BILL LOCKYER, Attorney General
of the State of California
JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2226
Facsimile: (510) 622-2121

Attorneys for Complainant

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

In the Matter of the Accusation Against: TIMOTHY FOSTER JONES 22 Battery Street, Suite 401 San Francisco, California 94111 Certified Public Accountant Certificate No. CPA 52045, Respondent.	Case No. AC-2005-38 OAH No. N2005120358 **DEFAULT DECISION AND ORDER** [Gov. Code §11520]

FINDINGS OF FACT

1. On or about August 23, 2005, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2005-38 against Timothy Foster Jones, Respondent, before the California Board of Accountancy.

2. On or about January 27, 1989, the California Board of Accountancy ("Board") issued Certified Public Accountant Certificate No. CPA 52045 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and is renewed through June 30, 2006.

3. On or about September 1, 2005, Mary Ann Reeves, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC-2005-38, Statement to Respondent, Notice of Defense, Request for Discovery, and

Government Code sections 11507.5, 11507.6, and 11507.7 on Respondent at his address of record with the Board, which was and is 22 Battery Street, Suite 401, San Francisco, California 94111. Subsequently, on or about December 2, 2005, Patricia Mota, an employee of the Department of Justice, served by Certified and First Class Mail a copy of First Amended Accusation No. AC-2005-38 and a Supplemental Statement to Respondent on Respondent at his address of record with the Board, which was and is 22 Battery Street, Suite 401, San Francisco, California 94111. Copies of the Accusation and First Amended Accusation (hereinafter the "Accusation"), the related documents, and Declarations of Service are attached as Exhibit A, and the documents are incorporated herein by reference. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

4. On or about September 12, 2005, Respondent signed and returned a Notice of Defense (which indicated his address of record was unchanged), requesting a hearing in this matter. A Notice of Hearing was served by both first class and certified mail at Respondent's address of record and it informed him that an administrative hearing in this matter was scheduled for December 20, 2005 at 1:30p.m.

Further, Respondent also received correspondence from Deputy Attorney General Werner regarding hearing dates, and copies of DAG Werner's Request to Set, both as submitted to the Office of Administrative Hearings and as completed by the Office of Administrative Hearings (OAH), as further notice regarding the scheduling of a hearing. The completed form, mailed to him by OAH, stated the actual date, time and place of the hearing.

5. Service of the Notice of Hearing was effective as a matter of law under the provisions of Government Code section 11509.

6. The Administrative Law Judge who was assigned the case, the Honorable Mary Margaret Anderson, opened the hearing record[1] at 2:00 p.m. on December 20, 2005, at the Oakland offices of OAH. Deputy Attorney General Werner and Investigative CPA Doug Reid

---

1. A tape recording was made of the hearing record, which is being kept by Judge Anderson.

appeared for the Board. There was no appearance by or on behalf of the Respondent. Judge Anderson stated that the OAH had not heard from the Respondent, and DAG Werner confirmed that neither she nor the Board had heard from Respondent. Judge Anderson reviewed the jurisdictional materials, that is, the pleadings, Notice of Defense, Notice of Hearing, and certified histories of licensure (one of which confirmed, as of December 19, 2005, Respondent's unchanged address of record with the Board), found the documents to be in order, and then remanded the matter to the Board for the preparation of a default decision. Copies of Respondent's Notice of Defense, the Notice of Hearing, and Declaration of Service are attached hereto as Exhibit B, and the documents are incorporated herein by reference.

7. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails ... to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. The Board finds that notice was in fact provided to Respondent on December 9, 2005, of the Complainant's intent to introduce into evidence the Declaration of Roberto Wiener as direct testimony in lieu of his oral testimony, unless Respondent objected. At no time did Respondent contact DAG Werner regarding the hearing or the use of the declaration as direct evidence.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing. Based on the declaration of Roberto Wiener attached hereto, the matters contained in the other exhibits hereto, and the entire evidentiary file (from both Board investigations), the Board finds that the allegations in Accusation No. AC-2005-38 are true, as follows:

A. Wiener Estate. Respondent served for many years as the tax preparer for, and was the friend of, Hans and Erika Wiener. Following their deaths on August 22, 2001, and May 14, 2001, respectively, Respondent served as Executor of their estate. Respondent owed a fiduciary duty to the Wieners and to their heirs and beneficiaries. Roberto Wiener is a beneficiary of the estate, and received a partial distribution of inheritance by check dated August 16, 2002.

