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

In the Matter of the Accusation/Petition to Revoke Probation Against: ANTHONY J. AZAVEDO 18021 Sky Park Circle, Suite K-2 Irvine, CA 92614-6565 CPA Certificate No. CPA 28959 Respondent.	Case No. D1-2004-1

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy as its Decision in this matter.

This Decision shall become effective on June 16, 2008.

It is so ORDERED May 16, 2008.

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
G. MICHAEL GERMAN, State Bar No. 103312
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2617
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/Petition to Revoke Probation Against: ANTHONY J. AZAVEDO 18021 Sky Park Circle, Suite K-2 Irvine, CA 92614-6565 CPA Certificate No. CPA 28959 Respondent.	Case No. D1-2004-1 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Carol Sigmann (Complainant) is the Executive Officer of the California Board of Accountancy (Board). She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by G. Michael German, Deputy Attorney General.

2. Respondent Anthony J. Azavedo (Respondent) is represented by attorney Thomas McIntosh, 1516 N. Broadway, Santa Ana, CA 92706 (714) 973-1112.

///

3. On or about February 1, 1980, the Board issued Certified Public Accountant Certificate No. CPA 28959 to Respondent. Said CPA Certificate will expire on June 1, 2009, unless renewed.

JURISDICTION

4. In a disciplinary action entitled, "In the Matter of Accusation Against Anthony J. Azavedo," Case No. AC-2004-1, the Board adopted a Proposed Decision and Order, effective March 12, 2006, in which Respondent's CPA Certificate was revoked. However, the revocation was stayed and Respondent's CPA Certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that Proposed Decision and Order is attached as Exhibit A and is incorporated by reference.

5. Accusation and Petition to Revoke Probation No. D1-2004-1, (Petition), was filed before the Board on July 2, 2007, and is currently pending against Respondent. The Petition and all other statutorily required documents were properly served on Respondent on July 9, 2007. A copy of the petition is attached as Exhibit B and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in the Petition. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation contained in the Petition.

10. Respondent agrees that his CPA Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

12. The parties understand and agree that the costs to be reimbursed to the Board include the cost of investigation and prosecution of this disciplinary action (including Attorney General billing), which total $4,997.81, in addition to the balance of the $10,000.00 in costs previously awarded to the Board in the matter of the Accusation against Anthony J. Azavedo as adopted by the Board on March 12, 2006. Of the $10,000.00 in costs previously awarded, Respondent has paid $3.750.00, leaving a balance of $6,250.00 of remaining costs to be reimbursed to the Board. Therefore, in this matter, Respondent agrees to pay the Board the amount of $11,247.81 for its costs of investigation and prosecution.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

///

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that CPA Certificate No. CPA 28959 issued to Respondent Anthony J. Azavedo is revoked. However, the revocation is stayed and Respondent is placed on probation for a period of five (5) years under the following terms and conditions:

1. **Actual Suspension.** CPA Certificate No. CPA 28959 issued to Respondent is suspended for one (1) year, beginning thirty (30) days after the effective date of this Order. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

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

8. **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.

9. **Restricted Practice.** Respondent shall be prohibited from performing any audit engagements during his term of probation, unless the Board provides him prior written permission to perform such tasks.

10. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90 percent or better a Board- approved ethics examination within 180 days of the effective date of this Order. 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 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 five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

11. **Active License Status.** Respondent shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

12. **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.

13. **Cost Reimbursement.** Respondent shall reimburse the Board $11,247.81, for its investigation and prosecution costs. The payment shall be made within ninety (90) days of the effective date of the Decision and Order.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Thomas M. McIntosh. I understand the stipulation and the effect it will have on my CPA Certificate No. CPA 28959. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 3-11-08

Anthony J. Azavedo
Respondent

I have carefully read and fully discussed with my client, Respondent Anthony J. Azavedo, the terms and conditions and other matters contained in this Stipulated Revocation of Licenses and Order. I approve its form and content.

DATED: 3/10/08

Thomas M. McIntosh
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

DATED: March 12, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

G. MICHAEL GERMAN
Deputy Attorney General

Attorneys for Complainant

Exhibit B

Accusation and Petition to Revoke Probation

Case No. D1-2004-1

EDMUND G. BROWN JR., Attorney General
of the State of California
MARGARET ANN LAFKO
Supervising Deputy Attorney General
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
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/Petition to Revoke Probation Against: ANTHONY J. AZAVEDO 18021 Sky Park Circle, Suite K-2 Irvine, CA 92614-6565 Certified Public Accountant License No. CPA 28959 Respondent.	Case No. D1-2004-1 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about February 1, 1980, the California Board of Accountancy issued Certified Public Accountant license No. CPA 28959 to ANTHONY J. AZAVEDO (Respondent). The Certified Public Accountant license expires on May 31, 2009, unless renewed.

3. In a disciplinary action entitled, "In the Matter of Accusation Against Anthony J. Azavedo," Case No. AC-2004-1, the California Board of Accountancy issued a

decision, effective March 12, 2006, in which Respondent's Certified Public Accountant license No. CPA 28959 was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation 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.

5. Section 5050 states, in pertinent part:

> (a) Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096.).

6. Section 5051 states, in pertinent part:

> Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of [Chapter 1 of Division 3 (commencing with Section 5000)] if he or she does any of the following:
>
> (a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.
>
> (b) Maintains an office for the transaction of business as a public accountant.
>
> . . . .
>
> (e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.
>
> (f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.
>
> (g) Prepares or signs, as the tax preparer, tax returns for clients.
>
> . . . .
>
> A person is not engaged in the practice of public accountancy if the only services he or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold himself or herself out, solicit, or advertise for clients using the certified public accountant or public accountant designation. A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA

certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client.

7. Section 5100 states:

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.

. . . .

8. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/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.

9. Section 5107 of the Code provides, in pertinent part, that 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 attorney's fees. The Board shall not recover costs incurred at the administrative hearing.

