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

12 In the Matter of the Accusation ) No. AC 91-10  
13 Against: )  
14 ANTHONY LABENDEIRA ) NOTICE OF REVOCATION  
3163 W. Indianapolis ) OF CPA CERTIFICATE  
15 Fresno, CA 93705 ) OF ANTHONY LABENDEIRA  
16 CPA Certificate No. 11725 )  
17 Respondent. )  
18

19 TO ANTHONY LABENDEIRA:

20 1. The decision in this case became effective on  
21 October 15, 1993. On that date, Labendeira's license was  
22 suspended for one year and he was required to comply with various  
23 conditions of probation.

24 2. Condition of probation 2A provided that within one  
25 year from the effective date of the decision, Labendeira had to  
26 take and successfully complete 80 hours of continuing education

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1 in accounting courses approved in advance by the Board. This was  
2 in addition to the continuing education for relicensing.

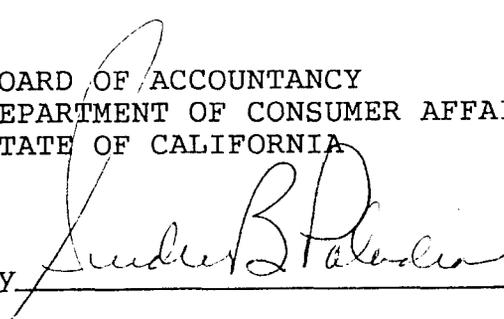
3 3. Condition 2B required Labendeira to take and  
4 successfully complete all continuing education required for  
5 relicensing and pay all necessary renewal and delinquency fees to  
6 bring his certificate current within one year from the effective  
7 date of the decision.

8 4. Condition 2C provided that if at the end of the one  
9 year suspension, Labendeira had not completed all of the  
10 requirements in conditions 2A and 2B, his CPA certificate was  
11 automatically revoked without further notice or hearing.

12 5. Whereas Labendeira has failed to obtain approval in  
13 advance by the Board or its designee of any continuing education,  
14 has failed to submit any proof that he has taken and successfully  
15 completed 80 hours of continuing education, has failed to take  
16 and successfully complete all continuing education required for  
17 relicensing, and has failed to pay the necessary fees to bring  
18 his certificate current, his certificate to practice as a  
19 certified public accountant was automatically revoked effective  
20 October 16, 1994.

21 DATED: February 7, 1995

22 BOARD OF ACCOUNTANCY  
23 DEPARTMENT OF CONSUMER AFFAIRS  
24 STATE OF CALIFORNIA

25 BY   
26  
27

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

12 In the Matter of the Accusation ) No. AC 91-10  
13 Against: )  
14 ANTHONY LABENDEIRA ) STIPULATION, DECISION  
3163 W. Indianapolis ) AND ORDER  
15 Fresno, CA 93705 )  
16 CPA Certificate No. 11725 )  
17 Respondent. )  
18 \_\_\_\_\_ )

19 IT IS STIPULATED AS FOLLOWS:

20 1. On or about June 19, 1965, respondent Anthony  
21 Labendeira (hereinafter "respondent") was issued certified public  
22 accountant certificate number 11725 under the laws of the State  
23 of California. Said certificate was not in effect between on or  
24 about April 1, 1986 and February 26, 1989. Said certificate was  
25 renewed on or about February 27, 1989, expired on April 1, 1990,  
26 and has not been renewed.

27 ///

1           2. On or about January 21, 1992, an accusation bearing  
2 number AC-91-10 was filed by Carol Sigmann, Executive Officer of  
3 the Board of Accountancy of the State of California, in her  
4 official capacity as such. Said accusation alleged cause for  
5 disciplinary action against respondent Labendeira, and said  
6 accusation is incorporated herein by reference as though fully  
7 set forth at this point. Said respondent was duly and properly  
8 served with accusation number AC-91-10 by certified mail, and  
9 said respondent filed a timely notice of defense requesting a  
10 hearing on the charges contained in the accusation.

