

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ELANA MAE MITCHELL
7755 Center Avenue, Suite 1100
Huntington Beach, CA 92647

Certified Public Accountant Certificate No.
CPA 65438

ELANA M. MITCHELL, CPA, INC.
19800 MacArthur, # 300
Irvine, CA 92612

Certified Public Accountancy Corporation
Certificate No. COR 5229

Respondents.

Case No. AL 2009 34

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 25, 2009, Complainant Patti Bowers, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AL 2009 34 against Elana Mae Mitchell, Certified Public Accountant (Respondent Mitchell) and Elana Mae Mitchell, CPA, Inc., (Respondent Firm) before the California Board of Accountancy.

2. On or about December 3, 1993, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. CPA 65438 to Respondent Mitchell. The Certified Public Accountant Certificate expired on February 1, 2007, and has not been renewed.

1 3. On or about February 25, 2003, the California Board of Accountancy issued Certified
2 Public Accountancy Corporation Certificate No. COR 5229 to Respondent Firm. The Certified
3 Public Accountancy Corporation Certificate expired on March 1, 2007, and has not been
4 renewed. Elana Mae Mitchell, holder of Certified Public Accountant Certificate Number 65438,
5 is the sole shareholder in Elana M. Mitchell, CPA, Inc., operating under Certified Public
6 Accountancy Corporation Certificate Number COR 5229.

7 4. On or about September 3, 2009, Joanne Millot, an employee of the Department of
8 Justice, served by Certified and First Class Mail a copy of the Accusation No. AL 2009 34,
9 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
10 sections 11507.5, 11507.6, and 11507.7 to Respondent's addresses of record with the Board. The
11 address of record for Respondent Mitchell was and is 7755 Center Avenue, Suite 1100,
12 Huntington Beach, CA 92647. The address of record for Respondent Firm was and is 19800
13 MacArthur, # 300, Irvine, CA 92612.

14 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

15 5. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c).

17 6. On or about September 23, 2009 the documents served on Respondent Firm were
18 returned by the U.S. Postal Service marked "Attempted, Not Known."

19 7. Business and Professions Code section 118 states, in pertinent part:

20 (b) The suspension, expiration, or forfeiture by operation of law of a license
21 issued by a board in the department, or its suspension, forfeiture, or cancellation by
22 order of the board or by order of a court of law, or its surrender without the written
23 consent of the board, shall not, during any period in which it may be renewed,
24 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the license on any such ground.

25 8. Government Code section 11506 states, in pertinent part:

26 (c) The respondent shall be entitled to a hearing on the merits if the respondent
27 files a notice of defense, and the notice shall be deemed a specific denial of all parts
28 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

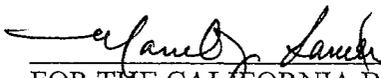
ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 65438 and Certified Public Accountancy Corporation Certificate Number COR 5229 heretofore issued to Respondent Elana Mae Mitchell, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 29, 2010.

It is so ORDERED January 29, 2010



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

80405575.DOC
DOJ docket number:SD2009804507

Attachment:

Exhibit A: Accusation No. AL 2009 34

Exhibit A
Accusation No. AL 2009 34

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD
Deputy Attorney General
4 State Bar No. 110639
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2025
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AL 2009 34

12 **ELANA MAE MITCHELL**
13 **7755 Center Avenue, Suite 1100**
14 **Huntington Beach, CA 92647**

A C C U S A T I O N

15 **Certified Public Accountant Certificate No.**
CPA 65438

16 **ELANA M. MITCHELL, CPA, INC.**
17 **19800 MacArthur, # 300**
Irvine, CA 92612

18 **Certified Public Accountancy Corporation**
19 **Certificate No. COR 5229**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
25 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

26 2. On or about December 3, 1993, the California Board of Accountancy issued Certified
27 Public Accountant (CPA) Certificate Number 65438 to Elana Mae Mitchell (Respondent
28 Mitchell).

1 The CPA Certificate was expired and not valid during the period February 1, 1995 through
2 May 21, 1995, due to Respondent Mitchell's failure to pay the renewal fee and submit a
3 declaration of compliance with continuing education requirements.

4 Effective May 22, 1995, the Certificate was renewed through January 31, 1997, with receipt
5 of the renewal fee and declaration of compliance with continuing education requirements
6 ("active").

7 The Certificate was continuously active for the periods: February 1, 1997 through
8 January 31, 1999, February 1, 1999 through January 31, 2001, February 1, 2001 through January
9 31, 2003 and February 1, 2003 through January 31, 2005.

10 The CPA Certificate was expired and was not valid during the period February 1, 2005
11 through June 2, 2005, due to Respondent Mitchell's failure to pay the renewal fee and submit a
12 declaration of compliance with continuing education requirements.

13 Effective June 3, 2005, the Certificate was active through January 31, 2007.

14 The Certificate expired on February 1, 2007 and is currently in a delinquent status.

15 3. On or about February 25, 2003, the California Board of Accountancy issued Certified
16 Public Accountancy Corporation Certificate Number COR 5229 to Elana M. Mitchell, CPA, Inc.,
17 (Respondent Firm).