FIRST CAUSE TO REVOKE PROBATION

(Practiced Public Accountancy During Suspension)

10. On March 12, 2006, Respondent's Certified Public Accountant license was placed on five years probation with sixty (60) days suspension. The suspension was effective July 1, 2006 through August 29, 2006. On August 9, 2006, a Board Investigative CPA conducted an unannounced visit to Respondent's business and determined that Respondent continued to maintain an office as a Certified Public Accountant. Respondent continued to operate his office using the CPA designation on his office building. Respondent's receptionist displayed and provided Respondent's business cards that also referenced the CPA designation. On May 11, 2007, a Board Investigative CPA performed a practice investigation at Respondent's

office. It was discovered that during his period of suspension Respondent continued to use his CPA designation in the practice of public accountancy on an accountant's report for the accompanying compiled financial statements, and on correspondence related to payroll services, and for the purposes of preparing corporation and payroll tax returns.

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition One, that is, to serve a sixty day suspension, as set forth above.

SECOND CAUSE TO REVOKE PROBATION

(Failed to Comply with Reporting Requirements)

12. At all times after the effective date of Respondent's probation, Condition Three required that Respondent submit quarterly reports in a timely manner. Respondent did not timely comply with the reporting requirements of his probation. For example, Respondent's September 2006 quarterly report was due on October 10, 2006, however, he filed it late on October 18, 2006; Respondent's March 2007 quarterly report was due on April 10, 2007, however, he filed it late on April 30, 2007.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition Three as set forth above.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Timely Pay Cost Reimbursement)

14. At all times after the effective date of Respondent's probation, Condition Fourteen required that he timely pay his quarterly cost reimbursement. Respondent was supposed to pay his quarterly reimbursement on or before April 10, 2007, however, he paid it late on May 4, 2007.

15. Respondent's probation is subject to revocation because he failed to comply with Probation Condition Fourteen, that is, he failed to pay his quarterly cost reimbursement in timely manner as set forth above.

ACCUSATION

16. Respondent has subjected his license to discipline under the Business & Professions Code for practicing accountancy without a valid permit as set forth in the allegation

paragraphs 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 the probation that was granted by the California Board of Accountancy in Case No. AC-2004-1 and imposing the disciplinary order that was stayed thereby revoking Certified Public Accountant license No. CPA 28959 issued to ANTHONY J. AZAVEDO;

2. Revoking or suspending Certified Public Accountant license No. CPA 28959, issued to ANTHONY J. AZAVEDO;

3. Awarding the Board costs as provided by statute;

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

DATED: July 2, 2007

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

SD2007801479
Petition to Revoke Probation_Revised3.wpd

COPY

NO FEE PURSUANT TO GOVERNMENT CODE SEC. 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
FEB 03 2006
ALAN SLATER, Clerk of the Court
BY B. MALFER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY ORANGE, CENTRAL JUDICIAL DISTRICT

ANTHONY J. AZAVEDO, Petitioner, THE CALIFORNIA BOARD OF ACCOUNTANCY Respondents.	Case No.: 04CC11321 **JUDGMENT DENYING PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS AND DEMAND FOR COMPLETE RECORD**

On November 29, 2005, in the above matter, the petition for writ of administrative mandamus and motion for a complete record of petitioner , ANTHONY J. AZAVEDO, came on regularly for hearing in Department 7 of the above-entitled court, the Honorable Derek G. Johnson, Judge Presiding. Petitioner was represented by the law firm of Lenore Albert, attorney at law. Respondent Department of Consumer Affairs for the State of California was represented by Bill Lockyer, Attorney General of the State of California, by James M. Ledakis, Deputy Attorney General.

The Court, having read and considered all pleadings and documents on file in this action, having heard oral argument. and having exercised its independent judgment, hereby

02/07/2006 10:52 Dept. of Justice → 919162633673 NO.041 P002

denies the motion for a complete record and petition for writ of administrative mandamus.

The Court, therefore, ORDERS, ADJUDGES AND DECREES that:

1. Petitioner's motion for a complete record is denied;

2. The petition for writ of administrative mandamus is denied;

3. Respondent's Decision revoking petitioner's Certified Public Accountancy license, and staying the revocation, placing the registration on probation for five years, payment of costs and placing the registration under 60 days suspension with standard terms and conditions set forth in the administrative decision are upheld. The sixty day suspension is stayed to July 1, 2006;

4. The Court's written tentative decision shall serve as the Statement of Decision under Code of Civil Procedure section 632;

5. Parties to bear their own costs;

Approved as to Form and Content:

DATED: January 11, 2006

James M. Ledakis

JAMES M. LEDAKIS
Counsel for Respondents

DATED: _____

_____
LENORE ALBERT
Counsel for Petitioner

IT IS SO ORDERED:

DATED: 2-3-06

DEREK G. JOHNSON

HON. DEREK JOHNSON
Judge of the Superior Court

02/07/2006 10:52 Dept. of Justice → 919162633673 NO.041 D003

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

In the Matter of the Accusation Against: ANTHONY J. AZEVEDO 18021 Skypark Circle, No. K-2 Irvine, California 92614 Certified Public Accountant Certificate Number CPA 28959	Case No. AC-2004-1 OAH No. L2003110277

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the CALIFORNIA BOARD OF ACCOUNTANCY as its Decision in the above-entitled matter.

This Decision shall become effective on November 12, 2004.

It is so ORDERED on this 8th day of October, 2004.

IAN B. THOMAS, BOARD PRESIDENT
For the California Board of Accountancy
California Department of Consumer Affairs

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

In the Matter of the Accusation Against: ANTHONY J. AZEVEDO 18021 Skypark Circle, No. K-2 Irvine, California 92614 Certified Public Accountant Certificate Number CPA 28959	Case No. AC 2004-1 OAH No. L2003110277

ORDER CORRECTING TEXT OF PROPOSED DECISION

The undersigned issued a proposed decision in the above-captioned matter on July 14, 2004. Thereafter, on September 9, 2004, the Board of Accountancy (the Board), acting through Ms. Tina MacGregor, CPA, of the Board's Enforcement Division, requested a correction to the order set out in the proposed decision, in a letter transmitted to Janis Rovner, Presiding Administrative Law Judge. Ms. Martin pointed out that the order placed Respondent on probation, but did not set a term of months or years. She noted that two aspects of the decision indicated the undersigned intended to order a five-year probation term: that paragraph 12 of the order required Respondent to take and pass the ethics exam within five years, and that the cost reimbursement payment schedule, set out in paragraph 14 of the order, calculated to an approximately five-year pay-off term.

It was in fact the intent of the undersigned to order a five-year term of probation, as implied by the payment term. That part of the order would require Respondent to pay $10,000.00 in a four year period beginning ninety days after the effective date of the order, with all payments due at least six months before the end of the probation term.