11           3. Respondent Labendeira has retained as his counsel  
12 the Law Offices of Henry D. Nunez. Respondent has fully  
13 discussed with his counsel the charges and allegations of  
14 violations of the California Business and Professions Code  
15 alleged in accusation number AC-91-10 and has been fully advised  
16 of his rights under the Administrative Procedure Act of the State  
17 of California, including his rights to a formal hearing and  
18 opportunity to defend against the charges contained therein, and  
19 reconsideration and appeal of any adverse decision that might be  
20 rendered following said hearing. Said respondent knowingly and  
21 intelligently waives his rights to a hearing, reconsideration,  
22 appeal, and to any and all other rights which may be accorded him  
23 pursuant to the Administrative Procedure Act regarding the  
24 charges contained in accusation number AC-91-10 subject, however,  
25 to the provisions of paragraph 6 herein.

26           4. Respondent Labendeira admits that the following is  
27 true:

1           A(1). In or about 1989, respondent performed an audit  
2 for an entity referred to herein as client B.

3           (2). Respondent was grossly negligent in the  
4 preparation of the audit report in violation of Business and  
5 Professions Code section 5100, subdivision (c), in that:

6           i. He used an incorrect accountant's report to  
7 express his opinion.

8           ii. The report used by respondent failed to refer  
9 to the statement of changes in financial position which  
10 was included in the client's financial statements.

11           iii. The report did not mention prior year totals  
12 included in statements as being audited.

13           iv. The client's financial statements included  
14 statement of changes in financial position instead of  
15 required statement of cash flows.

16           v. The statement of changes in financial position  
17 included General Funds, while a requirement for  
18 inclusion of these funds extended only to the client's  
19 Enterprise Funds.

20           vi. The client's financial statements failed to  
21 include a budget versus actual analysis as required by  
22 generally accepted governmental accounting standards.

23           vii. The scope of the government agency's taxing  
24 authority was not disclosed in the statements.

25           viii. Any restrictions on cash accounts were not  
26 discussed in the statement.

27 ///

1 B(1). In or about 1990, a review of respondent's audit  
2 working papers related to his audit of client B disclosed that:

3 i. No audit planning was documented.

4 ii. Confirmations were not prepared or sent on  
5 cash accounts, accounts receivable, notes payable,  
6 insurance coverages or any other accounts.

7 iii. No internal control study, evaluation or  
8 system reviews were performed or documented and  
9 reliance, if any, on client internal controls were not  
10 specified.

11 iv. Subsequent events procedures were not  
12 performed.

13 v. No specific evaluation of client's allowances  
14 for doubtful audits, self insurance reserves were  
15 performed.

16 vi. Contingencies were not evaluated.

17 (2). Said acts and omissions by respondent constitute  
18 gross negligence in the practice of public accountancy in  
19 violation of Business and Professions Code section 5100,  
20 subdivision (c).

21 C(1). Commencing on or about 1978, and continuing to  
22 at least in or about 1984, respondent prepared tax returns for  
23 John and Karen W.

24 (2). In or about November 1984, respondent discussed  
25 with John and Karen W., a tax shelter investment which would  
26 provide them with a tax refund rather than having to pay federal  
27 income tax. In or about November 1984, John W. and Karen W. gave  
28 respondent \$5,000 for said tax shelter investment. Respondent

1 used said tax shelters as deductions in their tax returns.  
2 Shortly thereafter, the deductions set forth by respondent were  
3 disallowed by the Internal Revenue Service. Respondent received  
4 approximately \$500 from the tax shelters for referring John and  
5 Karen W. to said product.

6 (3). Respondent was grossly negligent in the practice  
7 of public accountancy in violation of Business and Professions  
8 Code section 5100, subdivision (c), in that he presented John and  
9 Karen W. with a proposed investment that involved a high degree  
10 of risk which was totally inappropriate for their income and  
11 financial position at that time.

