

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

In the Matter of  
Brown Smith Wallace, LLC.  
Unlicensed

SETTLEMENT AGREEMENT  
AND  
CEASE AND DESIST ORDER  
Board File 2016-315

TO: Brown Smith Wallace, LLC  
Matthew E. Powell, CPA  
6 Cityplace Drive, Suite 900  
St. Louis, MO 63141

The Minnesota Board of Accountancy ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2016), Minnesota Statutes section 326A.02, subdivisions 4 and 6, and section 326A.08, subdivisions 1 and 4 (2016) to review complaints concerning the unauthorized practice of public accounting and the unauthorized use of the terms "CPA" or "certified public accountant," and to take action pursuant to those statutes whenever appropriate.

The Executive Director of the Board initiated a complaint concerning Brown Smith Wallace, LLC ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that the matter may now be resolved by this Settlement Agreement and Cease and Desist Order.

**SETTLEMENT AGREEMENT**

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. Pursuant to Minnesota Statutes section 326A.08, subdivision 4 (2016), the Board is authorized to issue an order requiring an unlicensed firm to cease and desist from holding itself out as a CPA firm and from offering to perform or performing services that only licensed CPA firms are authorized to perform in

Minnesota. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Settlement Agreement and Cease and Desist Order.

2. Facts. This Settlement Agreement is based upon the following facts:

a. Respondent does not currently hold, nor has it ever held, a Certified Public Accountant ("CPA") Firm Permit in the State of Minnesota issued by the Minnesota Board of Accountancy.

b. It is alleged, based on information received from the United States Department of Labor, that Respondent performed audits, pursuant to the Employee Retirement Income Security Act (ERISA), of the Profit Sharing and Savings Plan("the Plan") for MOM Brands, a business whose corporate headquarters are located in Minnesota.

c. It is alleged that Respondent performed an audit for a client having its headquarters in Minnesota without obtaining a Minnesota CPA Firm Permit to practice, as required by Minnesota Statutes 326A.05, subdivision 1 (a)(4) (2016).

3. Violations. Respondent admits that the facts specified above constitute violations of Minnesota Statutes section 326A.05, subdivision 1(a)(1) and 1(a)(4), and section 326A.10 (d) (2016); and Minnesota Rules 1105.5600, subpart 1.C.(1) (2015) and are sufficient grounds for the action specified below.

4. Enforcement Action. Respondent and the Committee agree that the Board may issue an Order in accordance with the following term(s):

a. Cease and Desist Order. Respondent shall cease and desist from holding out as a CPA firm, and from practicing public accounting in the State of Minnesota until such time as Respondent obtains a CPA firm permit from the Minnesota Board of Accountancy.

- b. Until such time as Respondent obtains a CPA firm permit from the Minnesota Board of Accountancy, Respondent shall not offer to perform or perform services required by law to be performed by a CPA firm as set forth in Minnesota Statutes Chapter 326A (2016) and Minnesota Rules Chapter 1105 (2013).
- c. Until such time as Respondent obtains a CPA firm permit from the Minnesota Board of Accountancy, Respondent shall not use the designations "Certified Public Accountant" nor "CPA" in conjunction with its firm name, nor shall Respondent hold itself out as a CPA firm in any manner in the State of Minnesota.
- d. Respondent shall pay to the Board a CIVIL PENALTY of Two Thousand Dollars (\$2,000.00). Respondent shall submit a Civil Penalty of Two Thousand Dollars (\$2,000.00) by check, payable to the Board, within sixty (60) days of the Board's approval and issuance of this Settlement Agreement and Cease and Desist Order
- e. Respondent shall not violate any statute, rule or order that the Board has issued or is empowered to enforce.

5. Waiver of Respondents' Rights. For the purpose of this Settlement Agreement, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States 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 proceeding pursuant to Minnesota Statutes Chapter 14 (2016). Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order requiring the action specified in paragraph 4 herein. Respondent waives the right to any judicial review of this Settlement Agreement and Cease and Desist Order or the attached Board Order by

appeal, writ of certiorari, or otherwise.

6. Board Rejection of Settlement Agreement and Cease and Desist Order. In the event the Board in its discretion does not approve this Settlement Agreement and Cease and Desist Order, this Settlement Agreement shall be null and void and shall not be used for any purpose by either party hereto. If this Settlement Agreement is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2016), Respondent agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Settlement Agreement and the record.

7. Record. The Settlement Agreement, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Settlement Agreement.

8. Data Classification. Under the Minnesota Government Data Practices Act, this Settlement Agreement is classified as public data upon its issuance by the Board. (Minnesota Statutes Section 13.41, subdivision 5 (2016)). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2016). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of public accounting.

9. Unrelated Violations. This settlement 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 Settlement Agreement and which is not directly related to the specific facts and circumstances set forth herein.

10. Entire Agreement; Authorized Representative. The undersigned representative of Respondent, whose signature appears below, hereby represents and warrants that the undersigned representative has been duly authorized by Respondent to sign this Settlement Agreement and Cease and Desist Order on its behalf, and that s/he has read, understands, and agrees to this Settlement Agreement and Cease and Desist Order and is freely and voluntarily signing it. The Settlement Agreement and Cease and Desist Order contains the entire agreement between the parties. Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

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

12. Service. If approved by the Board, a copy of this Settlement Agreement and Cease and Desist Order shall be served personally or by first class mail on Respondent. The Settlement Agreement shall be effective and deemed issued when it is signed by the Chair of the Board.

RESPONDENT

Anthony J. Calera  
Brown Smith Wallace, LLC  
By: Anthony J. Calera  
Its: Managing Partner

Dated: 28<sup>th</sup> March 2017

SUBSCRIBED and sworn to before me on  
this the 28<sup>th</sup> day of March 2017

Pauline O'Connor  
(Notary Public)



PAULINE O'CONNOR  
My Commission Expires  
March 25, 2018  
St. Louis County  
Commission #14596856

NOTARY SEAL

My Commission Expires: 03/25/2018

COMPLAINT COMMITTEE

Michael M. Vekich  
MICHAEL M. VEKICH, CPA  
Chair

Dated: 4/20/2017

ORDER

Upon consideration of the foregoing Settlement Agreement and based upon all the files, records and proceedings herein, all terms of the Settlement Agreement are approved and hereby issued as an Order of this Board on this the 20<sup>th</sup> day of April, 2017

STATE OF MINNESOTA

BOARD OF ACCOUNTANCY

Gregory S. Steiner  
GREGORY S. STEINER, CPA  
Chair

**AFFIDAVIT OF SERVICE BY MAIL**


RE: Brown Smith Wallace, LLC; Unlicensed

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF RAMSEY    )

Sara Datko, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 24<sup>th</sup> day of April, 2017, she served the attached Settlement Agreement and Cease and Desist Order, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with first class and certified postage prepaid, and addressed to:

Brown Smith Wallace, LLC  
Matthew Powell  
6 Cityplace Drive Suite 900  
St. Louis, Missouri 63141

  
\_\_\_\_\_  
Sara Datko

CERTIFIED MAIL  
Return Receipt Requested  
7016 1370 0001 0084 8765

Subscribed and sworn to before me on  
this the 24<sup>th</sup> day of April, 2017

  
\_\_\_\_\_  
(Notary Public)