The failure to include such an order resulted from the inadvertence and mistake of the undersigned in the course of editing and completing the proposed decision. It is deemed a technical mistake, subject to correction by the undersigned. (*See Russ v. Smith* (1968) 264 Cal. App. 2d 385, 391.)

GOOD CAUSE appearing, the following order is issued:

1. The correction suggested by the agency is authorized by law.

2. The proposed decision is amended. The initial language of the order, at the top of page 13 (without a numbered paragraph) is amended to read as follows:

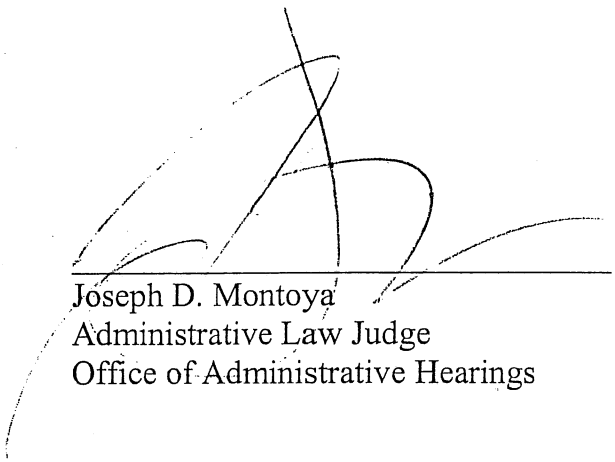
> "The Certified Public Accountant's license issued to Respondent Anthony J. Azevedo is hereby revoked. However, that revocation is stayed, Respondent placed on probation for a period of five years, subject to the following terms and conditions:"

3. This order and the Board's letter are hereby made a part of the record in this case.

4. The Board shall serve Respondent with a copy of this order and the agency's letter at the time it serves Respondent with a copy of the proposed decision or final decision in the case, whichever is earlier.

IT IS SO ORDERED.

September 17, 2004



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ANTHONY J. AZEVEDO 18021 Skypark Circle, No. K-2 Irvine, California 92614 Certified Public Accountant Certificate Number CPA 28959	Case No. AC 2004-1 OAH No. L2003110277

PROPOSED DECISION

The hearing in the above-captioned matter was held in Santa Ana, California, on June 14 and June 15, 2004. Complainant was represented by Mr. James M. Ledakis, Deputy Attorney General. Respondent appeared and was represented by his attorney, Ms. Lenore L. Albert.

Evidence was received, the case argued, and the matter submitted for decision on June 15, 2004. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and order, as follows.

FINDINGS OF FACT

A. Jurisdiction and the Parties:

1. Complainant Carol Sigmann filed the accusation in this matter while acting in her official capacity as Executive Officer of the California Board of Accountancy ("the Board"), an agency within the Department of Consumer Affairs of the State of California.

2. Respondent Anthony J. Azevedo (sometimes hereafter "Respondent") is a Certified Public Accountant, licensed by the Board to practice accountancy in the State of California. He holds certificate number 28959, first issued to him by the Board in February 1980.

3. The Board is the agency charged with licensing those who would practice accounting in California, and is empowered to take disciplinary action against such licensees. The Complainant asserts that Respondent allowed his accountancy certificate to expire, and that he failed to complete all his continuing education in a timely manner, during the period from June 1999 until November 2002. Complainant further asserts that Respondent, during that period, performed an audit for one firm, and provided a payroll certificate for another, and that both tasks were performed negligently, in an unprofessional manner. Respondent disputes the latter claims, though he acknowledges that he failed to timely renew his license.

B. The Expiration of Respondent's Certificate:

4. Respondent's certificate expired on June 1, 1999, because Respondent failed to pay the required renewal fee and because he had failed to submit evidence that he had complied with his continuing education requirements. Respondent's certificate was renewed on November 25, 2002, after the Board received the appropriate renewal fees, and a declaration that Respondent was then in compliance with his continuing education requirements.

5. The Board learned that Respondent's license had expired in the course of a routine status check, undertaken in response to a consumer complaint. Although that complaint was deemed by the Board to be unsubstantiated (and thus no disciplinary action was initiated thereon), the investigation brought the Board's attention to the fact of the expired license. Thus, on June 27, 2002, a Board investigator wrote to Mr. Azevedo and told him that the Board's records indicated that Respondent's CPA certificate had expired in June 1999. Respondent was informed that he did not have practice rights, and that he must cease and desist from the practice of public accountancy until he had renewed his license. A renewal form was sent to Respondent with that letter, along with a worksheet upon which he could establish his compliance with continuing education.

6. As of May 2001, Respondent had completed less than one-half of the eighty hours of continuing education that he should have then completed. It took him some time to complete his courses, and to satisfy the Board of his compliance with that statutory obligation.

7. Respondent spoke to the Board's investigator, Ms. Tina MacGregor, following the June 27, 2002 letter. However, he did not immediately apply for renewal of his license. On August 8, 2002, Ms. MacGregor again wrote to Respondent, requesting information, including about the type of practice he was operating. This second letter reminded Respondent about the status of his license.

8. Although Mr. Azevedo made some response to the August 8 letter, Ms. MacGregor was not completely satisfied, and she communicated that to him in a letter dated August 22, 2002. She pointed out that Respondent had previously been advised to cease and desist public accountancy until his license was renewed, but that the Board had not received

a renewal application and continuing education information. She again requested a description of the types of services that Respondent had been providing as a CPA.

9. In early September 2002 Respondent and Ms. MacGregor spoke together by telephone. The next day, September 10, 2002, she wrote Respondent to follow up on that conversation. Once again she pointed out that he did not have practice rights because his license had not been renewed, and she repeated the admonition to cease and desist from practice until renewal. The letter again requested information about the nature of Respondent's accounting practice, and it confirmed his admission, made during the telephone conversation of September 9, 2002, that he did not have enough continuing education hours to renew his license at that point.

10. On October 30, 2002, Ms. MacGregor wrote Respondent and acknowledged that his renewal application had been received, but that it could not be processed until he had provided more information about his continuing education. He was again advised he had no practice rights.