12 (4). Respondent violated section 56 of Title 16 of the  
13 California Code of Regulations.

14 D. In 1988, and continuing through in or about  
15 February 1989, respondent, while not the holder of a valid  
16 certificate to practice public accountancy, held himself out as a  
17 certified public accountant in violation of sections 5100,  
18 subdivision (f) and 5050.

19 5. Pursuant to the facts admitted in paragraphs 4A(1)  
20 through 4D hereinabove, respondent Labendeira admits that his  
21 certified public accountant certificate is subject to  
22 disciplinary action.

23 6. In the event that this stipulation, decision, and  
24 order is not adopted by the Board of Accountancy of the State of  
25 California, the stipulations and characterizations of law and  
26 fact made by all parties herein shall be null, void, and  
27 inadmissible in any proceeding involving the parties to it.

28 WHEREFORE, it is stipulated that the Board of

1 Accountancy may issue the following decision and order:

2           Certified Public Accountant's certificate number 11725  
3 issued to respondent Anthony Labendeira is hereby revoked,  
4 provided, however, that said revocation shall be stayed and  
5 respondent shall be placed upon probation for a period of three  
6 (3) years upon the following terms and conditions:

7           1. Respondent's certificate is suspended for one year.

8           2A. With the one year period of suspension, respondent  
9 shall take and successfully complete 80 (eighty) hours of  
10 continuing education in accounting courses which shall be  
11 approved in advance by the Board or its designee. These courses  
12 shall be in addition to the continuing education required for  
13 relicensing.

14           B. During the one year period of suspension,  
15 respondent shall take and successfully complete all continuing  
16 education required for relicensing and pay all necessary renewal  
17 and delinquency fees to bring his certificate current.

18           C. If at the end of the one year period of suspension,  
19 respondent has not completed all of the requirements in  
20 paragraphs 2A and 2B hereinabove, his certificate shall be  
21 automatically revoked without further notice or hearing.

22           3. Respondent is prohibited from doing any reviews or  
23 audits during the period of probation. Said prohibition shall  
24 continue in effect beyond the end of the probation and shall  
25 continue until he demonstrates to the satisfaction of the Board  
26 or its designee that he is competent to do such work.

27 Performance of audits or <sup>reviews</sup> ~~compilations~~ by respondent in violation  
28 of this condition after probation has otherwise ended shall be

1 unprofessional conduct and shall constitute grounds for further  
2 disciplinary action against respondent's certificate.

3 4. Following completion of the suspension, respondent  
4 shall be permitted to do compilations, provided, however, that  
5 said work shall be done under the supervision of a CPA acceptable  
6 to the Board, paid by respondent, who shall be responsible for  
7 said work. The supervision requirement shall continue until the  
8 Board or its designee determines that supervision is no longer  
9 required, and may continue after the period of probation is  
10 otherwise completed.

11 Violation of this condition after probation has  
12 otherwise ended shall be unprofessional conduct and shall  
13 constitute grounds for further disciplinary action against  
14 respondent's certificate.

15 5. Commencing no later than the effective date of this  
16 decision and every thirty days thereafter from the effective date  
17 for a total of twenty payments, respondent shall reimburse John  
18 and Karen Weisner no less than two hundred and fifty dollars  
19 (\$250) per month until he has paid them a total of five thousand  
20 (\$5,000) dollars. This obligation shall not be dischargeable in  
21 bankruptcy.

22 6. Respondent shall reimburse the Board six thousand  
23 dollars (\$6,000) for investigation and prosecution costs. Said  
24 payments shall be no less than \$250 per month and shall begin  
25 twenty months from the effective date of the decision, and is all  
26 due and payable at the end of thirty-six (36) months. This  
27 obligation shall not be dischargeable in bankruptcy.

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

4           8. Respondent shall submit quarterly written reports  
5 to the Board on a form provided by the Board.

