

**STATE OF MINNESOTA
BOARD OF ACCOUNTANCY**

In the Matter of Certified Public Accountant
Certificate of Jay Charles Johnson

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

CPA Certificate No. 08374

The above-entitled matter came on for a prehearing conference at the Office of Administrative Hearings before Administrative Law Judge Stephen D. Swanson ("ALJ") on September 4, 2014. Michele M. Owen, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Complaint Committee of the Minnesota Board of Accountancy ("Complaint Committee"). Jay Charles Johnson ("Respondent") did not appear, nor did anyone appear on his behalf. On September 26, 2014, the ALJ issued Findings of Fact, Conclusions, and Recommendation Upon Default ("Recommendation").

On October 10, 2014, the Minnesota Board of Accountancy ("Board") informed the parties of their right to file exceptions and argument to the Recommendation on or before November 14, 2014. The Complaint Committee served and filed its submission on November 14, 2014; however, no written arguments or exceptions were received from Respondent. This matter came before the Board at its regularly scheduled meeting on December 5, 2014. Christopher M. Kaisershot, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101, was present to advise the Board.

Based on all the files, records, and proceedings herein, the Board hereby issues the following Findings of Fact, Conclusions of Law, and Order:

STATEMENT OF THE ISSUES

The issues in this contested case proceeding are whether the Board should discipline Respondent because:

1. Respondent failed to provide documentation to substantiate the Continuing Professional Education (“CPE”) hours he reported to the Board for the years ending June 30, 2010, June 30, 2011, and June 30, 2012, as requested by the Board’s CPE Audit, in violation of Minn. Stat. §§ 326A.04, subd. 4 and 326A.08, subd. 5(a)(1); and Minn. R. 1105.3000, 1105.3200, 1105.5600, subp. 1.C, and 1105.7800.B;

2. Respondent failed to cooperate with the Board by not responding to communications from the Board and by failing to appear at a conference with the Complaint Committee, in violation of Minn. Stat. § 326A.08, subd. 5(a)(1) and Minn. R. 1105.1200 and 1105.1300; and

3. Respondent’s conduct constituted grounds justifying the Board to impose disciplinary action against Respondent’s CPA certificate, pursuant to Minn. Stat. § 326A.08, subd. 5(a)(1).

FINDINGS OF FACT

1. The Board hereby adopts and incorporates as its own the Findings in the Recommendation, which is attached hereto and incorporated herein by reference.¹

2. On July 31, 2014, the Complaint Committee served a Notice of and Order for Hearing and Prehearing Conference (“Notice and Order for Hearing”) upon Respondent. The

¹ Pursuant to Minn. Stat. §§ 13.41, subd. 5, and 326A.08, subd. 2 (2012), the Recommendation is now public as a matter of law.

Notice and Order for Hearing was sent to Respondent's last known address on file with the Board.

3. Minn. R. 1105.1100 (2013) requires that each licensee or registrant notify the Board with a current address and telephone number and advise the Board of any changes of address or telephone numbers within 30 days.

4. Respondent failed to file a Notice of Appearance with the ALJ, failed to appear at the September 4, 2014 prehearing conference, and failed to contact the ALJ about requesting a continuance. In addition, Respondent did not file any pleadings in opposition to the Complaint Committee's default motion.

5. Respondent is in default in this proceeding and, pursuant to Minn. R. 1400.6000 (2013), the allegations in the Notice and Order for Hearing are hereby taken as true.

6. Any Conclusions which should properly be termed Findings of Fact are hereby adopted as such.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS

1. The Board hereby adopts and incorporates as its own the Conclusions in the Recommendation.

2. The Board has jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 326A.02, subd. 4 (2012).

3. The Complaint Committee gave Respondent timely and proper notice in this matter and has complied with all relevant substantive and procedural requirements of law and rules.

4. Respondent violated Minn. Stat. §§ 326A.04, subd. 4, and 326A.08, subd. 5(a)(1), and Minn. R. 1105.3000, 1105.3200, 1105.5600, subp. 1.C(5), and 1105.7800.B.

5. Any Findings herein which should properly be termed Conclusions are hereby adopted as such.

6. The following Order is in the public interest.

Based on the foregoing Findings of Fact and Conclusions, the Board makes the following:

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §§ 326A.08, subds. 5 and 7, and 326A.09 (2012), as follows:

1. Respondent's Certified Public Accountant Certificate, No. 08374, is **SUSPENDED** from the date of this Order until as Respondent: (a) provides documentation satisfactory to the Board of having completed all of the 120 hours of continuing professional education required for the years ending June 30, 2010, June 30, 2011 and June 30, 2012; (b) pays the \$4,000 civil penalty imposed by ¶ 3 herein; and (c) provides documentation satisfactory to the Board of having successfully completed 8 hours of courses in professional ethics which have been approved in advance by the Complaint Committee. Respondent shall not use these 8 hours as part of the continuing education hours required for his CPA certificate reinstatement or thereafter, should his CPA certificate eventually be reinstated.