11. According to Respondent, the failure to renew the license in 1999 was a simple oversight, and he did not realize the problem until the Board contacted him in June 2002. He presents a related excuse on the matter of continuing education; he had simply been unable to keep up with his obligation due to the press of business, and that once reminded of his obligation, completed the work as quickly as possible.

C. The Audit of Knoche & Knoche:

12. In response to the Board's queries about the type of practice he operated, Respondent informed the investigator that ten percent or less of his work was audit work. The Board's letter of September 10, 2002, asked him to select an audit that he had then-recently performed, and to send the audit material to Ms. MacGregor for review. The letter informed him he would have to send all the working papers along with a statement to the effect that he had submitted "a complete universe of working papers related to the engagement." (Exhibit 11, page 1.) That statement had to be made under penalty of perjury.

13. Respondent forwarded material pertaining to an audit he had performed for a closely-held firm, Knoche & Knoche. He sent the material to the Board in late October 2002, as indicated in his statement that accompanied the audit material, which was dated October 22, 2002. Ms. MacGregor discussed the material with Respondent during a telephone call on November 12 of that year, and on November 22, 2002, she wrote to him asking for more information about the audit. The audit itself was for the year ending December 31, 2001, and was completed in February 2002.

14. Knoche and Knoche is a small business, operated by its sole shareholder with the assistance of one or two employees. It is in the mortgage business, and is a HUD (Department of Housing and Urban Development) non-supervised loan correspondent.

Respondent had performed accounting services for the firm for a period of years before he performed the audit, performing monthly bookkeeping services and preparing tax returns. He was requested to audit the company's financial statements for the year ending in December 2001, so that the client could be in compliance with HUD requirements, which include the obligation to submit an annual Audit Report.

15. (A) HUD has published a handbook that sets forth the requirements for "consolidated audits of HUD programs", hereafter "the HUD Handbook". The HUD Handbook provides that all HUD audits must be performed in compliance with Government Auditing Standards, and specifically, ". . . standards for financial audits of the U.S. General Accounting Office's (GAO) Government Auditing Standards, 1994 Revision, issued by the Comptroller General of the United States." (Ex. 18, at AGO 790.)[1]

(B) The HUD Handbook also provides that in the case of audit reports prepared for nonsupervised loan correspondents, such as Knoche and Knoche, the audit shall be performed under Government Auditing Standards "and shall include the auditor's report on the basic financial statements and a computation of the mortgagee's Adjusted Net Worth." (Exhibit 18, at AG) 816.)

(C) The HUD Handbook speaks to what should be addressed vis-à-vis internal controls. In pertinent part, the Handbook states:

> "For nonsupervised mortgagees, other than nonsupervised loan correspondents, the audit report shall also cover internal controls, compliance with specific requirements that have a direct and material effect on HUD-assisted mortgages, including: an opinion on compliance with specific requirements applicable to major HUD-assisted programs . . . .
>
> For nonsupervised loan correspondents, although the audit is performed under Government Auditing Standards, the Office of Housing has changed the compliance and auditing requirements. The scope of the auditors' testing of compliance with internal controls and the presentation of the results of those tests may be included in the auditors' report on the basic financial statements. The audit is not subject to the requirements of paragraph 7-5 except where mandated by Government Auditing Standards."
>
> (Ex. 18 at AGO 817.)

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[1] Many of the exhibits had been paginated with a Bates stamp, each page number preceded by "AGO".

(D) "Paragraph 7-5" of the HUD Handbook is in fact sixteen pages long, entitled "Compliance Requirements and Audit Areas." (See Ex. 18 at AGO 818-835.) It would otherwise require auditors to review the mortgagee's quality control plan, the operations of branch offices, the loan origination process, whether loan settlement practices are in compliance, and whether loan servicing is properly performed. Further, Paragraph 7-5 requires audits of escrow and trust accounts, compliance with "section 235 assistance payment" rules, financial status reports, and compliance with anti-kickback rules. Finally, paragraph 7-5 would otherwise have an auditor verify minimum net worth for some loan correspondents. Based on the language quoted in Factual Finding 15(C), above, all these accounting requirements are set aside for firms such as Knoche and Knoche, unless specifically required by Government Auditing Standards.

16. To be clear, it does not follow, as asserted by Respondent, that all auditing standards pertaining to the issues of compliance with laws and internal controls were dispensed with; the HUD Handbook states that for nonsupervised correspondents Government Auditing Standards still apply.

17. Respondent's audit report was deficient in that it did not comport with Government Auditing Standards in a number of respects, and as follows:

(A) The nature of the company's operations and its use of estimates was not disclosed in the report.

(B) The company's accounting policy for cash and equivalents was not disclosed in the report.

(C) Cash paid for interest and taxes was not disclosed.

(D) The company's investments of approximately $27,000 were not classified by type and disclosures related to the classifications were not presented.

(E) The cost recognized for the company pension plan, some $22,000, was not presented in the report.

(F) The financial statements or notes did not present the components of the net deferred tax liabilities or the significant components of income tax expense.

(G) Balances for major classes of fixed assets and accumulated depreciation were not disclosed.

18. This is not to say that Respondent utterly failed to examine the areas referred to in Finding 17. His work papers tend to show that such issues were examined. But, the information must be searched for in the work papers, and is not disclosed in the Audit Report or the financial statements. This is non-complying with accepted standards; as explained by Ms. MacGregor, one needs to examine both the report and the working papers to obtain the

complete picture; without the work papers the information set forth in Finding 17 above is not fully presented, and that is not in compliance. It should be noted that the very specific nature of the report, and the fact that the report was prepared for HUD, which had actual knowledge that Knoche & Knoche was an "unsupervised loan correspondent" tends to mitigate the failing to describe the company's operations in the audit report. (See Finding 17(A).)

19. The Respondent deviated from accepted auditing standards in performing the audit in other respects:

(A) He failed to issue a report on compliance with laws and regulations and on internal control;

(B) He failed to prepare adequate written audit programs for the audit of Knoche and Knoche, and failed to include in the work papers the objectives of the audit, the scope of the audit, and estimates of materiality and risk levels, including the risk of material misstatement due to fraud.

(C) He failed to provide documentation related to the understanding of the internal control structure and assessed level of control risk.

20. Regarding the deficiencies described in Factual Finding 19(A) through (C), Respondent, due to his personal knowledge of the company's operations, and his regular involvement in their monthly operations, was in fact aware of issues pertaining to internal control, and he had an understanding of issues such as the risk levels for potential material misstatement. However, under applicable auditing standards, it was incumbent upon him to set such information out in the work papers and to issue the appropriate reports.