6           9. Respondent shall comply with all citations.

7           10. Respondent shall make personal appearances and  
8 report to the administrative committee at the Board's  
9 notification, provided such notification is accomplished in a  
10 timely manner. The purpose of respondent making a personal  
11 appearance before the administrative committee is to discuss  
12 respondent's compliance with the terms of the probation.

13           11. Respondent shall cooperate fully with the Board of  
14 Accountancy, and any of its agents or employees in their  
15 supervision and investigation of his compliance with the terms  
16 and conditions of this probation including the Board's probation  
17 surveillance compliance program.

18           12. Respondent shall be subject to, and shall permit,  
19 a general review of the respondent's professional practice. Such  
20 review shall be conducted by representatives of the Board  
21 whenever designated by the administrative committee, provided  
22 notification of such review is accomplished in a timely manner.

23           13. Upon successful completion of probation,  
24 respondent's certificate will be fully restored except that the  
25 requirements set forth in condition numbers 3 and 4 shall  
26 continue until they have been satisfied. Probation shall also  
27 continue even if three years have elapsed if the payments in

1 conditions 5 and 6 have not been satisfied.

2 14. If respondent violates probation in any respect,  
3 the Board, after giving respondent notice and an opportunity to  
4 be heard, may revoke probation and carry out the disciplinary  
5 order which was stayed except that no notice or opportunity to be  
6 heard shall be required for the circumstances described in  
7 condition 2C.

8 15. If an accusation or a petition to revoke probation  
9 is filed against respondent during probation, the Board shall  
10 have continuing jurisdiction until the matter is final, and the  
11 period of probation shall be extended until the matter is final.

12 16. In the event respondent should leave California to  
13 reside or practice outside this state, respondent must notify the  
14 Board in writing of the dates of departure and return. Periods  
15 of residency or practice outside the state shall not apply to  
16 reduction of the probationary period.

17 I HAVE READ the stipulation, decision and order. I  
18 understand I have the right to a hearing on the charges contained  
19 in the accusation, the right to cross-examine witnesses, and the  
20 right to introduce evidence in mitigation. I have discussed this  
21 stipulation and the charges contained in the accusation with my  
22 counsel and my rights to hearing and defense. I knowingly and  
23 intelligently waive all of these rights, and understand that by  
24 signing this stipulation, I am permitting the Board of  
25 Accountancy to impose discipline against my certificate. I  
26 understand the terms and ramifications of the stipulation,  
27 decision and order, and agree to be bound by its terms.

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DECISION AND ORDER

The foregoing is adopted as the Decision of the Board of Accountancy in this matter and shall become effective on the 15th day of October 1993.

IT IS SO ORDERED this 15th day of September 1993.

BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By Janice B. Wilson

0354110-SA90AD1904



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12 In the Matter of the Accusation ) No. . AC-91-10  
13 Against: )  
14 ANTHONY LABENDEIRA ) ACCUSATION  
3163 W. Indianapolis )  
15 Fresno, CA 93705 )  
16 CPA Certificate No. 11725 )  
17 Respondent. )  
18

19 Carol Sigmann, the complainant herein, alleges as  
20 follows:

- 21 1. She is the Executive Officer of the Board of  
22 Accountancy of the State of California and makes and files this  
23 accusation in her official capacity as such and not otherwise.  
24 2. On or about June 19, 1965, respondent Anthony  
25 Labendeira (hereinafter "respondent") was issued certified public  
26 accountant certificate number 11725 under the laws of the State  
27 of California. Said certificate was not in effect between on or

1 about and on or about April 1, 1986 and February 26, 1989. Said  
2 certificate was renewed on or about February 27, 1989, expired on  
3 April 1, 1990, and has not been renewed.

4           3. Section 5100 of the Business and Professions Code  
5 (hereinafter "the Code") provides that a certificate may be  
6 disciplined for unprofessional conduct which includes, but is not  
7 limited to, the grounds set forth in said section.