18 The Certificate was active for the period from March 1, 2003 through February 28, 2005.

19 The Certificate was in a delinquent status for the period March 1, 2005 through June 20,
20 2006, for Respondent Firm's failure to pay the renewal fee required by California Business and
21 Professions Code section 5070.5 and file the renewal form.

22 Effective June 21, 2006, the Certificate was active through February 28, 2007.

23 The Certificate expired on March 1, 2007 and is currently in a delinquent status.

24 Elana Mae Mitchell, holder of Certified Public Accountant Certificate Number 65438, is
25 the sole shareholder in Elana M. Mitchell, CPA, Inc., Certified Public Accountancy Corporation
26 Certificate Number COR 5229.

27 ///

28 ///

1 **JURISDICTION**

2 4. This Accusation is brought before the California Board of Accountancy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 5. Section 5100 states, in part:

6 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
7 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
8 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
9 conduct that includes, but is not limited to, one or any combination of the following causes:

10 "...

11 "(g) Willful violation of this chapter or any rule or regulation promulgated by the board
12 under the authority granted under this chapter.

13 "...

14 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
15 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
16 disciplinary action during the period within which the license may be renewed, restored, reissued
17 or reinstated.

18 **REGULATORY PROVISIONS**

19 7. California Code of Regulations, Title 16 (CCR), section 95.4 states:

20 "The failure of a licensee to comply with a citation containing an assessment of
21 administrative fine, an order of correction or abatement or both an administrative fine and an
22 order of correction or abatement after this citation is final and has been served in accordance with
23 the provisions of Section 11505(c) of the Government Code shall constitute a ground for
24 revocation or suspension of the license or permit."

25 **COST RECOVERY**

26 8. Section 5107(a) of the Code states:

27 "The executive officer of the board may request the administrative law judge, as part of the
28 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate

1 found to have committed a violation or violations of this chapter to pay to the board all reasonable
2 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
3 The board shall not recover costs incurred at the administrative hearing."

4 FACTS

5 9. On or about November 14, 2006, Citation No. 2007-10 was issued to Respondent
6 Firm, for violating section 5050, for engaging in the practice of public accountancy without a
7 valid permit during the time period from March 1, 2005 through June 30, 2006. This Citation
8 required payment of an administrative fine of \$1,000.00.

9 10. On or about November 14, 2006, Citation No. 2007-11 was issued to Respondent
10 Mitchell, for violating section 5050, for engaging in the practice of public accountancy without a
11 valid license during the time period from March 1, 2005 to at least April 12, 2005. Respondent
12 Mitchell was also cited for a violation of CCR section 52, for failing to respond to a Board
13 inquiry on July 6, 2006 and another on August 16, 2006. This Citation required payment of an
14 administrative fine of \$1,000.00.

15 11. On or about December 4, 2006, both Respondents filed timely notices of appeal
16 of the Citations. After review of the file information and the details supplied in Respondents'
17 appeals, the Board determined there was insufficient information to mitigate the original
18 Citations. On or about January 24, 2007, the Board issued Affirmed Citations, to both
19 Respondents, allowing the Citations and fines to stand as originally issued. With service upon
20 both Respondents, the Board also notified them of their right to appeal the Affirmed Citations
21 within thirty days. Neither Respondent appealed the Affirmed Citations, and the Affirmed
22 Citations became the final order of the Board on February 24, 2007.

23 12. On or about December 8, 2008, both Respondents submitted renewal applications for
24 the certificates that expired in 2007. Both Respondents were notified that the renewal could not
25 be processed until both Respondents had resolved the outstanding citations and fines.

26 13. On or about February 2, 2009, Respondent Mitchell submitted a renewal application
27 and a check for \$2,000.00 to pay the outstanding fines. The check was returned for insufficient
28 funds.

1 14. The administrative fines assessed in Citation Nos. 2007-10 and 2007-11 remain
2 outstanding.

3 **CAUSE FOR DISCIPLINE**

4 **(Willful Violation)**

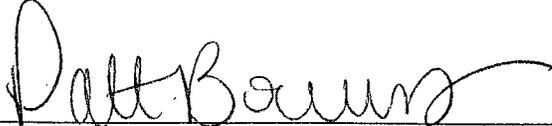
5 15. Both Respondents are subject to disciplinary action under Code section 5100 (g), due
6 to willful violations of 16 CCR 95.4, by reason of their failure to comply with Citation Nos.
7 2007-10 and 2007-11, issued on November 14, 2006, as more particularly described in
8 Paragraphs 9 through 14, above.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the California Board of Accountancy issue a decision:

- 12 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
13 Accountant Certificate Number CPA 65438, issued to Elana Mae Mitchell.
- 14 2. Revoking, suspending or otherwise imposing discipline upon Certified Public
15 Accountancy Corporation Certificate Number COR 5229, issued to Elana M. Mitchell, CPA, Inc.
- 16 3. Ordering Respondents to pay the California Board of Accountancy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 5107;
- 19 4. Taking such other and further action as deemed necessary and proper.

20
21 DATED: August 25, 2009


22 PATTI BOWERS
23 Executive Officer
24 California Board of Accountancy
25 Department of Consumer Affairs
26 State of California
27 Complainant

26 SD2009804507
27 80380856.doc