21. There is absolutely no evidence that Knoche and Knoche was not in compliance with HUD laws and regulations, nor is there any evidence that the government, Knoche and Knoche, or any other person has been harmed by the deficiencies in the audit and audit report. On balance, it appears that in most every respect the Respondent actually performed the audit steps necessary, but he either failed to properly report his findings or he failed to adequately document his work in the work papers.

22. Ms. MacGregor, who is a CPA with appropriate experience, established that the Audit Report must stand alone; a person reviewing it must be able to obtain the pertinent information without referring to the work papers or some other source of information. Here, that can not be done; essentially, the work papers must become a part of the audit report to make it complete, and even that set of information must be supplemented by Respondent's statements. At the same time, Ms. MacGregor established deficiencies in the work papers, as not every step is properly documented. Essentially, applicable standards require that an auditor's work papers should also stand alone, so that another accountant can review them and be able to follow all the steps that lead to the audit report, and be able to verify that all

steps were taken. That is not always the case here; instead, the work papers sometimes had to be supplemented by Respondent's statements.

23. It was not established that any one of the deficiencies described in Findings 17 or 19 when taken alone establish an extreme departure from applicable auditing standards, or a failure to exercise due professional care. However, in the aggregate, when taken together those deficiencies found in the audit of Knoche and Knoche do establish an extreme departure from applicable auditing standards and a failure to exercise due professional care.

D. The Certification of the Payroll of Integrated Projects Solutions, Inc.:

24. On February 1, 2002, Respondent issued a "payroll verification" relevant to a firm known as Integrated Project Solutions, Inc. ("IPS"). According to Respondent, the purpose of this document was to assure the City of Lake Forest that IPS, in its performance of a construction contract for that entity, had paid the proper and prevailing wages to its workers. The Labor Code requires that wages must meet certain minimums set by collective bargaining agreements or the State of California when there is a public works contract with a private contractor. The City of Wake Forrest wanted verification that IPS had complied with the law.

25. The payroll verification letter is on Respondent's letterhead, and the body of the letter states, in its entirety:

> "TO WHOM IT MAY CONCERN:
>
> I, Anthony J. Azevedo, CPA, have prepared the certified Payroll on behalf of Integrated Project Solutions, Inc. The payroll was prepared as the guidelines set forth in the General Prevailing Wage Determination made by the Director of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2 Sections 1770, 1773, and 1773.1.
>
> All wage rates have been verified for the Prevailing rate per the Locality Craft # Laborer and Related Classifications Determination: SC-23-102-2001-2, dated August 22, 2001.
>
> Very truly yours,
> /s/
> Anthony J. Azevedo"

26. A review of sections 1770, 1773, and 1773.1 of the Labor Code reveals they simply establish the requirement that in public works contracts of more than $1,000.00, the prevailing wage rates shall be paid to the workers, and that there shall be a certain methodology used to establish the prevailing wage rates. The statutes cited in the letter do nothing to establish guidelines for preparing payroll.

27. Section 1776 of the Labor Code, cited by Respondent during the hearing, does in some ways speak to the preparation and maintenance of payroll records. Among other things, each contractor on a public works project must keep accurate payroll records, showing information such as the name, address, job classification, hours worked for each worker, as well as "the actual wages paid to each [worker]". (Lab. Code, § 1776, subd. (a).) Each payroll record must be verified by a sworn statement to the effect that the information therein is true and correct, and that the employer has complied with sections 1771, 1811, and 1815 of the Labor Code. (*Id.*) Other subdivisions of section 1776 require the employer to maintain certified copies of the payroll records, available for inspection, and to produce those records upon proper demand.

28. (A) According to Respondent's testimony in this proceeding and in a prior civil proceeding, his main task was to verify the prevailing wage rates for the various employees of IPS, based on prevailing wage publications. He then computed the payroll for each employee. He did not, however, prepare any checks or issue them; he simply prepared the equivalent of a pay stub for each employee, and IPS was then to issue checks to each employee in the amounts stated. He does not know if the monies were paid to any or all of the employees in the amounts he calculated. In this sense he was very much a bookkeeper, telling how much to pay, but he did not verify the payment having been actually made.

29. It was not established that Respondent acted untruthfully when he gave his opinion in the payroll verification letter that the wages met the prevailing rate. He testified in this proceeding and in his deposition that he had indeed verified the wage rates, and that testimony was credible. Nor, on that point, was it established that he failed to obtain sufficient evidence to provide a reasonable basis for that opinion—that the wages met the prevailing rate. While he acknowledged not verifying other information, such as whether the workers actually were paid the amount he calculated, on this narrow point it is found that he researched the wage rates.

30. As to Respondent's statement that he had prepared the "certified payroll", that was not entirely accurate within the meaning of the Labor Code. Section 1776, subdivision (b), requires that the payroll records must be certified, and must be maintained. Subdivision (a) requires the payroll records to include "the actual per diem wages paid" to each employee. Since Respondent did not know that the wages were paid, he can not have prepared a certified payroll within the meaning of Labor Code section 1776.

31. (A) The accounting standards applicable to the task undertaken by Respondent—to verify for a local government compliance with the prevailing wage rules in connection with a public works project—are found in the AICPA Professional Standards pertaining to Compliance Attestation, AT section 601. These standards, by their own terms, "provide[s] guidance for engagements related to either (a) an entity's compliance with requirements of specified laws, regulations, rules, contracts, or grants or (b) the effectiveness of an entity's internal control over compliance with specified requirements." (Ex. 17, at

AGO 905.) Here Respondent undertook to verify ISP's compliance with specified laws, the prevailing wage laws set out in the Labor Code.

(B) Respondent's statement did not conform to those standards, in that he did not assess the inherent risk[2] that the firm would not pay the amounts he scheduled to be paid. It appears he did not obtain an adequate understanding of the specified compliance requirements, as provided in AT 601.40, as he did not understand that preparing a certified payroll within the meaning of Labor Code section 1776 would mean that he would have to verify that the wages were actually paid. (See Finding 29, above.) While he did obtain evidence pertaining to the prevailing wage rates, he did not obtain adequate evidence of actual payment of the wages, as would be required under AT 601.48. In preparing his report, he did not comply with all the guidelines set out in AT 601.54, AT 601.55, and AT 601.56.

