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

In the Matter of the Accusation Against: MARVIN J. BARANOV 15720 Ventura Blvd., Suite 520 Encino, CA 91436 Public Accountant Certificate No. PA 6623 Respondent.	NO. AC-94-24 **ACCUSATION**

Complainant Carol B. Sigmann, as cause for disciplinary action, alleges:

1. Complainant is the Executive Officer of the California State Board of Accountancy ("Board") and makes and files this accusation solely in her official capacity.

2. On or about August 30, 1946, Public Accountant Certificate No. PA 6623 was issued by the Board to Marvin J. Baranov ("respondent"), and at all times relevant herein, said Public Accountant Certificate was, and currently is, in full force and effect. Effective on September 11, 1963, in a case entitled, "In the Matter of the Accusation Against: Marvin J.

Baranov," case no. LA 30, the Board determined that respondent violated Business and Professions Code section 5100(d) and revoked respondent's certificate, but stayed the revocation, and placed respondent on probation for a period of three years, including 180 days of suspension.

3. This accusation is made in reference to the following statutes of the California Business and Professions Code ("Code"):

a. At all times relevant herein, section 5100 has provided, in part, that the Board may revoke, suspend or refuse to renew any permit or certificate issued by the Board, or may censure the holder of any such permit or certificate for (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy; and (f) Willful violation of any rule or regulation promulgated under the authority of the Accountancy Act.

b. Section 5107 provides, in part, that 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 in violation of section 5100 (a), (b), (c), (h), (i) or (j), to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees.

4. This accusation is made in reference to the following regulations of the California Code of Regulations (formerly the California Administrative Code), title 16. (The regulations of the Board are contained in Title 16 of the

California Code of Regulations and will be cited herein as "Rule ____," with the specific number of the regulation set forth.)

a. At all times relevant herein, Rule 58.3 has provided as follows:

"(a) This rule defines the compilation of financial statements and the review of financial statements of a non-public entity and provides guidance to accountants concerning the standards and procedures applicable to such engagements. The accountant is required to issue a report conforming to professional standards whenever he completes a compilation or review of the financial statements of a non-public entity. the accountant should not issue any report on the unaudited financial statement of a non-public entity or submit such financial statement to his client or others unless he complies with such professional standards.

"(b) Compilation of financial statements is the presentation in the form of financial statements of information that is the representation of management (owners) without undertaking to express any assurance on the statements.

"(c) Review of financial statements is the performance of inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are not material modifications that should be made to the statements in order for them to be in conformity with

generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

"(d) An accountant should not consent to the use of his name in a document or written communication containing unaudited financial statements of a non-public entity unless (a) the accountant has compiled or reviewed the financial statements and the accountant's report accompanies them, or (b) the financial statements are accompanied by an indication that the accountant has not compiled or reviewed the financial statement and that the accountant assumes no responsibility for them."

b. At all times relevant herein, Rule 68 has provided as follows:

"A licensee of the board, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records.

"Although in general the accountant's working papers are the property of the licensee, if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, then the information on those working papers must be treated the

same as if it were part of the client's books and records."

5. Respondent is subject to disciplinary action on account of the following:

a. For the years 1985, 1986, 1987 and 1988, respondent provided tax preparation services for J.D. Price, Jr., (hereinafter "Price") and on behalf of his estate. Price retired in June 1985. Pursuant to his employee retirement benefits package, Price received payments after his retirement from the State Teachers Retirement System ("STRS") and the Public Employee Retirement System ("PERS"). Prior to his retirement, Price had made contributions to each system.

b. For the years 1985, 1986 and 1987, respondent included the payments received by Price from STRS and PERS as taxable income.

c. On or about April 30, 1989, Price died. Alice Cox (hereinafter "Cox"), his daughter, was named executrix of his estate.

d. Respondent's inclusion of the payments from STRS and PERS as taxable income for 1985, 1986 and 1987, constitute gross negligence in violation of section 5100(c) of the Code because said pension payments were exempt from taxation as the taxpayer's contributions under Internal Revenue Code section 72(d).

e. Approximately in March 1989, Cox had informed respondent about the overpayment of taxes for 1985, 1986 and

1987. Respondent failed to timely submit a claim for a refund for overpayment as authorized pursuant to Internal Revenue Code section 6511. Respondent claimed additional fees were due to him for work on behalf of the estate. Thereafter Cox was unable to obtain any refunds for the overpayments of approximately $4000 because too much time had elapsed. Respondent's failure to submit a claim for refund or to exercise due diligence in such regard constitutes gross negligence in violation of section 5100(c) of the Code.

f. Immediately prior to March 1991, Cox repeatedly requested copies of the 1988 tax returns and other documents. Respondent did not provide them. On or about March 5, 1991, Cox through her counsel submitted a written request for the entire file of Price and/or of the estate. Respondent refused to comply with the written request because no written authorization from Cox was included. Respondent's refusal and failure to provide records to Cox or her counsel constitutes a willful violation of Rule 68 and grounds for discipline under section 5100(f) of the Code.