2. Respondent shall not offer to perform or perform services required by law to be performed by a Certified Public Accountant as set forth in Minn. Stat. §§ 326A.01-326A.14 (2012) and Minn. R. ch. 1105 (2013). Moreover, Respondent shall not use the title "Certified Public Accountant" or the abbreviation "CPA" in connection with his name, nor shall

Respondent hold himself out as a Certified Public Accountant or CPA in any manner in the State of Minnesota.

3. Respondent **SHALL PAY** a \$4,000 civil penalty to the Board within sixty days of the date of this Order.

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 16D.17 (2012), the Board may file and enforce the civil penalty imposed by this Order as a judgment against Respondent in district court without further notice or additional proceedings. In addition, pursuant to Minn. Stat. § 16D.13 (2012), Respondent is hereby notified that 30 days after the date of this Consent Order, simple interest computed in accordance with Minn. Stat. § 16D.13, subd. 2 (2012) will begin to accrue on the civil penalty imposed against Respondent.

Dated this 15 day of December, 2014.

**STATE OF MINNESOTA BOARD OF
ACCOUNTANCY**



ROBERT P. SAUNDERS, CPA
Chair, Minnesota Board of Accountancy



THIS DOCUMENT IS NOT PUBLIC

OAH 140100-31718

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of Jay Charles Johnson

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
UPON DEFAULT**

This matter came on for a Prehearing Conference before Administrative Law Judge Stephen D. Swanson on September 4, 2014.

Michele M. Owen, Assistant Attorney General, appeared on behalf of the Minnesota Board of Accountancy (Board). There was no appearance by, or on behalf of Respondent Jay Charles Johnson (Respondent).

STATEMENT OF THE ISSUES

1. Whether Respondent failed to comply with the Board's Continuing Professional Education (CPE) Audit, in violation of Minn. Stat. §§ 326A.04, sub. 4 and 326A.08, sub. 5(a)(1); and Minn. R. 1105.3000, 1105.3200, 1105.5600, subp. 1.C, and 1105.7800.B.

2. Whether Respondent failed to meet the Board's CPE requirements as he has not provided any documentation to substantiate the CPE hours he reported to the Board for the years ending June 30, 2010, June 30, 2011, and June 30, 2012, in violation of Minn. Stat. §§ 326A.04, sub. 4 and 326A.08, subd. 5 (a)(1); and Minn. R. 1105.3000, 1105.3200, 1105.5600, subp. 1.C(5), and 1105.7800.B.

3. Whether Respondent failed to cooperate by not responding to communications from the Board and by failing to appear at a conference with the Complaint Committee, in violation of Minn. Stat. § 326A.08, subd. 5(a)(1) and Minn. R. 1105.1200 and 1105.1300.

4. Whether Respondent's conduct constitutes grounds justifying the Board to take disciplinary action against Respondent.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Respondent is in default and recommends that the allegations in the Notice and Order for Hearing and Prehearing Conference be accepted as true and deemed proven, and that the Board take reasonable and appropriate disciplinary action against the Respondent.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 31, 2014, a Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing) in this matter was mailed to Respondent at his last known address.¹

2. The Notice and Order for Hearing indicated that a telephone prehearing conference would be held in this matter on September 4, 2014, at 9:30 a.m.²

3. In conformity with Minn. R. 1400.5700, the Notice and Order for Hearing requires that any party intending to "appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service" of the Notice and Order for Hearing.³

4. In conformity with Minn. R. 1400.6000, the Notice and Order for Hearing in this matter also includes the following statement:

The Respondent's failure to appear at the telephone prehearing conference by failing to call into the conference as set forth on page 1 above, or Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

5. Respondent did not file a Notice of Appearance with the Administrative Law Judge.

6. No one appeared at the September 4, 2014, prehearing conference on behalf of Respondent. No request was made for a continuance, nor was any communication received by the undersigned from Respondent prior to the September 4, 2014, prehearing conference.

¹ See Attachment A at Affidavit of C.O. Ransom.

² *Id.* at 1.

³ *Id.* at 4.

7. Respondent's failure to appear at the prehearing conference was without consent of the Administrative Law Judge.

8. Because Respondent failed to appear at the prehearing conference, Respondent is in default.

9. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Board of Accountancy and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 326A.02, subd. 4.

2. The Respondent received timely and proper notice of the prehearing conference in this matter when the Minnesota Board of Accountancy sent the Notice and Order for Hearing and Prehearing Conference to last known address.

3. The Minnesota Board of Accountancy has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true and deemed proved. The Administrative Law Judge deems the allegations to be true.