32. There is no evidence that any person, firm, or entity was harmed by the issuance of the "payroll verification."

33. It was not established, as alleged, that Respondent made a false financial report or statement by failing to verify prevailing wage rates, and then stating he had. He did verify those wage rates.

E. Other Findings Relevant To This Decision:

34. (A) The Board has incurred costs in the investigation and prosecution of this matter. Those costs total $11,695.00.

(B) The cost certifications do not factor out the time spent by the Board investigator in connection with the unsubstantiated complaint against Respondent.

(C) No evidence has been provided to establish the ability of the Respondent to pay costs in this matter. Based on the totality of the record, the threat of a cost award has not chilled Respondent's ability or desire to defend himself, as his counsel provided a vigorous defense.

(D) In all the facts and circumstances, the sum of $10,000 is a reasonable sum of costs, if paid over a period of time.

35. Respondent has been a CPA for nearly twenty five years. He has never been the subject of a disciplinary proceeding before this, and he has never suffered any malpractice judgments. Indeed, until the unsubstantiated complaint was received by the Board, he had not had any complaints from anyone, and he asserts that there have been no problems with tax authorities in connection with his tax work. He is now sixty-one years old, and the

[2] See AT 601.32a, at Ex. 17, at AGO 914.

primary support for his family. There is no evidence of any actual harm to any person, firm, or entity as a result of any of the deficiencies found herein. (See also Factual Findings 21 and 31, above.) Respondent only occasionally performs audits, for clients that he is already familiar with from performing tax preparation or bookkeeping services.

36. Respondent completed his continuing education requirements prior to the filing of the accusation in this case. He has attended continuing education classes since that time.

37. During the hearing Respondent acknowledged shortcomings in the audit report that he prepared, and acknowledged that he should have done some things differently. He defended other aspects of his work, and some of that defense reveals a continuing misapprehension of how the work should be handled. This was especially true regarding the payroll verification.

38. The Respondent's license history reveals that his license had lapsed on other occasions for failure to timely renew. However, the Board did not take any disciplinary action, which may have fostered the belief that a belated compliance was adequate. It must also be noted that Respondent was practicing after the Board gave him notice of lapse of his license.

LEGAL CONCLUSIONS

1. The Board has jurisdiction to proceed in this matter pursuant to Business and Professions Code (hereafter "the Code"), section 5100, et. seq., based on Factual Findings 1 through 3.

2. Cause exists to discipline Respondent's certificate for gross negligence, pursuant to Code section 5100, subdivision (c), based on Factual Findings 12 through 23.

3. Cause exists to discipline Respondent's certificate pursuant to Code section 5062 and California Code of Regulations, title 16, section 58, for his failure to exercise due care in the performance of an audit, and for his failure to use due care in preparing the payroll verification. This Conclusion is based on Factual Findings 12 through 23, and 24 through 31(B).

4. Cause was not established to discipline Respondent's certificate for making false and misleading financial statements pursuant to Code section 5100, subdivision (j), based on Factual Findings 24, 25, 29, and 33.

5. Cause exists to discipline Respondent's certificate for his practice of accountancy without a current and valid permit, pursuant to Code section 5050 and section 5100, subdivision (g), based on Factual Findings 4 through 10, 13, and 24.

6. Cause exists to discipline Respondent's certificate for his failure to timely comply with his continuing education requirements, in violation of CCR sections 87 and 87.7, and Code section 5100(g), based on Factual Findings 6 and 9.

7. Cause exists to order Respondent to pay the Board the reasonable costs of investigation and prosecution of this matter, pursuant to Code section 5107, based on Legal Conclusions 1 through 6 and their factual predicates. Based on *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal. App. 4th 32, 45, and on Findings 34(A) through 34(D), the reasonable amount of costs is $10,000.00.

8. There are mitigating facts, and aggravating facts to consider when determining what type of order should issue as a result of the foregoing Conclusions, as set out in Findings 35 through 38.

9. Based on all the foregoing, and the discussion below, Respondent's license should be placed on a term of probation, his license actually suspended, and his subsequent practice restricted in scope.

Discussion and Rationale:[3]

Complainant, through the credible testimony of Ms. MacGregor, established that Respondent had demonstrated shortcomings in his audit report, his working papers connected therewith, and in his payroll verification. There was no doubt that Respondent had allowed his license to lapse for a rather lengthy period of time, and while he fell behind on his continuing education requirements.

In the course of Respondent's testimony to the undersigned, and during the hearing by the Board's Administrative Committee, it became clear that Respondent is lacking in some basic auditing skills, and that he has not kept up with the requirements for auditors. Notwithstanding that fact, it emerged during this hearing that in one narrow sense the audit was accurate—the information was obtained and evaluated—but clearly the report and work papers are inadequate. As Ms. MacGregor confirmed for the undersigned, between the financial statements, the audit report, the work papers, and what was in Mr. Azevedo's memory, all the components and information are present. However, the information is not set out in the report, or in the work papers, as it should be. While any one shortcoming described by Ms. MacGregor might not be sufficient to establish gross negligence, the aggregate effect of the several deficiencies in the report did prove such negligence by clear

[3] The section that follows is within the ambit of Government Code section 11425.50, subdivision (d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

and convincing evidence.[4] To be clear, Respondent's failings amount to more than a matter of form versus substance, even when it is considered that no actual harm was established. Respondent's inadequate methodology could lead to harm in the future.

As to the payroll verification, the Complainant alleged that Respondent made a false statement to the effect he had verified the wage rates when he had not. That allegation was not proven at the hearing, as there was evidence Mr. Azevedo had checked the rates. The allegation was based mainly on a statement made by Respondent during his deposition, at page 40 thereof, to the effect that he had verified nothing. (See Exhibit 16.) However, the entire examination on the point, when taken in context, shows that he had verified the wage rate, but he had verified little else. Put another way, the undersigned is convinced that the cold deposition transcript, read in isolation at part of one page, does not establish that Respondent did not verify the wage rates. Rather, it appears that Respondent had not expressed himself well at that particular point, and such does not constitute clear and convincing evidence on this point.

