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Attorneys for Complainant

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

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| In the Matter of the Accusation Against:<br><br>JOE PAUL DIBENEDETTO<br>755 Orange Hill Drive<br>Corona, CA 91719<br><br>CPA Certificate No. 73278<br><br>Respondent. | Case No. AC-2007-53<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

FINDINGS OF FACT

1. On or about October 2, 2007, 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-2007-53 against Joe Paul DiBenedetto (Respondent) before the California Board of Accountancy.

2. On or about May 9, 1997, the California Board of Accountancy (Board) issued CPA Certificate Number 73278 to Respondent. The CPA Certificate expired on August 31, 2003, and has not been renewed. The certificate is currently on "expired" status.

3. On or about October 10, 2007, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. AC-2007-53, Statement to Respondent, Notice of Defense, Request for Discovery, and

Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 755 Orange Hill Drive, Corona, CA 91719. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

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

5. On or about October 17, 2007, the aforementioned documents were returned by the U.S. Postal Service marked "Not Deliverable as Addressed, Unable to Forward." A copy of the envelope returned by the post office is attached as Exhibit B, and is incorporated herein by reference.

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

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, 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.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts 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.

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. AC-2007-53.

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

> (a) If the respondent either fails to file a notice of defense or 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.

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10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A, B, C and D, finds that the allegations in Accusation No. AC-2007-53 are true.

11. The total costs for investigation and enforcement are $1,640.35 as of October 17, 2007. A copy of the Attorney General cost certification is attached as Exhibit C, and is incorporated herein by reference. A copy of the Board's cost certification is attached as Exhibit D, and is incorporated herein by reference.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Joe Paul DiBenedetto has subjected CPA Certificate Number 73278 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

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

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

a. Respondent is subject to disciplinary action under sections 490 and 5100(a) in that he has been convicted of multiple crimes substantially related to the qualifications, functions, or duties of a certified public accountant, as more particularly alleged below:

1. On or about November 6, 2006 in Orange County Superior Court Case No. 05CF0015, *People v. Joseph Paul DiBenedetto*, Respondent pled guilty to 45 felony charges and various enhancements, as follow:

(1) Count 1 - Grand Theft, a violation of Penal Code section 487(a), with the added enhancements that the theft was an amount exceeding $100,000 and that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offense.

(2) Counts 2 through 22 - Falsifying Records, violations of Penal Code section 471, with the added enhancement that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offenses.

(3) Counts 23 through 43 - Fraudulent Computer Access, violations of Penal Code section 502(c)(1), with the added enhancement that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offenses.

(4) Counts 44 and 45 - Filing of False Tax Return, violations of Revenue and Taxation Code section 19705(a)(1), the added enhancement that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offenses.

2. Respondent was sentenced to 2 years in state prison, which prison time was suspended regarding all counts, but Respondent was ordered to serve 365 days in county jail and placed on 3 years formal probation. He was ordered to pay $41,964.48 in restitution to the Franchise Tax Board regarding counts 44 and 45.

3. The facts and circumstances surrounding the convictions are that the charges arise from Respondent's employment as the Chief Financial Officer for MasterCraft Homes and relate to his illegal actions to benefit himself.

b. Respondent is subject to disciplinary action under section 5100(g), for violating Board regulation, in conjunction with section 5063 in that he failed to report his felony convictions to the Board within 30 days, as required by section 5063.

ORDER

IT IS SO ORDERED that CPA Certificate Number 73278, heretofore issued to Respondent Joe Paul DiBenedetto, 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, 2008.

