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

In the Matter of the Accusation Against: **DAVID DEUK-KWON KIM** 3200 Wilshire Blvd., Suite 1515 Los Angeles, CA 90010 Certified Public Accountant Certificate No. 56598 Respondent.	Case No.: AC-2009-19 OAH No.: L2008100544

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on October 30, 2009

It is so ORDERED on October 1, 2009.

PRESIDENT
For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against: DAVID DEUK-KWON KIM, Respondent.	Case No. AC-2008-19 OAH No. L2008100544

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 12, 2009, in Los Angeles, California.

Christina Thomas, Deputy Attorney General, represented complainant Daniel Rich.

Respondent David Deuk-Kwon Kim represented himself.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, State of California.

2. On August 3, 1990, the Board issued certified public accountant certificate number 56598 to Respondent. The certificate expired on February 1, 2007, and is currently in delinquent status. The certificate has not been previously disciplined.

3. On November 19, 2007, the Board conducted an investigation of Respondent based on an internal referral from the Licensing Division. Several events prompted the referral; namely that Respondent failed to appear at a scheduled meeting, after the Board provided him with four opportunities to do so. Respondent also failed to comply with the Board's continuing education requirements. Respondent's license was in delinquent status since February 2007. In addition, Respondent failed to register his firm name, "Kim & Co."

4. The facts underlying the investigation are that from July 2006 through February 2008, the Board made repeated attempts to meet with Respondent, and he failed to comply. Beginning on July 7, 2006, the Board notified Respondent that he was scheduled to meet with the Qualifications Committee on October 25, 2006, regarding his attestation for a licensee applicant, Etta Hur. Respondent signed a Certificate of Attest Experience in Public Accounting

which certified that he employed Ms. Hur for 615 hours in 2004-2005. Respondent did not attend the October 25, 2006, meeting, and he requested a postponement. The Board accommodated Respondent's request. Three times thereafter, the Board scheduled meetings with Respondent, he requested adjournments, and eventually Respondent failed to appear at the fourth scheduled meeting. Respondent therefore failed to provide the explanation required by the Board regarding the certification of Ms. Hur's experience. This sequence of events lasted fifteen months, and delayed Ms. Hur's application process. Ultimately, the Board granted her license in November 2007, without the benefit of meeting with Respondent.

5. Upon further inquiry into Respondent's license history, the Board discovered that his firm name "Kim & Co." was not registered. The Secretary of State, California Business Portal indicated that "Kim & Co. Accountancy Corporation" had been filed on April 29, 2004, and is currently in suspended status. Respondent is listed as the agent for service of process.

6. Respondent did not comply with his continuing education basic requirements. For the period ending January 31, 2005, Respondent submitted a blank continuing education worksheet with his license renewal. Respondent did not take any required courses. Although Respondent checked the box which indicated that he requested a six-month extension to complete the required hours, to date, Respondent has not submitted any proof of completion to the Board.

7. Respondent was forthcoming and acknowledged that he had a problem following through with the Board, and that he should have done so. Respondent confirmed that he employed Ms. Hur to work on an audit in 2004-2005. He admitted that he did not register the firm name "Kim & Co." Respondent explained that sometime in 2004, he and four other accountants, who happened to share his last name, had planned to form an accounting firm under the name "Kim & Co." In the beginning of 2005, the partners had a dispute, and they decided to separate. According to Respondent, the practice dissolved before it was fully formed. Respondent no longer practices public accounting. Early in 2005, Respondent joined a start-up company, Finetex Technology Global Limited (Finetex), as a financial advisor. He is currently employed as Finetex's Executive Vice President. Finetex is primarily located in Hong Kong, and since 2005, Respondent has spent eighty to ninety percent of his time outside of the United States. This contributed significantly to his difficulty in coordinating with the Board. Respondent also admitted that he did not comply with the continuing education requirements, and he is willing to do so in order to retain his license. He would like the opportunity to keep his license in an inactive status.

8. The Board incurred $7,456.80 in costs to investigate and prosecute this matter, which costs are reasonable.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Business and Professions Code 5100, subdivision (g), in conjunction with California Code of Regulations (CCR), title 16, section 69, subdivision (e), to suspend or revoke Respondent's license because he willfully failed to explain to the Board

information in a certificate of experience that he completed, as set forth in factual finding numbers 3 and 4.

2. Cause exists pursuant to Business and Professions Code 5100, subdivision (g), in conjunction with California Code of Regulations (CCR), title 16, section 69, subdivisions (f), to suspend or revoke Respondent's license because his willful failure to act jeopardized an applicant's chances for obtaining a certificate, as set forth in factual finding numbers 3 and 4.