That being said, the report did not comply with attestation requirements, and Respondent did not understand all the requirements of the task. To the extent Respondent was attesting that IPS had complied with the sections of the Labor Code cited in his report, Respondent he had not obtained adequate evidence of actual payment of the wages. Narrowly read, the report was accurate regarding the verification of prevailing wage rates, but broadly read, as a result of his citation to the Labor Code, he did not have adequate evidence of compliance.

Respondent's failure to renew his license for a period of years, and to complete all of his educational requirements is a matter that can not be ignored despite the fact the Board had not taken action in other instances. That Mr. Azevedo allowed the day-to-day pressures of operating a busy sole practice to district him from such an important matter is not an excuse, especially given the very lengthy passage of time. This was a recurring professional obligation that he failed to comply with.

Notwithstanding these matters, the ultimate sanction of an outright revocation appears harsh in a case where there was no actual harm to the public, where Respondent has otherwise enjoyed a career without mishap, and where a disciplinary order can be crafted that will protect the public. That order should include an actual suspension so that further misconduct is deterred in Respondent and others, and he should be barred from performing audits at any time in the near future, or at least until he can demonstrate to the Board that he has undertaken sufficient training and education to justify allowing him to do such work in the future.

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[4] That standard of proof was applied in this case, because this proceeding involves discipline of a professional, as opposed to occupational, license. (See *San Benito Foods v. Veneman* (1996) 50 Cal. App. 4th 1889, 1893.) Complainant was therefore obligated to adduce evidence that was clear, explicit, and unequivocal—so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal. App. 3d 278.)

ORDER

The Certified Public Accountant's license issued to Respondent Anthony J. Azevedo is hereby revoked. However, that revocation is stayed on the following terms and conditions:

1. That Respondent's license be actually suspended for a period of sixty days, beginning thirty days after the effective date of this order. During the period of his suspension Respondent shall engage in no activities for which certification as a Certified Public Account is required as described in Business and Professions Code, Division 3, Chapter 1, section 5051.

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

3. Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. 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.

4. 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.

5. 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.

6. 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.

7. Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. 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.

9. 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.

10. Upon successful completion of probation, Respondent's license will be fully restored.

11. Respondent shall be restricted from performing any audit engagements during his term of probation, unless the Board provides him prior permission to perform such tasks.

12. Respondent shall take and pass with a score of 90 percent or better a Board approved ethics class within 180 days of the effective date of this order. 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 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 five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

13. Respondent shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

14. The Respondent shall reimburse the Board its costs in the sum of $10,000. He may do so in quarterly payments of $625.00, beginning ninety days after period of suspension ends, and in any event within six months of the termination of probation.

July 14, 2004

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
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: ANTHONY J. AZAVEDO 18021 Skypark Circle #K-2 Irvine, California 92614 Certified Public Accountant Certificate No. CPA 28959 Respondent.	Case No. AC 2004-1 **ACCUSATION**

The Complainant, Carol Sigmann, for cause of accusation against ANTHONY J. AZAVEDO, alleges:

PARTIES

1. The Complainant, Carol Sigmann is the Executive Officer of the California Board of Accountancy (hereinafter the "Board") and makes this Accusation solely in her official capacity.

2. On or about February 1, 1980, the Board issued to respondent ANTHONY J. AZAVEDO (hereinafter respondent) certificate, No. 28959, Certified Public Accountant, to practice accountancy in the State of California pursuant to the Accountancy Act, Division 3, Chapter 1, § 5000 et seq. of the California Business and Professions Code.

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3. On June 1, 1999, said certificate expired for failure to timely pay the required renewal fee and failure to submit evidence of compliance with continuing education requirements. From June 1, 1999, through November 24, 2002, the certificate remained in an expired status for the foregoing reasons.

4. On November 25, 2002, said certificate was renewed upon receipt of the renewal fee and declaration of compliance with continuing education ("active") through May 31, 2003.

5. On June 1, 2003, said certificate was renewed and is currently in full force and effect through May 31, 2005.

JURISDICTION

6. 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

7. Section 5100 states:

"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:

. . .

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

. . .

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

. . .

"(j) Knowing preparation publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

8. Section 5062 states:

"A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements."

9. Title 16, California Code of Regulations (hereinafter "CCR") section 58 states:

"Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards."

10. CCR 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 [of the California Code of Regulations]. 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, 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 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 basis 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.

. . ."

11. CCR section 87.7, states, in pertinent part:

"(a) In order to renew a license in an active status a licensee shall, within the six years preceding the license expiration date, complete a continuing education course on the provisions of the Accountancy Act and the Board of Accountancy Regulations, application to current practice, and other rules of professional conduct. Such course shall be approved by the Board prior to the licensee receiving continuing education credit for the course and shall be a minimum of 8 hours.

"(b) The operative date for this regulation is based on the last two digits of the license number according to the following schedule: for license numbers ending with 01-33 the operative date is January 1, 1998, for license numbers ending with 34-66 the operative date is January 1, 2000, for license numbers ending with 67-00 the operative date is January 1, 2002.

. . ."

12. Section 118(b) provides that the expiration 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.

13. Section 5107 provides, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct a Respondent found to have committed specified acts of unprofessional conduct to pay to the Board all reasonable costs of investigation and prosecution.

PROFESSIONAL STANDARDS

14. At all times material herein, Generally Accepted Accounting Principles ("GAAP") were and are the conventions, rules and procedures that constitute the professional

standards of the accounting profession. GAAP are statements issued by the American Institute of Certified Public Accountants ("AICPA") through successive groups it has established to promulgate accounting standards, including the Financial Accounting Standards Board ("FASB") which issued Statements of Financial Accounting Standards ("FAS"), codified by FAS number; the Accounting Principles Board ("APB"), predecessor to the FASB, which issued numbered Opinions; and the Accounting Standards Division of AICPA which issues Statement of Position ("SOP").

15. At all times material herein, Generally Accepted Auditing Standards ("GAAS") were and are the standards and principles for performing audits. GAAS are promulgated by the AICPA. The ten GAAS (AU § 150), which are interrelated, are attached as Exhibit A and are discussed in the Statements of Auditing Standards ("SAS"). The SAS are codified by AU number.

16. At all times material herein, Generally Accepted Government Auditing Standards (GAGAS) were and are the standards and principles for performing audits of government organizations, programs, activities, and functions and of government assistance received by contractors, nonprofit organizations, and other nongovernment organizations. GAGAS are discussed in the GAO's Government Auditing Standards, 1994 Revision, as amended ("The Yellow Book").