It is so ORDERED January 25, 2008

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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DOJ docket number:SD2007801869

Attachments:

Exhibit A: Accusation No. AC-2007-53, Related Documents, and Declaration of Service
Exhibit B: Copy of Envelopes Returned by Post Office
Exhibit C: Certification of Costs: Declaration of Rita M. Lane
Exhibit D: California Board of Accountancy Certification of Costs

Exhibit A

Accusation No. AC-2007-53,
Related Documents and Declaration of Service

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**CALIFORNIA BOARD OF ACCOUNTANCY**
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| In the Matter of the Accusation Against:<br><br>JOE PAUL DIBENEDETTO<br>755 Orange Hill Dr<br>Corona, CA 91719<br><br>CPA Certificate No. 73278<br><br>Respondent. | Case No. AC-2007-53<br><br>**ACCUSATION** |
|---|---|

Complainant alleges:

PARTIES

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

2. On or about May 9, 1997, the California Board of Accountancy issued CPA Certificate Number 73278 to Joe Paul DiBenedetto (Respondent) with an expiration date of August 31, 1997.

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The certificate expired and was not valid from September 1, 1997, through September 28, 1997, for failure to pay the renewal fee and failure to file the required declaration of compliance with continuing education requirements.

The certificate was renewed on September 29, 1997, effective through August 31, 1999.

The certificate was renewed for September 1, 1999, through August 31, 2001, without continuing education ( "inactive").

The certificate expired and was not valid from September 1, 2001, through November 28, 2001, for failure to pay the renewal fee and failure to file the required declaration of compliance with continuing education requirements.

The certificate was renewed on November 29, 2001, effective through August 31, 2003, without continuing education ("inactive").

The certificate expired on September 1, 2003, has not been renewed, and currently is in "expired" status.

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws of the Business and Professions Code:

A. Section 5063 of the Code requires a licensee to report in writing to the Board within 30 days all felony convictions and convictions of any crime: related to the qualifications, functions or duties of a licensee or committed in the course and scope of practice of public accountancy; or involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

B. Section 5100 states in pertinent part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for

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unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

". . . .

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

C. Section 5107 of the Code provides for the recovery by the Board of its reasonable costs of investigation and prosecution, including attorney's fees, if respondent is found to have committed a violation of this chapter.

D. Section 5109 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to commence or proceed with a disciplinary action against a licensee.

E. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

F. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the

qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

4. This Accusation also references the following sections of California Code of Regulations (CCR), title 16:

A. CCR section 99 states in pertinent part:

"For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

. . . .

(d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board."

B. CCR section 99.1 states:

When considering. . .the suspension or revocation of a certificate or permit. . ., in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

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(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conviction of Substantially Related Crimes)

5. Respondent is subject to disciplinary action under sections 490 and 5100(a) in that he has been convicted of multiple crimes substantially related to the qualifications, functions, or duties of a certified public accountant, as more particularly alleged below:

A. On or about November 6, 2006 in Orange County Superior Court Case No. 05CF0015, *People v. Joseph Paul DiBenedetto*, Respondent pled guilty to 45 felony charges and various enhancements, as follow:

(1) Count 1 - Grand Theft, a violation of Penal Code section 487(a), with the added enhancements that the theft was an amount exceeding $100,000 and that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offense.

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took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offenses.

(4) Counts 44 and 45 - Filing of False Tax Return, violations of Revenue and Taxation Code section 19705(a)(1), the added enhancement that Respondent intentionally took, damaged and destroyed property in excess of $150,000 during the commission and attempted commission of the offenses.

B. Respondent was sentenced to 2 years in state prison, which prison time was suspended regarding all counts, but Respondent was ordered to serve 365 days in county jail and placed on 3 years formal probation. He was ordered to pay $41,964.48 in restitution to the Franchise Tax Board regarding counts 44 and 45.

C. The facts and circumstances surrounding the convictions are that the charges arise from Respondent's employment as the Chief Financial Officer for MasterCraft Homes and relate to his illegal actions to benefit himself.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Willful Violation of Board Regulation)

6. Respondent is subject to disciplinary action under section 5100(g), for violating Board regulation, in conjunction with section 5063 in that he failed to report his felony convictions to the Board within 30 days, as required by section 5063.

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 CPA Certificate Number 73278, issued to Joe Paul DiBenedetto;

2. Ordering Joe Paul DiBenedetto 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; and

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

DATED: October 2, 2007

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

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