwise.

Although Respondent was reminded 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 July 7, 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 agrees 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 failed to comply with the Board's Continuing Professional Education (CPE) rules by failing to report and provide proof of completion of 120 hours of mandatory CPE during the years ended June 30, 2005, June 30, 2006, and June 30, 2007.

b. Respondent thereby violated Minn. Stat. §§ 326A.04, subd. 2 (2008), 326A.08, subd. 5(a)(8) (2008), and Minn. R. 1105.2500B, 1105.3000, and 1105.7800.

c. Respondent's active certificate expired on December 31, 2008, and Respondent failed to renew his CPA certificate in violation of Minn. Stat. § 326A.04 (2008).

d. On March 23, 2009, the Board served Respondent with a Notice of Conference with the Complaint Committee, scheduled for April 13, 2009. Respondent failed to appear at the conference.

e. Respondent failed to respond to communications from the Board, in violation of Minn. R. 1105.1200 and failed to cooperate with an investigation of the Board, in violation of Minn. R. 1105.1300.

STATUTES

7. 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 (2007) 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 permit.

8. This Stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by resuming or 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

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 and require him to comply with the following:

9. a. Respondent shall **SURRENDER** to the board his certificate number 12926 to practice as a certified public accountant. Surrender shall be accomplished by delivering personally or by certified mail said certificate to Doreen Frost, Executive Director, Minnesota Board of Accountancy, 85 East Seventh Place, suite 125, St. Paul, Minnesota 55101, within five days after receipt by respondent of the attached order issued by the board and signed by its authorized representative.

b. Respondent shall pay late processing fees of **\$1,100.00** concurrent with his submission of this Stipulation and Consent Order for Board approval.

c. Unless reinstated:

1) respondent shall not perform audits or reviews;

2) respondent shall not hold himself out to the public as a certified public accountant; and

3) respondent shall remove the designation of being a certified public accountant from all advertisements, business forms, listings, signage, and other places in which the designation is used, whether electronically, in print, or by any other medium.

d. Any reinstatement of Respondent's certificate shall be as provided in Minn. Stat. § 326A.09 (2008).

e. Any reinstatement of Respondent's certificate shall be further conditioned upon:

1) respondent's payment of civil penalties in the amount of **\$2,000.00**;

2) respondent's completion and reporting, with proof of completion, of **120 hours of CPE** completed during the three years immediately preceding Respondent's petition for reinstatement; and

3) respondent's completion and reporting, with proof of completion, of an additional **240 hours of CPE** for the years ending June 30, 2005 through June 30, 2010.

10. Any appropriate court may, upon application of the board, enter its decree enforcing the order of the board.

11. 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 either approve the stipulation and consent order

as proposed, approve the order subject to specified change, or reject it. If the changes are acceptable to respondent, the stipulation will take effect and the order as modified will be issued. If the changes are unacceptable to respondent or the board rejects the stipulation, it will be of no effect except as specified herein.

12. Violation of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 326A.08, subd. 5(1) (2008). If Respondent violates this Stipulation and Consent Order, Minn. Stat. §§ 326A.01-.14 (2008) or Minn. Rules ch. 1105 (2007), the Board may impose additional discipline pursuant to the following procedure:

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.

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.

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, 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 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.

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

14. 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.

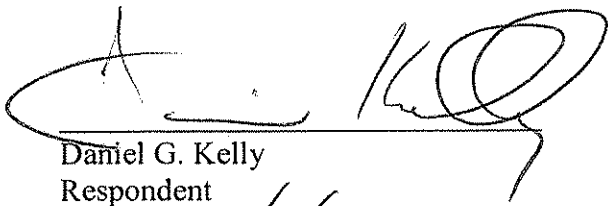
15. This Stipulation and Consent Order is public data pursuant to Minn. Stat. § 13.41, subd. 4 (2008).

16. 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.


17. 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

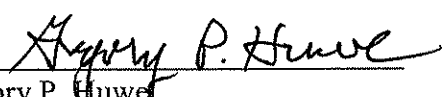
BOARD OF ACCOUNTANCY


Daniel G. Kelly
Respondent

Dated: 11/6/, 2009

COMPLAINT COMMITTEE

Michael M. Vekich, CPA
Chair

Dated: 1/11, 20~~09~~¹⁰


Gregory P. Huwe
Assistant Attorney General

Dated: 1/11, 2009

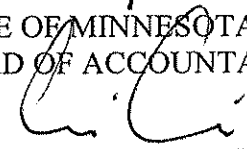
ORDER

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 SURRENDERED, and

2. **IT IS FURTHER ORDERED** that all other terms of this stipulation and consent Order are adopted and implemented this 1/13 day of January, 2009.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY


Neil Lapidus
Vice-Chair