6. Minnesota Statutes section 326A.08 provides that the Minnesota Board of Accountancy may discipline a licensee who engages in conduct that violates the rules or law applicable to a licensee.

7. The Minnesota Board of Accountancy has grounds to take disciplinary action against the Respondent's license based upon the allegations set forth in the Notice and Order for Hearing and Prehearing Conference.

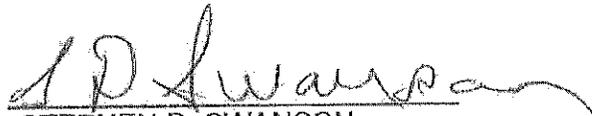
8. An order by the Minnesota Board of Accountancy taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minnesota Board of Accountancy consider the Respondent to be in default, accept the allegations in the Notice and Order for Hearing and Prehearing Conference as true and deemed proven, and take reasonable and appropriate disciplinary action against Jay Charles Johnson.

Dated: September 26, 2014



STEPHEN D. SWANSON
Administrative Law Judge

Reported: Default, not recorded

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Doreen Johnson Frost, Executive Director, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, MN 55101, (telephone 651- 296-7938) to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

OAH Docket No.: 14-0100-31718

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of the Certified Public
Accountant Certificate of Jay Charles
Johnson

NOTICE AND ORDER FOR HEARING
AND PREHEARING CONFERENCE

CPA Certificate No. 08374

TO: Jay Charles Johnson, Passolt, Johnson & Co, Ltd., 5700 Smetana Drive,
Suite 125, Minnetonka, MN 55343 ("Respondent").

RESPONDENT IS HEREBY NOTIFIED that the Board of Accountancy ("Board"), by its Complaint Committee ("Committee"), has initiated this action to determine whether to take disciplinary action against Respondent. Disciplinary action may include the revocation or suspension of Respondent's Certified Public Accountant Certificate ("CPA Certificate") to practice as a Certified Public Accountant in the State of Minnesota, the imposition of limitations or conditions upon his ability to practice, censure or reprimand, and/or other action authorized by Minnesota Statutes sections 214.10, subdivision 2 and 326A.08, subdivisions 5(a) and 7 (2012).

IT IS HEREBY ORDERED that a contested case prehearing conference will be held by telephone on September 4, 2014 at 9:30 a.m. On September 4, 2014 at 9:30 a.m., the parties are directed to:

- (a) Call 1-888-742-5095 and
- (b) When prompted, enter the conference code: 614 677 4895#.

All mail sent to the Administrative Law Judge assigned to this matter should be directed to P.O. Box 64620, St. Paul, MN 55164-0620.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Administrative Law Stephen Swanson. The Administrative Law Judge's legal assistant, Rachel Youness, may be reached at 651-361-7881.

The hearing, which may be scheduled at the prehearing conference, will be conducted under the contested case procedures set out in chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minnesota Rules chapter 1400 (2011) and Minnesota Statutes section 214.10. A copy of these materials may be purchased from the Minnesota Book Store, telephone 651-297-3000, or are available at www.revisor.leg.state.mn.us. Copies of the rules are also available at www.oah.state.mn.us. They generally provide for the procedural rights of the parties, including: rights to

Attachment A

advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examination, and right to purchase a transcript of the record.

The purposes of the prehearing conference include simplifying and narrowing the issues, establishing a discovery schedule, establishing hearing dates and locations, and exploring the possibilities for resolving the issues without the necessity of a hearing.

The attorney for the Complaint Committee of the Board of Accountancy, Michele M. Owen, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101-2134, (651) 757-1322; may be contacted to discuss discovery or informal disposition of this matter pursuant to Minnesota Rules 1400.5900 or discovery pursuant to Minnesota Rules 1400.6700 to 1400.7000 (2011).

Pursuant to Minnesota Statutes section 214.10, the decision to initiate this proceeding was made by the Complaint Committee and not by the Board as a whole. After the hearing, the record and the administrative law judge's recommendations will be forwarded to the Board to make a final decision. Members of the Complaint Committee will not participate in the Board's deliberations in this matter. In addition, the Board will be advised by an attorney other than Michele Owen.

