

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
David John McKee
CPA Certificate No. 16934

STIPULATION AND
CONSENT ORDER
Board File 2012-218

The Minnesota Board of Accountancy ("Board") is authorized pursuant to Minnesota Statutes Section 214.10 (2010); Minnesota Statutes section 326A.02, subdivisions 4 and 6 (2010); and Minnesota Statutes section 326A.08, subdivision 1 (2010) to review complaints against certified public accountants and to take disciplinary action whenever appropriate.

The Board received information concerning David John McKee, 12917 Highclere Drive, Burnsville, Minnesota 55337 ("Respondent"). The Board's Complaint Committee ("Committee") reviewed that information.

It is hereby stipulated and agreed by Respondent and the Committee 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. 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 Minnesota Statutes Chapter 14 (2010), and to dispute any civil penalty imposed by this Stipulation. Respondent agrees that upon the *ex parte* application of the Committee, without notice to or appearance by Respondent, 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.

2. 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 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

3. In the event the Board in its discretion does not approve this Stipulation or a lesser remedy than specified herein, 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 Minnesota Statutes Chapter 14 (2010), 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 its review and consideration of this Stipulation or of any records relating hereto.

FACTS

4. This Stipulation is based upon the following facts. 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. The Board issued a Certified Public Accountant license to Respondent on July 1, 2006.

b. Respondent's Certified Public Accountant certificate expired on December 31, 2008, and the Respondent failed to renew his certificate for the years 2009 through 2014, or notify the Board that the Respondent was electing exemption from renewal under Minnesota Statutes section 326A.04, subdivision 2 (b) (2010).

Respondent's certificate was revoked pursuant to Minnesota Statutes section 326A.04, subdivision 11, by a Board Order issued on May 13, 2011.

c. Respondent admits that the facts and conduct specified in paragraphs 4a. and 4b. above constitute violations of Minnesota Statutes section 326A.08, subdivision 5(a) (1) (2010) and Minnesota Rules part 1105.7800 D. (2011), are sufficient grounds for the remedy specified in paragraph 7 below, and that proof at hearing of any one or more of the allegations set forth would empower the Board to take disciplinary action pursuant to Minnesota Statutes section 326A.08 (2010) and, pursuant to Minnesota Statutes section 326A.09 (2010) and Minnesota Rules part 1105.6200.B. (2011), set terms and conditions for the reinstatement of Respondent's certificate.

5. 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

6. Upon this Stipulation and record, as set forth in paragraphs 2 and 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. Upon its reinstatement, pursuant to the terms and conditions set forth below, Respondent's CPA certificate is **CENSURED** and **REPRIMANDED**.

b. Concurrent with the submission of this Stipulation and Consent Order to the Committee for the Board's approval, Respondent shall pay to the Board the total sum of \$995.00, consisting of:

1. A CIVIL PENALTY of \$750.00,
2. A \$60.00 Inactive Certificate Renewal Fee for the years 2009 through 2014 at \$10.00 per year,
3. A \$150.00 Annual Delinquency Fee for the years 2009, 2010 and 2012 at \$50.00 per year,
4. A \$15.00 Licensing Surcharge Fee for the years 2009, 2010 and 2012 at \$5.00 per year and
5. A \$20.00 Reinstatement Application Fee.

c. Concurrent with the submission of this Stipulation and Consent Order to the Committee for the Board's approval, Respondent shall apply for an inactive CPA certificate. During the time period that Respondent holds an inactive CPA certificate, Respondent shall not engage in activities requiring an active CPA certificate in this State, including but not limited to the performance of attest services, nor shall Respondent hold out to the public in this State in any manner so as to suggest that the Respondent holds an active CPA certificate. Respondent shall comply with Minnesota Statutes section 326A.04, subdivision 4 (2010).

7. Violations of this Stipulation and Consent Order shall be considered a violation of Minnesota Statutes section 326A.08, subdivision 5 (a) (1) and (8) (2010). If Respondent violates this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Complaint Committee shall schedule a hearing before the Board. At least thirty (30) 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 fourteen (14) 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 Committee may submit affidavits responding to any affidavits submitted by Respondent. 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 Minnesota Statutes Section 214.10 (2010). Nothing herein shall limit (a) the Committee's right to initiate a proceeding against Respondent pursuant to Minnesota Statutes Chapter 14 (2010), or (b) the Committee's and the Board's right to temporarily suspend Respondent's certificate pursuant to Minnesota Statutes section 326A.08, subdivision 6 (2010), 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 4 above.

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

9. Respondent hereby acknowledges that he has read, understands, and agrees to this Stipulation and Consent Order and is freely and voluntarily signing 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.

10. Upon approval by the Board and execution by the Board Chair or the Chair's designee, this Stipulation and Consent Order is public data pursuant to Minnesota Statutes section 13.41, subdivision 5 (2010).

11. 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.

12. Respondent is aware that Respondent may choose to be represented by legal counsel in this matter. Respondent knowingly waived legal representation.


13. 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 of the Chair.

CONSENT:

BOARD OF ACCOUNTANCY
COMPLAINT COMMITTEE



DAVID JOHN MCKEE
Respondent



~~KATHLEEN K. MOONEY, CPA~~
~~Chair~~ Robert P. Saunders, CPA

Dated: June 9, 2012

Dated: 7-16, 2012

ORDER:

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

1. **IT IS HEREBY ORDERED** that all other terms of this Stipulation and Consent Order are adopted and implemented this 16th day of July, 2012.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY



MICHAEL M. VEKICH, CPA
Chair

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
David John McKee
CPA Certificate No. 16934

ORDER TO REINSTATE
Board File 2012-218

Based upon the request of David John McKee and all the terms and conditions in the Stipulation and Consent Order issued by the Board on this same date, the Board issues the following **ORDER**.

1. The Board's Order revoking David John McKee's Certified Public Accountant (CPA) Certificate number 16934, issued on May 13, 2011, is hereby **RESCINDED** and shall have no further effect.
2. David John McKee's Certified Public Accountant (CPA) Certificate number 16934 is **REINSTATED**.

Dated: 7/16, 2012

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY


MICHAEL M. VEKICH, CPA
Chair

