

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

In the Matter of  
Brian A. Herda  
CPA Certificate No. 24511

STIPULATION AND  
CONSENT ORDER  
Board File 2018-188

The Minnesota Board of Accountancy ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2017); Minnesota Statutes section 326A.02, subdivisions 4 and 6 (2017); and Minnesota Statutes section 326A.08, subdivision 1 (2017) to review complaints against certified public accountants and to take disciplinary action whenever appropriate.

The Board received information concerning Brian A. Herda, 14564 Ibis Street Northwest, Andover, Minnesota 55304 ("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 (2017), 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 (2017). 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 (2017), 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 certificate to Respondent on April 14, 2008.

b. Respondent's Certified Public Accountant certificate expired on December 31, 2015, and the Respondent failed to renew the certificate for the 2016 through 2018 renewal cycles, or notify the Board that the Respondent was electing exemption from renewal under Minnesota Statutes section 326A.04, subdivision 2 (b)

(2017). Respondent's certificate was revoked pursuant to Minnesota Statutes section 326A.04, subdivision 11, by a Board Order issued on February 5, 2018.

5. 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) (2017) and Minnesota Rules 1105.7800 D. (2018), 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 (2017) and, pursuant to Minnesota Statutes section 326A.09 (2017) and Minnesota Rules 1105.6200.B. (2018), set terms and conditions for the reinstatement of Respondent's certificate.

6. 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**

7. 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. Respondent shall pay to the Board within sixty (60) days of the Board's approval of the Stipulation and Consent Order, the total sum of \$745.00, consisting of:

1. A CIVIL PENALTY of \$500.00,
2. A \$75.00 Inactive Certificate Renewal Fee for the years 2016 through 2018 at \$25.00 per year,
3. A \$150.00 Annual Delinquency Fee for the years 2016 through 2018 at \$50.00 per year, and
4. 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 (2017).

8. 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.

9. Under the Minnesota Government Data Practices Act, this Stipulation is classified as public data upon its issuance by the Board. (Minnesota Statutes Section 13.41, subdivision 5 (2017)). 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 (2017). 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.

10. 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.

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

12. 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.

13. Pursuant to Minnesota Statutes Section 16D.17 (2017), after ninety (90) days of the Board's approval of this Stipulation and Order, the Board may file and enforce any unpaid portion of the civil penalty imposed by this Order as a judgment against the Respondent in district court without further notice or additional proceedings.

**CONSENT:**

**RESPONDENT**

Brian A Herda  
BRIAN A. HERDA

Dated: May 14th, 2018

SUBSCRIBED and sworn to before me on  
this the 14<sup>th</sup> day of May, 2018.

Lori L. Yalch  
(Notary Public)



My Commission Expires: 1/31/20

**COMPLAINT COMMITTEE**

Sharon A Jensen  
SHARON A. JENSEN, CPA  
Chair

Dated: June 7, 2018

**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 7<sup>th</sup> day of June, 2018.

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

Gregory S Steiner  
GREGORY S. STEINER, CPA  
Chair

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

In the Matter of  
Brian A. Herda  
CPA Certificate No. 24511

ORDER TO REINSTATE  
Board File 2018-188

Based upon the request of Brian A. Herda 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 Brian A. Herda's Certified Public Accountant (CPA) Certificate number 24511, issued on February 5, 2018, is hereby **RESCINDED** and shall have no further effect.
2. Brian A. Herda's Certified Public Accountant (CPA) Certificate number 24511 is **REINSTATED**.

Dated: 6/7, 2018

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

  
\_\_\_\_\_  
GREGORY S. STEINER, CPA  
Chair

AFFIDAVIT OF SERVICE BY MAIL

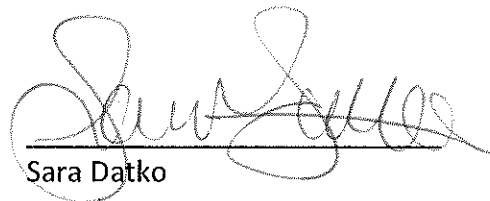
RE: Brian A. Herda; CPA Certificate No. 24511

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 12<sup>th</sup> day of June, 2018, she served the attached Stipulation and Consent Order and Order to Reinstate, 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:

Brian A. Herda  
14564 Ibis Street Northwest  
Andover, Minnesota 55304

  
Sara Datko

CERTIFIED MAIL  
Return Receipt Requested  
7017 3040 0000 1241 2295

Subscribed and sworn to before me on  
this the 12<sup>th</sup> day of June, 2018.

  
(Notary Public)