6. Respondent is subject to disciplinary action on account of the following:

a. On or about February 25, 1993, pursuant to an investigative hearing, respondent appeared before the Administrative Committee of the Board. Respondent produced samples of his work including a financial statement for a

client, "Ruzane, Inc.," for the period ending October 31, 1993, which consisted of a single page income statement, a compilation report which referred to a balance sheet and the related statements of income and expense. According to respondent, the statement was prepared on a cash basis.

b. Respondent's conduct in the preparation of the financial statements for Ruzane, Inc., constitutes gross negligence in violation of section 5100(c) of the Code as follows:

(1) Respondent's report refers to the accompanying Balance Sheet of Ruzane, Inc. and the related statements of income and expense when the only statement accompanying the report is an income statement of one page.

(2) The financial statements fail to include a statement of cash flows, fail to include note disclosures as required by generally accepted accounting principles or in the alternative fail to describe the absence of these disclosures.

(3) The report fails to disclose the basis of accounting as being on the cash basis.

(c) Said failures also constitute a willful violation of Rule 58.3 for failure to comply with professional standards as set forth in the AICPA's Statements on Standards for Accounting and Review Services (SSARS) No. 1, AR § 100.05, AR § 100.21, and AR § 100.20 and thereby grounds for discipline under section 5100(f) of the

Code.

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending Public Accountant Certificate Number PA 6623, heretofore issued to respondent Marvin J. Baranov;
2. Directing respondent Marvin J. Baranov to pay to the Board a reasonable sum for its investigative and enforcement costs of this action; and
3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: August 16, 1994

Carol B. Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

DANIEL E. LUNGREN, Attorney General
of the State of California
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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARVIN J. BARANOV 15720 Ventura Blvd., Suite 520 Encino, California 91436 Public Accountant Certificate No. PA 6623 Respondent.	NO. AC-94-24 DEFAULT DECISION AND ORDER

On August 16, 1994, accusation number AC-94-24 was filed by Carol B. Sigmann, (hereinafter "complainant") before the Board of Accountancy (hereinafter "the Board"), Department of Consumer Affairs of the State of California against Marvin J. Baranov (hereinafter "respondent"), holder of Public Accountant Certificate No. PA 6623.

On or about August 29, 1994, the accusation, along with the statement to respondent, excerpt of Government Code sections 11507.5, 11507.6, 11507.7, notice of defense, request for discovery (hereinafter the accusation package), was served on

respondent by certified mail addressed to respondent at 15720 Ventura Boulevard, Suite 520, Encino, California 91436. On or about August 30, 1994, an agent, on behalf of respondent, signed for receipt of the accusation package.

Pursuant to Title 16, California Code of Regulations, section 3, as holder of a public accountant certificate from the Board, respondent is required to file his current mailing address with the Board, and is required to immediately notify the Board of any and all changes of his mailing address. Respondent's mailing address of record with the Board is 15720 Ventura Boulevard, Suite 520, Encino, California 91436.

Respondent was served with the accusation package on August 29, 1994, in a manner authorized by Government Code section 11505(c) and Code of Civil Procedure section 11.

On September 2, 1994, respondent filed a Notice of Defense to the accusation, and listed his counsel of record as Don D. Nelson.

On December 7, 1994 a Notice of Hearing was mailed to respondent by regular first class mail addressed to respondent at 15720 Ventura Boulevard, Suite 520, Encino, California 91436. The Notice of Hearing was also mailed to respondent's counsel by regular first class mail addressed to Don Nelson, Esq., 699 Hampshire Road, Suite 217, Westlake Village, California 91361. The hearing was set for April 20 and April 21, 1995.

On March 25, 1995, respondent signed a Withdrawal of Notice of Defense, and on March 28, 1995, respondent's counsel signed the Withdrawal of Notice of Defense. Respondent has

waived his right to a hearing on the accusation and is in default. Because of respondent's waiver and pursuant to Government Code section 11520(a), the Board takes action on the accusation without a hearing, based upon the accusation and documentary evidence on file, and makes the following findings of fact and determination of issues.

FINDINGS OF FACT

1. Complainant, Carol B. Sigmann, the Executive Officer of the Board of Accountancy, made and filed accusation No. AC-94-24 in the above-entitled action solely in her official capacity.