ALLEGATIONS

1. On July 23, 2013, the Board mailed a letter to Respondent at Passolt, Johnson & Company, Ltd., 5700 Smetana Drive, Suite 125, Minnetonka, Minnesota 55343, his last known address on file with the Board, informing him that he had been selected, as part of the Board's Continuing Professional Education ("CPE") annual audit ("CPE Audit"), to document the forty (40) CPE hours that Respondent reported to the Board for each of the three years ending June 30, 2010; June 30, 2011; and June 30, 2012. The Board's letter asked Respondent to provide, no later than August 21, 2013, copies of certificates of completion to substantiate the CPE hours he completed during the three year period under review. The Board's reporting forms were enclosed. Respondent never replied to the CPE Audit letter. The CPE Audit letter was not returned to the Board by the U.S. Post Office. Respondent's failure to comply with the Board's CPE Audit letter by providing the substantiation requested and Respondent's failure to respond to this communication from the Board was in violation of Minnesota Statutes sections 326A.04, subdivision 4 (2012) and 326A.08, subdivision 5(a)(1) (2012); and Minnesota Rules 1105.1200, 1105.3000, 1105.3200, 1105.5600, subpart 1.C (5); and 1105.7800.B. (2011)

2. A complaint file was opened by the Board to investigate why Respondent failed to comply with the CPE Audit. On September 17, 2013, the Board sent Respondent a letter alleging failure to comply with the CPE Audit and failure to respond to Board communications and asked Respondent to provide a written response to the allegations within 30 days. The allegation letter was sent by mail to Respondent at his last known address on file with the Board, listed in paragraph 1 above. Respondent never replied to the September 17, 2013 allegation letter. It was not returned to the Board by the U.S. Post Office.

3. On March 10, 2014, the Board sent Respondent a letter with an enclosed Notice of Conference informing Respondent that he was scheduled to meet with the Committee on April 3, 2014 at 9:00 a.m. at the Board's office to discuss the Committee's concerns and the Notice of Conference referenced the issues listed in the September 17, 2013 allegation letter and asked Respondent to submit a written response to the allegations by March 27, 2014. The Notice of Conference was sent to Respondent at his last known address on file with the Board, listed in paragraph 1 above. The Notice of Conference was not returned to the Board by the U.S. Post Office. Respondent did not reply to the Notice of Conference, nor did he appear before the Committee on April 3, 2014. Respondent's failure to appear before the Committee and failure to respond to the Notice of Conference were in violation of Minnesota Statutes section 326A.08, subdivision 5(a)(1) (2012) and Minnesota Rules 1105.1200 and 1105.1300 (2011).

4. As of the date of this Notice and Order for Hearing and Prehearing Conference, Respondent has not provided to the Board any written substantiation of the CPE hours for the three years ending June 30, 2010, June 30, 2011, and June 30, 2012 that he had reported to the Board.

ISSUES

1. Whether Respondent failed to comply with the Board's Continuing Professional Education (CPE) Audit, in violation of Minnesota Statutes sections 326A.04, subdivision 4 and 326A.08, subdivision 5(a)(1) (2012); and Minnesota Rules 1105.3000, 1105.3200, 1105.5600, subpart 1.C.(5), and 1105.7800.B. (2011).

2. Whether Respondent failed to meet the Board's CPE requirements as he has not provided any documentation to substantiate the CPE hours he reported to the Board for the years ending June 30, 2010, June 30, 2011, and June 30, 2012, in violation of Minnesota Statutes sections 326A.04, subdivision 4 and 326A.08, subdivision 5(a)(1) (2012); and Minnesota Rules 1105.3000, 1105.3200, 1105.5600, subpart 1.C.(5); and 1105.7800.B (2011).

3. Whether Respondent failed to cooperate by not responding to communications from the Board and failed to appear at a conference with the Complaint Committee, in violation of Minnesota Statutes section 326A.08, subdivision 5(a)(1) (2012) and Minnesota Rules 1105.1200 and 1105.1300 (2011).

3. Whether Respondent's conduct constitutes grounds justifying the Board to take disciplinary action against Respondent.

ADDITIONAL NOTICE

1. The Respondent's failure to appear at the telephone prehearing conference by failing to call into the conference as set forth on page 1 above, or Respondent's failure to appear at the hearing may result in a finding that the

Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

2. If any party has good cause for requesting a delay of the telephone prehearing conference or hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the telephone prehearing conference or hearing. A copy of the request must be served on the other party.

3. Any party intending to appear at the telephone prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on Michele M. Owen, the Committee's attorney. A Notice of Appearance form is enclosed.

4. At the telephone prehearing conference and hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2012).

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minnesota Rules 1400.7000 (2011). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us or by calling 651-361-7900.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly. "No matter shall be ordered for mediation if the agency or any party is opposed." Minn. Rule 1400.5950, subp. 3C (2011).

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at www.oah.state.mn.us or by calling (651) 361-7900. **Pursuant to Minnesota Rules 1400.5100, subpart 3a and 1400.5500 (2011), filing may be accomplished by mail, delivery, fax or licensed overnight express mail service. The fax number for the administrative law judge is (651) 539-0300.**

9. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable

accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call (651) 361-7900 (voice) or (651) 361-7878 (TTY).

Dated this 29 day of July, 2014.

COMPLAINT COMMITTEE



DOREEN FROST
Executive Director

Minnesota Board of Accountancy