However, he did not timely receive a distribution of securities as provided by Hans Wiener's will. Pursuant to the probate court's *Order Settling First and Final Account and Report of Executor Allowing Statutory Compensation and Judgment of Final Distribution* ("Order"), dated June 30, 2003, in an action brought by beneficiary (and declarant) Roberto Wiener, the Respondent was ordered to complete the distribution of estate assets. Respondent was to distribute approximately 5,918 shares of Dreyfus securities (shares held in the Dreyfus California Tax Exempt Bond Fund) to Roberto Wiener (hereinafter "Wiener"). At Respondent's request, Wiener provided Respondent with personal brokerage account information for use in the transfer of the bonds. No transfer took place, and Wiener was unable to obtain information from Respondent, or to successfully contact him, regarding the settling of the estate, which caused Wiener to file an application for an Order to Show Cause with the court on March 2, 2004, and, at a subsequent hearing on April 22, 2004, Jones was surcharged $2,500 for fees and costs, and subsequent court proceedings were noticed. The shares were transferred in or about May or June, 2004, almost two years after the original partial distribution took place. However, the court-ordered surcharge, increased to $4,210.91, has not been paid, except for a partial payment ($537) obtained by Wiener through a levy on Respondent's bank accounts.

B. Use of Unapproved Namestyle. Respondent, a sole proprietor, has not requested approval from the Board to use the namestyle of Jones and Company or Jones and Co. Respondent used the name "Jones and Co., CPA" in the preparer's block of a federal form 1120 for the 1998 tax year and was requested by the Board to cease and desist this use in the absence of obtaining approval from the Board. After representing that he would discontinue the practice, Respondent subsequently issued Check # 101, drawn on the account of "The Estate of Hans and Erika Wiener c/o Jones and Company, 22 Battery St., Ste. 401, San Francisco, CA 94111", on August 16, 2002.

C. Failure to Cooperate & Respond & To Complete Continuing Education. Respondent failed to respond to the Board's written inquiries in its investigation A-2004-190 which inquiries were dated December 4, 2003; March 18, 2004; and September 17, 2004. Respondent also failed to comply with an order of the Board's Report Quality Monitoring

Committee which, following the rating of a review report submitted by Respondent as substandard, ordered Respondent to complete two continuing education classes. Respondent was subsequently granted an extension to September 21, 2003, at his request, to complete the classes. However, Respondent failed to produce evidence to the Board that he completed the assigned class on financial statement disclosures.

10. California Business and Professions Code section 5107(j) provides:

> "(1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.
> (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs."

11. The Board's records and billing information obtained from the Attorney General's Office reflect that its reasonable costs for investigation and enforcement of this matter are $4,252.00 as of the beginning of the hearing convened on December 20, 2005, at 1:30p.m. The Board's investigative costs (Investigative CPA) are $6,458.40 as of the time the hearing was convened. Thus, the total costs for investigation and enforcement are $10,710.40 as of December 20, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Timothy Foster Jones has subjected his Certified Public Accountant Certificate No. CPA 52045 to discipline.

2. Service of the Accusation and Notice of Hearing was proper.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation:

\\

a. Business & Professions Code Section 5100(i) - [Fiscal dishonesty or] breach of fiduciary responsibility of any kind. Respondent's conduct constitutes multiple breaches of his

fiduciary duty to his clients (Hans and Erika Wiener) and to their beneficiaries, including Roberto Wiener, constituting multiple causes for discipline of his licenses for unprofessional conduct within the meaning of Code section 5100(i)(breach of fiduciary duty of any kind). Respondent was late, without explanation, in distributing the estate. Respondent did not respond to reasonable requests for information from the beneficiaries. Respondent's conduct necessitated the filing of motions in probate court by the beneficiaries to force Respondent to distribute the securities in question. Respondent has repeatedly failed to pay the surcharge ordered by the court, and the augmented surcharge, in violation of the court's orders. This latter conduct also constitutes "general" unprofessional conduct in violation of Code section 5100.

b. Business and Professions Code section 5060 in conjunction with Code section 5100(g) - Unapproved Namestyle. Respondent continued "holding out" as the firm "Jones and Company" after being warned by, and in the absence of his obtaining approval from, the Board. This was contrary to his explicit representation to the Board.

c. Board Rule 52 in conjunction with Business and Professions Code section 5100(g) - Response to Board. Respondent failed to respond truthfully and accurately, or at all, to Board requests during Investigation A-2004-190 and A-2004-454. Specifically,Respondent failed to respond at all to Board requests dated December 4, 2003, March 18, 2004, and September 17, 2004, for information regarding its investigation of the Wiener matter. Respondent has also failed to take the class (financial statement disclosures) *ordered* by the RQMC following his review being rated substandard, and/or failed to produce to the Board evidence that he had done so.