17. At all times material herein, audit and reporting standards for programs administered by the Department of Housing and Urban Development ("HUD") are contained in the Consolidated Audit Guides for Audits of HUD Programs (HUD Handbook 2000.04 REV-2) August 1997 [applicable to Audits with fiscal years ending on or after September 30, 1997, and before March 31, 2002].

FIRST CAUSE FOR DISCIPLINE

(GROSS NEGLIGENCE)

18. Respondent is subject to disciplinary action under section 5100(c) for gross negligence in the practice of public accountancy. The circumstances are as follows:

19. Respondent was engaged to perform, and did perform, an audit of the

financial statements of Knoche & Knoche, Inc. dba Prime Pacific Financial ("Knoche") for the year ending December 31, 2001. In performing the Knoche audit, Respondent committed numerous acts and omissions that constitute extreme departures from GAAP, GAAS and GAGAS, including:

a. Respondent failed to modify his report for departures from GAAP due to the exclusion of relevant disclosures. Knoche's financial statements and accompanying notes failed to include several disclosures that were required by GAAP as follows:

(1) The nature of the company's operations and its use of estimates was not disclosed.

(2) The company's accounting policy for cash and equivalents was not disclosed.

(3) Cash paid for interest and taxes was not disclosed.

(4) The company's investments ($26,879) were not classified by type and disclosures related to the classifications were not presented.

(5) The cost recognized for the company's pension plan ($22,460) was not presented.

(6) The financial statements or notes did not present the components of the net deferred tax liabilities ($10,027) or the significant components of income tax expense.

(7) The balances of major classes of fixed assets and accumulated depreciation was not disclosed.

b. Respondent failed to issue a report on compliance with laws and regulations and on internal control in accordance with the HUD audit guide.

c. Respondent failed to properly plan the audit, failed to prepare written audit programs for the audit, and failed to include within the work papers the objectives of the audit, the scope of the audit, and any estimates of materiality and risk levels including the risk of material misstatement due to fraud.

d. Respondent failed to provide documentation related to the understanding

of the internal control structure and the assessed level of control risk.

e. Respondent failed to obtain, through inspections, observations, inquiries, or confirmations, sufficient competent evidential supporting the balances of assets, liabilities, revenues, and expenses reported in Knoche's financial statements.

f. Respondent failed to employ procedures to test for proper cutoffs or other events related to the period after the balance sheet date.

g. Respondent failed to perform and document tests of compliance with the requirements applicable to federal financial programs.

h. Respondent failed to obtain an external quality control review.

SECOND CAUSE FOR DISCIPLINE

(FAILURE TO EXERCISE DUE PROFESSIONAL CARE)

20. Respondent is subject to disciplinary action under section 5062 and CCR section 58 for failure to exercise due professional care in the performance of the Knoche audit and in the preparation of the Knoche audit report for the year ended December 31, 2001. The circumstances demonstrating the failure to exercise due professional care are those facts stated above in subparagraphs (a) through (h) of paragraph 19.

THIRD CAUSE FOR DISCIPLINE

(GROSS NEGLIGENCE)

21. Respondent is subject to disciplinary action under section 5100(c) for gross negligence in the practice of public accountancy. The circumstances are as follows:

22. Respondent was engaged to perform, and did perform, a certification of Integrated Projects Solutions, Inc. payroll. In performing the certification, Respondent failed to comply with professional standards as follows:

a. Respondent failed to obtain sufficient evidence to provide a reasonable basis for the conclusion expressed in his report.

b. Respondent's report certifying that he verified the payroll information did not conform to professional standards for compliance attestation engagements.

FOURTH CAUSE FOR DISCIPLINE

(FALSE, MISLEADING FINANCIAL REPORTS)

23. Respondent is subject to disciplinary action under section 5100(j) for the knowing preparation, publication, or dissemination of false, fraudulent or materially misleading financial statements, reports or information. The circumstances are as follows:

a. In the certification of Integrated Projects Solutions, Inc. payroll, Respondent violated professional standards when he provided a false statement in his certification that he verified prevailing wage rates when he had not done so.

FIFTH CAUSE FOR DISCIPLINE

(PRACTICE WITHOUT PERMIT)

24. From June 1, 1999 to November 24, 2002, Respondent's license was in an expired status.

25. During the course of the Knoche audit and the Integrated Projects Solutions, Inc. payroll certification, Respondent did not have a valid permit to practice public accountancy.

26. The certificate of Certified Public Accountant held by Respondent is subject to discipline under section 5050, which provides that 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.

27. Section 5100(g) provides that unprofessional conduct under the Accountancy Act includes a wilful violation of the Act or any regulation promulgated by the Board.

28. The certificate of Certified Public Accountant held by Respondent is subject to discipline under section 5100(g), for a wilful violation of section 5050, in that Respondent practiced accountancy with an expired license, as described in paragraphs 24 through 25 above.

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SIXTH CAUSE FOR DISCIPLINE

(FAILURE TO COMPLY WITH CONTINUING EDUCATION REQUIREMENTS)

29. For the two-year period ending May 31, 2001, Respondent was required to complete continuing educational requirements as follows:

a. 80 hours of continuing education within the two-year period preceding expiration.

b. 24 hours (of the 80 hours referenced in paragraph 29(a), above) of continuing education within the two-year period preceding expiration, in accounting and auditing subjects.

c. 8 hours (of the 80 hours referenced in paragraph 29(a), above) of continuing education within the two-year period preceding expiration, in Professional Conduct and Ethics (PC&E).

30. Respondent completed only 32 hours of continuing education as of May 31, 2001. None of the courses were in accounting and auditing subjects or PC&E.

31. Section 5100(g) provides that unprofessional conduct under the Accountancy Act includes a wilful violation of the Act or any regulation promulgated by the Board.

32. The certificate of Certified Public Accountant held by Respondent is subject to discipline under section 5100(g), for a wilful violation of CCR sections 87, 87(c) and 87.7, as described in paragraphs 29 through 30 above.

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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 28959, issued to ANTHONY J. AZAVEDO;

2. Awarding the Board costs as provided by statute; and

3. Taking such other further action as may be deemed proper.

DATED: October 8, 2003

Mary J. Crocker for

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