2. On or about August 30, 1946, respondent was issued Public Accountant Certificate No. PA 6623 by the Board. The certificate at all times relevant herein was in force and effect. Effective on September 11, 1963, in a case entitled "In the Matter of the Accusation Against Marvin J. Baranov", case No. LA 30, the Board determined that respondent violated Business and Professions Code section 5100(d) and revoked respondent's certificate, but stayed the revocation, and placed respondent on probation for a period of three years, including 180 days of suspension.

3. For the years 1985, 1986, 1987 and 1988, respondent provided tax preparation services for J. D. Price, Jr., (hereinafter "Price") and on behalf of his estate.

a. Price retired in June 1985. Pursuant to his employee retirement benefits package, Price received payments after his retirement from the State Teachers Retirement System ("STRS") and the Public Employee Retirement System ("PERS"). Prior to his retirement, Price had made contributions to each system.

b. For the years 1985, 1986 and 1987, respondent included the payments received by Price from STRS and PERS as taxable income.

c. On or about April 30, 1989, Price died. Alice Cox (hereinafter "COX"), his daughter, was named executrix of his estate.

d. Respondent's inclusion of the payments from STRS and PERS as taxable income to Price for 1985, 1986 and 1987 constituted gross negligence because the pension payments were exempt from taxation under Internal Revenue Code section 72(d) as Price's taxpayer contributions.

e. Approximately in March 1989, Cox had informed respondent about the overpayment of taxes for 1985, 1986 and 1987. Thereafter, respondent failed to timely submit a claim for a refund for overpayment as authorized pursuant to Internal Revenue Code section 6511. Respondent claimed additional fees were due to him for work on behalf of the estate. Thereafter Cox was unable to obtain any refunds for the overpayments of approximately $4,000.00 because too much time had elapsed. Respondent failed to submit a claim for refund or to exercise due diligence, which constituted gross

negligence.

f. Immediately prior to March 1991, Cox repeatedly requested copies of Price's 1988 tax returns and other documents. Respondent did not provide them. On or about March 5, 1991, Cox through her counsel submitted a written request for the entire file of Price and/or of the estate. Respondent refused to comply with the written request because no written authorization from Cox was included. Respondent's refusal and failure to provide records to Cox or her counsel constituted a willful violation of Title 16, California Code of Regulations, Section 68.

4. On or about February 25, 1993, pursuant to an investigative hearing, respondent appeared before an administrative committee of the Board. Respondent produced samples of his work including a financial statement for a client, "Ruzane, Inc.", for the period ending October 31, 1993, which consisted of a single page income statement, a compilation report which referred to a balance sheet and the related statements of income and expense. According to respondent, the statement was prepared on a cash basis.

a. Respondent's financial statement referred to the accompanying balance sheet of Ruzane, Inc. and the related statements of income and expense when the only statement accompanying the report was an income statement of one page.

b. The financial statement failed to include a statement of cash flows, failed to include note disclosures

as required by generally accepted accounting principles or in the alternative failed to describe the absence of these disclosures.

c. The financial statement failed to disclose the basis of accounting as being on the cash basis.

d. Respondent's failures in the preparation of the financial statements for Ruzane, Inc. constituted a willful violation of Title 16, California Code of Regulations, Section 58.3, for failure to comply with professional standards as set forth in the AICPA'S Statements on Standards for Accounting and Review Services (SSARS) No. 1, AR § 100.05, AR § 100.21, and AR § 100.20.

5. The Board's reasonable cost of investigation and prosecution of this matter is $1,864.01 to March 25, 1995.

DETERMINATION OF ISSUES

1. Because of the above findings of fact, cause for disciplinary action against respondent exists for violating provisions of the California Accountancy Act and the rules and regulations adopted by the Board of Accountancy.

2. Cause for discipline exists pursuant to section 5100(c) of the Business and Professions Code by reason of Findings of Fact No. 3.

3. Cause for discipline exists pursuant to section 5100(f) of the Business and Professions Code for violating Title 16, California Code of Regulations, Section 68 by reason of

Findings of Fact No. 3.

4. Cause for discipline exists pursuant to section 5100(f) of the Business and Professions Code for violating Title 16, California Code of Regulations, Section 58.3 by reason of Findings of Fact No. 4.

DISCIPLINARY ORDER

WHEREFORE, IT IS ORDERED:

Public Accountant Certificate Number PA 6623 issued to Marvin J. Baranov is hereby revoked pursuant to Determination of Issues Nos. 1 through 4, inclusive, separately and as to all of them.

Respondent shall not be deprived of making any showing by way of mitigation; however, such showing shall be made to the Board prior to the effective date of this Default Decision.

This Default Decision shall become effective on September 6, 1995.

DATED: August 7, 1995

AVEDICK POLADIAN
President
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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(CML)