\\

\\

\\

\\

\\

\\

ORDER

IT IS ORDERED that Certified Public Accountant Certificate No. CPA 52045, heretofore issued to Respondent Timothy Foster Jones, is 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 February 24, 2006.

It is so ORDERED January 25, 2006

RONALD BLANC, President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

~4896059.wpd
DOJ docket number:SF2005200180

Attachments:

Exhibit A: Accusation & First Amended Accusation No.AC-2005-38, Related Documents, and Declaration of Service

Exhibit B: Notice of Defense, Notice of Hearing, and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
California Department of Justice
1515 Clay Street, 21st Floor ~ P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2226
Facsimile: (510) 622-2121

Attorneys for Complainant

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

In the Matter of the Accusation Against: TIMOTHY FOSTER JONES 22 Battery Street, Suite 401 San Francisco, California 94111 Certified Public Accountant Certificate No. CPA 52045, Respondent.	Case No. AC-2005-38 **FIRST AMENDED ACCUSATION**

Carol Sigmann, the Complainant herein, alleges:

PARTIES AND JURISDICTION

1. Complainant Carol Sigmann brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs. This First Amended Accusation, hereinafter "Accusation," replaces the Accusation on file herein *nunc pro tunc.*

2. On or about January 27, 1989, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 52045 to Timothy Foster Jones, Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and is renewed through June 30, 2006.

3. This Accusation is brought before the Board under the authority of Code section

5100 of the Business and Professions Code,[1] which provides, in relevant part, that, after notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted, for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including those in the following subparagraphs:

5100 (g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

5100(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

Further, Board Rule 5[2] requires a licensee to observe Board rules if the licensee is engaged in the types of activities performed by certified public accountants or who renders other professional services which include, but are not limited to, bookkeeping, financial planning, investment planning, tax services and management services.

4. Name of Person or Firm. Code Section 5060 provides that no person or firm may practice public accountancy under any name which is false or misleading. Further, no person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice, unless the name is registered by the Board, is in good standing, and is neither false nor misleading.

5. Required Response to Board Inquiry. Board Rule 52 requires a licensee to respond to an inquiry by the board, including making available all files, working papers and other documents requested. A licensee is required to provide true and accurate information and responses to questions and other requests, and (shall) not take any action to obstruct any Board inquiry or investigation. Failure to respond to a written inquiry within thirty days constitutes a cause for discipline under Code Section 5100(g).

---

1. All statutory references are to the Business and Professions Code unless otherwise indicated.

2. References to sections of Title 16 of the California Code of Regulations will also be referred to herein as "Board rule." Thus,Title 16, California Code of Regulations, section 5 will be referenced as "Board rule 5."

6. Report Quality Monitoring Committee - Continuing Education Requirements. Board Rule 87.6 provides that the Report Quality Monitoring Committee may order a licensee to complete qualifying education by a certain date, and that the licensee's failure to comply with an order by the committee constitutes cause for disciplinary action under Section 5100 of the Business and Professions Code.

7. Code section 5107 provides for recovery by the Board of all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. A certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of the case.

8. Code sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not, deprive the Board of its authority to investigate, or to institute or continue a disciplinary proceeding against, a licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

9. Code section 5000.1 provides as follows: "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

CAUSES FOR DISCIPLINE

First Cause for Discipline - Breach of Fiduciary Duty of Any Kind
Bus. & Prof. Code § 5100(i)

Respondent's Fiduciary Duty as Executor of Estate of Hans & Erika Wiener

10. Respondent had a fiduciary duty as follows:

A. Respondent served for many years as the tax preparer for, and was the friend of, Hans and Erika Wiener. Following their deaths on August 22, 2001, and May 14, 2001, respectively, Respondent served as Executor of their estate. Respondent owed a fiduciary duty to the Wieners and to their heirs and beneficiaries.

B. Roberto Wiener is a beneficiary of the estate, and received a partial distribution of inheritance by check dated August 16, 2002. However, he did not timely receive a distribution of securities as provided by Hans Wiener's will.

C. Pursuant to the probate court's *Order Settling First and Final Account and Report of Executor Allowing Statutory Compensation and Judgment of Final Distribution* ("Order"), dated June 30, 2003, the Respondent was ordered to complete the distribution of estate assets. Respondent was to distribute approximately 5,918 shares of Dreyfus securities (shares held in the Dreyfus California Tax Exempt Bond Fund) to Roberto Wiener (hereinafter "Wiener"). At Respondent's request, Wiener provided Respondent with personal brokerage account information for use in the transfer of the bonds. No transfer took place, which caused Wiener to file an application for an Order to Show Cause with the court on March 2, 2004, and, at a subsequent hearing on April 22, 2004, Jones was surcharged $2,500 for fees and costs, and subsequent court proceedings were noticed.