8           4. Section 5100, subdivision (c), of the Code  
9 provides, in pertinent part, that gross negligence in the  
10 practice of public accountancy constitutes unprofessional  
11 conduct.

12           5. Section 5100, subdivision (f), of the Code provides  
13 that willful violation of any provision of chapter 1 of division  
14 3 (section 5000 et seq.) or any rule or regulation promulgated by  
15 the Board of Accountancy constitutes unprofessional conduct.

16           6. Section 56 of Title 16 of the California Code of  
17 Regulations, a rule and regulation promulgated by the Board,  
18 provides, in pertinent part, that a licensee of the Board shall  
19 not accept a commission for a referral to a client of products or  
20 services of others.

21           7. Section 58 of Title 16 of the California Code of  
22 Regulations, a rule and regulation promulgated by the Board,  
23 provides that in all cases where an accountant's name is  
24 associated with financial information, the report should contain  
25 a clear cut indication of the character of the accountant's  
26 association and the degree of responsibility the accountant is  
27 taking.

1           8. Section 58.3 of Title 16 of the California Code of  
2 Regulations, a rule and regulation promulgated by the Board,  
3 contains requirements regarding the compilation of financial  
4 statements.

5           9. Section 5050 of the Code provides that no person  
6 shall engage in the practice of public accountancy unless the  
7 person is the holder of a valid permit to practice public  
8 accountancy issued by the Board.

9                           I. CLIENT A.

10           10. Respondent is subject to disciplinary action  
11 pursuant to section 5100 of the Code in that he has violated  
12 section 5100, subdivision (c), of the Code in committing acts of  
13 gross negligence in the practice of public accountancy as more  
14 particularly alleged hereinafter:

15           A. In or about 1989, respondent performed a  
16 compilation for an entity referred to herein as client A. The  
17 identity of client A will be provided to respondent pursuant to a  
18 timely request for discovery.

19           B. Respondent was grossly negligent in the performance  
20 of said compilation in that:

21           1. The financial statement for the client  
22 contained no accountant's report.

23           2. The financial statement referred to it being  
24 subject to comments contained in the opinion letter.

25           However no such letter was prepared or accompanied the  
26 financial statement.

1 II. CLIENT B.

2 11. Respondent is further subject to disciplinary  
3 action pursuant to section 5100 of the Code in that he has  
4 violated section 5100, subdivision (f), of the Code in  
5 conjunction with sections 58 and 58.3 of Title 16 of the  
6 Administrative Code as more particularly alleged hereinafter.

7 A(1). Paragraphs 10A and 10B.1 alleged hereinabove are  
8 incorporated herein by reference as though fully set forth at  
9 this point.

10 (2). Respondent violated section 58 of Title 16 of  
11 the California Code of Regulations.

12 B(1). Paragraphs 10A and 10B.2 alleged hereinabove are  
13 incorporated herein by reference as though fully set forth at  
14 this point.

15 (2). Respondent violated section 58.3 of Title 16 of  
16 the California Code of Regulations.

17 12. Respondent is further subject to disciplinary  
18 action pursuant to section 5100 of the Code in that he was  
19 grossly negligent in the practice of public accountancy as more  
20 particularly alleged hereinafter:

21 A. In or about 1989, respondent performed an audit for  
22 an entity referred to herein as client B. The identity of client  
23 B will be provided to respondent pursuant to a timely request for  
24 discovery.

25 B. Respondent was grossly negligent in the preparation  
26 of the audit report in that:

27 ///

1           1a. He used an incorrect accountant's report to  
2           express his opinion.

3           1b. The report used by respondent failed to refer  
4           to the statement of changes in financial position which  
5           was included in the client's financial statements.

6           1c. The report did not mention prior year totals  
7           included in statements as being audited.

8           2. The client's financial statements included  
9           statement of changes in financial position instead of  
10          required statement of cash flows.

11          3. The statement of changes in financial position  
12          included General Funds, while a requirement for  
13          inclusion of these funds extended only to the client's  
14          Enterprise Funds.

15          4. The client's financial statements failed to  
16          include a budget versus actual analysis as required by  
17          generally accepted governmental accounting standards.

18          5. The scope of the government agency's taxing  
19          authority was not disclosed in the statements.

20          6. Any restrictions on cash accounts were not  
21          discussed in the statement.

22                   III. REVIEW OF RESPONDENT'S WORKING PAPERS

23          13. Respondent is further subject to disciplinary  
24          action pursuant to section 5100, subdivision (c), of the Code in  
25          that he was grossly negligent in the practice of public  
26          accountancy as more particularly alleged hereinafter:

27          ///

1           A. In or about 1990, a review of respondent's audit  
2 working papers related to his audit of client B disclosed that:

3           1. No audit planning was documented.

4           2. Confirmations were not prepared or sent on  
5 cash accounts, accounts receivable, notes payable,  
6 insurance coverages or any other accounts.

7           3. No internal control study, evaluation or  
8 system reviews were performed or documented and  
9 reliance, if any, on client internal controls was not  
10 specified.

11           4. Subsequent events procedures were not  
12 performed.

13           5. No specific evaluation of client's allowances for  
14 doubtful audits, self insurance reserves were performed.

15           6. Contingencies were not evaluated.

16                                   IV. JOHN AND KAREN W.

17           14. Respondent is further subject to disciplinary  
18 action pursuant to section 5100 of the Code in that he was  
19 grossly negligent in the practice of public accounting as more  
20 particularly alleged hereinafter:

21           A. Commencing on or about 1978, and continuing to at  
22 least in or about 1984, respondent prepared tax returns for John  
23 and Karen W. The identity of said persons will be provided to  
24 respondent pursuant to a timely request for discovery.

25           B. In or about November 1984, respondent discussed  
26 with John and Karen W., a tax shelter investment which would  
27 provide them with a tax refund rather than having to pay federal

1 income tax. In or about November 1984, John W. and Karen W. gave  
2 respondent \$5,000 for said tax shelter investment. Respondent  
3 used said tax shelters as deductions in their tax returns.  
4 Shortly thereafter, the deductions set forth by respondent were  
5 disallowed by the Internal Revenue Service.

6 C. Respondent was grossly negligent in the practice of  
7 public accountancy in that he presented John and Karen W. with a  
8 proposed investment that involved a high degree of risk which was  
9 totally inappropriate for their income and financial position at  
10 that time.

11 15. Respondent is further subject to disciplinary  
12 action pursuant to section 5100 of the Code in that he has  
13 violated section 5100, subdivision (f), of the Code in  
14 conjunction with section 56 of Title 16 of the California Code of  
15 Regulations as more particularly alleged hereinafter:

16 A. Paragraphs 14A through 14B hereinabove are  
17 incorporated herein by reference as though fully set forth at  
18 this point.

19 B. Respondent received approximately \$500 from the tax  
20 shelters for referring John and Karen W. to said product.

21 16. Section 60 of Title 16 of the California Code of  
22 Regulations provides that no licensee shall engage in conduct  
23 which constitutes fiscal dishonesty or breach of fiduciary  
24 responsibility of any kind.

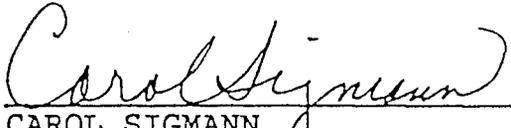
25 17. Respondent is further subject to disciplinary  
26 action pursuant to section 5100 of the Code in that he has  
27 violated section 5100, subdivision (f), of the Code and section

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1. Suspending or revoking certified public accountant certificate issued to respondent Anthony Labendeira; and

2. Taking such other and further action as may be proper.

DATED: *January 21, 1992*



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

Complainant

03541110-  
SA90AD1904