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

In the Matter of the Accusation Against: KIYOSHI HATANAKA 39 Red Bud Aliso Viejo, CA 92656 Certified Public Accountant Certificate No. 73188 Respondent.	Case No. AC 2009 31 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 22, 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. AC 2009 31 against Kiyoshi Hatanaka (Respondent) before the California Board of Accountancy.

2. On or about March 22, 1997, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. 73188 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

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3. On or about July 7, 2009, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC 2009 31, 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: 39 Red Bud, Aliso Viejo, California 92656. In response, the Department of Justice received an unsigned letter stating that Respondent is now "in jail" at 45396-112, F.S.L. La Tuna, P.O. Box 6000, Anthony, NM 88021. F.S.L. La Tuna is a Federal Correctional Institution. Therefore, on or about July 17, 2009, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC 2009 31, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to that address. In response, a signed Domestic Mail Return Receipt acknowledging receipt of the Accusation package was received by the Department of Justice.

A copy of the Accusation is attached as Exhibit A, and is 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. 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."

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 2009 31.

6. 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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7. 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 the evidence on file herein, finds that the allegations in Accusation No. AC 2009 31 are true.

8. The total cost for investigation and enforcement in connection with the Accusation are $1,925.20 as of September 3, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kiyoshi Hatanaka has subjected his Certified Public Accountant Certificate No. 73188 to discipline.

2. A copy of the Accusation is attached.

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. Between 1999 and January 2006, Respondent embezzled approximately $1,756,000 from his employer, and on October 27, 2008, Respondent was convicted of embezzlement, a felony.

ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. 73188, heretofore issued to Respondent Kiyoshi Hatanaka, 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 October 1, 2009.

It is so ORDERED October 01, 2009

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A: Accusation No. AC 2009 31

Exhibit A

Accusation No. AC 2009 31

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

In the Matter of the Accusation Against: KIYOSHI HATANAKA 39 Red Bud Aliso Viejo, CA 92656 Certified Public Accountant Certificate No. CPA 73188 Respondent.	Case No. AC 2009 31 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patti Bowers (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 March 22, 1997, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 73188 to Kiyoshi Hatanaka (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 5100 states in relevant 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 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.

". . . .

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

". . . .

"(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses."

5. Section 5106 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, 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 allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment."

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially

related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. California Code of Regulations, title 16, section 99 provides in relevant 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."

8. California Code of Regulations, title 16, section 99.1 provides:

"When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, 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).

"(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."

COST RECOVERY

9. Section 5107 states in part:

"(a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

". . . ."

FIRST CAUSE FOR DISCIPLINE

(October 27, 2008 Criminal Conviction for Embezzlement 1999-2006)

10. Respondent is subject to disciplinary action under Code section 5100, subsection (a), for unprofessional conduct arising from his conviction of a crime substantially related to the qualifications, functions or duties of a certified public accountant. The circumstances are as follows:

11. On October 27, 2008, in the case of *United States of America vs. Kiyoshi Hatanaka*, United States District Court, Central District, Case No. SACR 07-00295-JVS, Respondent pled guilty to embezzlement from a program receiving federal funds in violation of Title 18 U.S.C. 666(a)(1)(A), a felony.

12. The facts and circumstances underlying this criminal conviction are as follows: In or around 1990, Respondent was hired by Soka as its Finance Director and in or around 1993 became Controller and Finance Director. In or around early 2005, Respondent changed positions and became the Chief Investment Officer (CIO) for Soka. Respondent's employment terminated January 9, 2006. As the controller, finance director and CIO, Respondent had access to Soka's bank and investment accounts and had responsibility for managing Soka's investments. Accordingly, Respondent had the ability to cause unauthorized transfers and withdrawals to be

made from Soka's bank accounts and accounts in which its investments were held. Beginning in 1999 and continuing to early January 2006, Respondent caused approximately $1,756,000 to be transferred from Soka's bank and investment accounts to bank accounts he controlled. Respondent withdrew those finds from the accounts that he controlled, and then used those funds for his own benefit.

13. As terms of sentencing, the court ordered Respondent to be imprisoned for a term of thirty-seven (37) months, to pay a special assessment of $100.00, and to pay restitution in the amount of $1,756,000. The court further ordered that upon release from imprisonment, Respondent is to be placed on supervised release for three (3) years under terms and conditions including: comply with all the rules and regulations of the U.S. Probation Office and General Order 318; pay the special assessment and restitution; not be employed in any capacity wherein he has custody, control or management of his employer's funds; not be employed in any position that requires licensing and/or certification by any local, state or federal agency, without prior approval of the Probation Officer; notify the California Board of Accountancy of his conviction in this matter within 30 days of sentencing and provide proof to the Probation Officer of compliance with this instruction; comply with the immigration rules and regulations of the United States; cooperate in the collection of a DNA sample; attend meetings of Gamblers Anonymous; and apply monies received from income tax refunds greater than $500, lottery winnings, inheritance, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Fiscal Dishonesty)

14. Respondent is subject to disciplinary action under Code section 5100, subsection (i) for fiscal dishonesty. The circumstances are set forth in paragraphs 11 through 13, above, which are incorporated here by this reference.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Embezzlement)

15. Respondent is subject to disciplinary action under Code section 5100, subsection (k) for embezzlement. The circumstances are set forth in paragraphs 11 through 13, above, which are incorporated here by this reference.

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 CPA 73188, issued to Kiyoshi Hatanaka;

2. Ordering Kiyoshi Hatanaka 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: June 22, 2009

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant