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.

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

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

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

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

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

7. 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.

8. 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.

9. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. AL 2009 34.

10. 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.

11. 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. AL 2009 34 are true.

12. The total cost for investigation and enforcement in connection with the Accusation are $2,402.50 as of November 13, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Elana Mae Mitchell has subjected her Certified Public Accountant Certificate No. CPA 65438 to discipline.

2. Based on the foregoing findings of fact, Respondent Elana Mae Mitchell has subjected her Certified Public Accountancy Corporation Certificate Number COR 5229 to discipline.

3. A copy of the Accusation is attached.

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

5. The California Board of Accountancy is authorized to revoke Respondent Mitchell's Certified Public Accountant Certificate No. CPA 65438 and Respondent Firm's Certified Public Accountancy Corporation Certificate Number COR 5229, based upon the following violations alleged in the Accusation:

a. Willful violations of Business and Professions Code section 5100 (g) and 16 California Code of Regulations section 95.4, for the failure to comply with citations that had been previously issued to Respondent Mitchell and Respondent Firm.

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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

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

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 **A C C U S A T I O N**

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 December 3, 1993, the California Board of Accountancy issued Certified Public Accountant (CPA) Certificate Number 65438 to Elana Mae Mitchell (Respondent Mitchell).

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

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

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

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

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

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

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

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

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

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

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

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

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JURISDICTION

4. 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.

5. Section 5100 states, in 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:

"...

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

"...

6. 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.

REGULATORY PROVISIONS

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

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

COST RECOVERY

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

"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."

FACTS

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

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

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

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

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

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

CAUSE FOR DISCIPLINE

(Willful Violation)

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

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 upon Certified Public Accountant Certificate Number CPA 65438, issued to Elana Mae Mitchell.

2. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountancy Corporation Certificate Number COR 5229, issued to Elana M. Mitchell, CPA, Inc.

3. Ordering Respondents 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: August 25, 2009

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

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