3. Cause exists pursuant to Business and Professions Code 5100, subdivision (g), in conjunction with California Code of Regulations (CCR), title 16, section 52, to suspend or revoke Respondent's license because he willfully failed to act in response to a Board inquiry, as set forth in factual finding numbers 3 and 4.

4. Cause exists pursuant to Business and Professions Code 5100, subdivision (g), in conjunction with California Code of Regulations (CCR), title 16, section 87, subdivisions (a) and (c), to suspend or revoke Respondent's license because he willfully failed to provide satisfactory evidence of his completion of qualifying continuing education requirements, as set forth in factual finding numbers 3 and 6.

5. Cause exists pursuant to Business and Professions Code 5060, to suspend or revoke Respondent's license because he failed to register the name of "Kim & Co." with the Board, as set forth in factual finding numbers 3 and 5.

6. All evidence presented in mitigation and rehabilitation has been considered. Although Respondent was remiss in failing to meet with the Board and explain Ms. Hur's application; in failing to register his firm name, and in complying with his continuing education requirements, he proffered extenuating circumstances, i.e., the failure of his practice and his new overseas career. In addition, Respondent ultimately verified that Ms. Hur received experience under his employ. Respondent accepted full responsibility for his conduct. Respondent has no previous discipline against his license. Given these circumstances, public protection can be achieved by the order that follows.

7. Cause exists pursuant to Business and Professions Code section 5107 to order Respondent to reimburse the Board for its reasonable costs of investigation and prosecution, in the sum of $7,456.80, as set forth in factual finding numbers 3, 4, 5, and 8, and legal conclusion numbers 1 through 5.

ORDER

Certified Public Accountant License number 56598, issued to Respondent David Deuk-Kwon Kim, is revoked; however, the revocation is stayed and Respondent's license is placed on probation for three years upon the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. **Cost Reimbursement.** Respondent shall reimburse the Board $7,456.80 for its investigation and prosecution costs. The payment shall be made in quarterly amounts during the first two years of probation.

2. **Submit Written Reports.** Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

3. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

4. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

5. **Practice Investigation.** Respondent shall be subject to, and shall permit, a practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

6. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

7. **Tolling of Probation for Out-of-State Residence/Practice.** In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

8. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

10. **Continuing Education Courses.** Respondent shall complete professional education courses as specified by the Board or its designee at the time of Respondent's first probation appearance. The professional education courses shall be completed within a period of time designated and specified in writing by the Board or its designee, which time frame shall be incorporated as a condition of this probation. This shall be in addition to continuing education requirements for relicensing.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation.

11. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination during the first year of probation.

If Respondent fails to pass said examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes and successfully passes said exam, has submitted proof of same to the Board, and has been notified by the Board that he or she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.

Notwithstanding any other provision of this probation, failure to take and pass this examination within three years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

Dated: July 10, 2009

Amy C Lahr

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: DAVID DEUK-KWON KIM 3200 Wilshire Blvd., Suite 1515 Los Angeles, CA 90010 Certified Public Accountant No. 56598 Respondent.	Case No. AC-2008-19 **ACCUSATION**

Complainant alleges:

PARTIES

1. Daniel Rich (Complainant) brings this Accusation solely in his official capacity as the Acting Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about August 3, 1990, the California Board of Accountancy issued Certified Public Accountant Certificate Number 56598 to David Deuk-Kwon Kim (Respondent). The Certificate expired on February 1, 2007, and is currently in "delinquent" 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. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5050 of the Code states:

"No person shall engage in the practice of public accountancy in this State unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or a public accountant of another state, or any accountant of a foreign country lawfully practicing therein, from temporarily practicing in this State on professional business incident to his regular practice in another state or country."

5. Section 5060 of the Code states:

"(a) No person or firm may practice public accountancy under any name which is false or misleading.

"(b) 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 issued by the board.

"(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a).

"(d) The board may adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations designating particular forms of names as being false or misleading."

6. Section 5100 of the Code 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 unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

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

7. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to

proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9. Title 16 California Code of Regulations Section 52 states in pertinent part:

"(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

"(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer within 30 days and in accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

"(c) A licensee shall appear in person upon written notice or subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer.

"(d) A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding.

10. Title 16 California Code of Regulations Section 69 states in pertinent part:

. . . .

"(b) Any licensee who shall have signed a certification of experience shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the information provided on any said certification of experience, in any situation including, but not limited to, the following:

"(1) Where there is an alleged disagreement between an applicant and any licensee as to dates and/or type of work performed;

"(2) Where there is satisfactorily answered certification of experience submitted to

the board, but the period of experience appears to be unduly short;

"(3) Where the board seeks to verify on a sample basis information submitted by an applicant or attested thereto on a certification of experience; or

"(4) Where the board reasonably believes that the information in the certification of experience may be false or incorrect.

11. Title 16 California Code of Regulations Section 87 states in pertinent part:

"(a) 80 Hours. As a condition of active status license renewal, a licensee shall complete at least 80 hours of qualifying continuing education as described in Section 88 in the two-year period immediately preceding license expiration, and meet the reporting requirements specified in subsection (a) of Section 89. A licensee engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code is required to hold a license in active status. No carryover of continuing education is permitted from one two-year license renewal period to another.

. . . .

"(c) Accounting and Auditing Continuing Education Requirement.

A licensee who engages in planning, directing, performing substantial portions of the work, or reporting on an audit, review, compilation, or attestation service, shall complete 24 hours of the 80 hours of continuing education required pursuant to subsection (a) in the course subject matter specified in this subsection. Course subject matter must pertain to financial statement preparation and/or reporting (whether such statements are prepared on the basis of generally accepted accounting principles or other comprehensive bases of accounting), auditing, reviews, compilations, industry accounting, attestation services, or assurance services. This continuing education shall be completed in the same two-year license renewal period as the report is issued. If no report is issued because the financial statements are not intended for use by third parties, the continuing education shall be completed in the same two-year license renewal period as the financial statements are submitted to the client.

. . . .

"(g) Failure to Comply. A licensee's willful failure to comply with the requirements

of this section shall constitute cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act."

12. Title 16 California Code of Regulations Section 89 provides in pertinent part:

"(a) Upon renewal, a licensee who is required, pursuant to section 87, to obtain continuing education must provide a written statement, signed under penalty of perjury, certifying that the requisite number of continuing education hours has been obtained.

. . . .

"(d) If continuing education credit is claimed for completing a self-study course, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent disclosing the following information:

(1) Name of licensee taking the course

(2) School, firm, or organization providing the course

(3) Title of course or description of contents

(4) Date of completion

(5) Number of hours of continued education credit granted for completing the course"

FIRST CAUSE FOR DISCIPLINE

(Willfully Impeding Applicant's Certification Process)

13. Respondent is subject to disciplinary action under section 5100(g) of the Code in conjunction with Title 16 California Code of Regulations section 69(b) in that on or about February 20, 2006, Respondent completed a Certificate of Attest Experience (Public Accounting) to the Board on behalf of applicant E. H., his former employee.

14. By the Certificate of Attest Experience, Respondent attested that applicant E.H. was an employee of "KIM & Co." for the period of July 1, 2003 through August 31, 2005. Respondent further attested that he was a shareholder of "KIM & Co." and provided his personal certificate number. Respondent attested that during the time of E.H.'s employment, she gained satisfactory knowledge of current practice standards and pronouncements.

15. Commencing on or before July 7, 2006 and continuing through September, 2007, the Board's Qualifications Committee attempted to contact Respondent to request that Respondent appear and present support for the certification of applicant E.H. Notwithstanding the multiple requests by the Board, Respondent willfully impeded the applicant's certification when he failed to comply with the Board's request. Respondent's failure to act jeopardized applicant E.H.'s chances for obtaining a certificate.

SECOND CAUSE FOR DISCIPLINE

(Failure to Response to Board Inquiry)

16. Respondent is subject to disciplinary action under section 5100(g) of the Code in conjunction with Title 16 California Code of Regulations section 52 in that Respondent failed to act in response to the Board's inquiry regarding applicant E.H., as set forth more fully in paragraph 15 above.

THIRD CAUSE FOR DISCIPLINE

(Willful Violation of Continuing Education Basic Requirements)

17. Respondent is subject to disciplinary action under section 5100(g) of the Code in conjunction with Title 16 California Code of Regulations section 87 subdivision (g) in that Respondent failed to comply with Title 16 California Code of Regulations section 87 subdivisions (a) and (c) in providing satisfactory evidence of his completion of qualifying continuing education requirements (as described in Title 16 California Code of Regulations section 88) and the reporting requirements (as described in Title 16 California Code of Regulations section 89(a)) for the period February 1, 2003 through January 31, 2005.

FOURTH CAUSE FOR DISCIPLINE

(Use of Unregistered Name)

18. Respondent is subject to disciplinary action under section 5060 of the Code in that Respondent practiced under the name "KIM & Co" during the period of July 1, 2003 through August 31, 2005. Respondent failed to registered the name of "KIM & Co." or "Kim & Company" with the Board. At all times, Respondent's license was issued solely in the name of "David Deuk-Kwon Kim" and not in any business name.

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 or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 56598 issued to David Deuk-Kwon Kim.

2. Ordering David Deuk-Kwon Kim 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;

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

DATED: July 17, 2008

DANIEL RICH
Acting Executive Officer
California Board of Accountancy
State of California
Complainant

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