D. The shares were transferred in or about May or June, 2004, almost two years after the original partial distribution took place. However, the court-ordered surcharge, increased to $4,210.91, was not paid. Wiener was required to obtain partial payment through a levy on Respondent's bank accounts.

11. Incorporating by reference the matters set forth in paragraph 10, Respondent's conduct constitutes multiple breaches of his fiduciary duty and thus constitutes multiple causes for discipline of his licenses for unprofessional conduct within the meaning of Code section 5100(i)(breach of fiduciary duty of any kind).

<u>Second Cause for Discipline - Namestyle Violation</u>
Business And Professions Code Section 5060/5100(g)

12. Complainant realleges paragraphs 2 and 10 above, incorporating them herein by reference as if fully set forth at this point.

13. In a prior Board investigation, Respondent was queried regarding his having prepared a federal Form 1120 for the 1998 tax year, displaying the firm name "Jones and Co., CPA" in the preparer's signature block. In a letter responding to the Board on May 9, 2001,

Respondent asserted that his firm "represents itself now and for the foreseeable future as Timothy F. Jones, Certified Public Accountant."

14. Complainant further alleges that Respondent practiced, at times known to Respondent but not all known to Complainant, as "Jones and Company" or "Jones and Co." without having that namestyle approved by the Board. In one instance, he practiced as Jones and Company in August 2002.

15. Incorporating by reference the matters alleged in paragraphs 12 through 14 above, cause for discipline of Respondent's license is established Code section 5060 in conjunction with Code section 5100(g), in that Respondent's continued "holding out" as the firm "Jones and Company" violates the Code, in the absence of his obtaining approval from the Board, and is contrary to his earlier representation to the Board.

Third Cause for Discipline - Failure to Cooperate & Respond Truthfully & To Complete Continuing Education
(Board Rules 52 and 87.6/Bus. & Prof. Code Section 5100(g))

16. Respondent failed to respond to the Board's written inquiries dated December 4, 2003; March 18, 2004; and September 17, 2004.

17. Incorporating by reference the allegations in paragraphs 13, 14, and 16, Respondent's certificate is subject to discipline under Board Rule 52 in conjunction with Code section 5100(g) in that Respondent failed to respond truthfully and accurately to Board requests.

18. Incorporating by reference the allegations in paragraphs 13, 14, and 16, Respondent's certificate is subject to discipline under Board Rule 52 in conjunction with Code section 5100(g) in that Respondent has failed to respond to Board requests dated December 4, 2003, March 18, 2004, and September 17, 2004, for information regarding its investigation.

19. In or about September, 2002, Respondent submitted a review report to the Report Quality Monitoring Committee (RQMC) which was rated as substandard by the RQMC. The RQMC ordered Respondent to complete two continuing education classes, and Respondent was subsequently granted an extension to September 21, 2003, at his request, to complete the classes. However, Respondent failed to produce evidence that he completed one of the assigned classes.

20. Incorporating by reference the allegations in paragraph 19, Respondent's certificate is subject to discipline under Board Rules 87.6 and 52 in conjunction with Code section 5100(g) in that Respondent has failed to take the class ordered by the RQMC and/or failed to produce to the Board evidence that he had done so.

Fourth Cause for Discipline - Unprofessional Conduct
(Bus. & Prof. Code Section 5100)

21. Incorporating by reference the matters asserted in paragraph 10, in particular 10.C. and 10.D., cause for discipline of Respondent's license is established under Code section 5100 (general unprofessional conduct) in that he has repeatedly failed to pay the surcharge ordered by the court, in violation of the court's orders, which constitutes unprofessional conduct.

OTHER MATTERS

22. Pursuant to Code section 5107, it is requested that the administrative law judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board all reasonable costs of investigation and prosecution in this case, including, but not limited to, attorneys' fees.

23. Under Government Code section 11519(d), the Board may order, as a condition of probation in the event that probation is ordered, restitution of damages suffered as a result of Respondent's conduct.

24. Code section 5000.1 is relevant to the penalty determination in this matter.

PRAYER

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

1. Revoking, suspending, or otherwise imposing discipline on Certified Public Accountant Certificate Number CPA 52045, issued to Timothy Foster Jones.

2. Ordering restitution of all damages according to proof suffered by the beneficiary(s) of Hans and Erika Wiener as a condition of probation in the event that probation is ordered;

3. Ordering Timothy Foster Jones to pay the California Board of Accountancy the

reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

4. Taking such other and further action as deemed necessary and proper.

DATED: Dec. 2, 2005

for CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

SF2005200180

1st AMENDED ACCUSATION.wpd