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8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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In the Matter of the Accusation) NO. AC-95-3
Against:)
JOHN JOSEPH MOHALLEY) DEFAULT DECISION AND
P. O. Box 1095 Fintas) ORDER OF THE BOARD
51011 Fintas, KUWAIT)
Certified Public Accountant) [Gov. Code §11520]
Certificate No. 20213)
Respondent.)

STATUTES

1. California Government Code section 11506 provides,
in pertinent part:

"(b) The respondent shall be entitled to a hearing on
the merits if he files a notice of defense, and any such
notice shall be deemed a specific denial of all parts of the
accusation not expressly admitted. Failure to file such
notice shall constitute a waiver of respondent's right to a

1 hearing, but the agency in its discretion may nevertheless
2 grant a hearing. ..."

3 2. California Government Code section 11520 provides,
4 in pertinent part:

5 "(a) If the respondent fails to file a notice of
6 defense or to appear at the hearing, the agency may take
7 action based upon the respondent's express admissions or
8 upon other evidence and affidavits may be used as evidence
9 without any notice to respondent; ..."

10 3. The Board of Accountancy, Department of Consumer
11 Affairs, is authorized to revoke respondent's Certified Public
12 Accountant Certificate pursuant to the following provisions of
13 the California Business and Professions Code:

14 Section 5100 provides that the Board may revoke, suspend or
15 refuse to renew any permit or certificate issued by the
16 Board for unprofessional conduct which includes, but is not
17 limited to:

18 (g) Suspension or revocation of the right to practice
19 before any governmental body or agency.

20 (i) Knowing preparation, publication or dissemination of
21 false, fraudulent, or materially misleading financial
22 statements, reports or information.

23 (f) Willful violation of this chapter or any rule or
24 regulation promulgated by the board under the authority
25 granted under this chapter.

26 The Board's regulations, codified in Title 16 of the
27 California Code of Regulations, provide, in Section 65, that a

1 licensee or a firm of which the licensee is a partner or
2 shareholder shall not express an opinion on or issue a report on
3 review services with respect to financial statements of an
4 enterprise unless the licensee and the licensee's firm are
5 independent with respect to such enterprise.

6 4. Recovery of Costs: Code Section 5107 provides, in
7 part, that the Board may request the administrative law judge, as
8 part of the proposed decision in a disciplinary proceeding, to
9 direct any holder of a permit or certificate in violation of,
10 *inter alia*, section 5100(i), to pay to the Board all reasonable
11 costs of investigation and prosecution of the case, including,
12 but not limited to, attorney's fees. A certified copy of the
13 actual costs, or a good faith estimate of costs where actual
14 costs are not available, signed by the executive officer, shall
15 be prima facie evidence of reasonable costs of investigation and
16 prosecution of the case.

17 5. California Business and Professions Code section
18 118 provides, in pertinent part:

19 "(b) The suspension, expiration, or forfeiture by
20 operation of law of a license issued by a board in the
21 department, or its suspension, forfeiture, or cancellation
22 by order of the board or by order of a court of law, or its
23 surrender without the written consent of the board, shall
24 not, during any period in which it may be renewed, restored,
25 reissued, or reinstated, deprive the board of its authority
26 to institute or continue a disciplinary proceeding against
27 the licensee upon any ground provided by law or to enter an

1 order suspending or revoking the license or otherwise taking
2 disciplinary action against the license on any such ground."

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5 FINDINGS OF FACT

6 6. On April 26, 1974, the Board of Accountancy issued
7 Certified Public Accountant Certificate No. 20213 to respondent.
8 Said Certified Public Accountant Certificate was in full force
9 and effect until its expiration on August 1, 1992.

10 7. In October of 1992, respondent requested that the
11 Board accept his "voluntary resignation" and indicated that he
12 did not intend to return to California in the "foreseeable
13 future." The Board has not acted upon this request.

14 8. On or about January 10, 1995, Complainant Carol
15 Sigmann, in her official capacity as Executive Officer of the
16 Board of Accountancy, Department of Consumer Affairs, State of
17 California ("Board"), filed Accusation No. AC-95-3 against John
18 Joseph Mohalley ("respondent"). A copy of the Accusation is
19 attached hereto as Exhibit A and incorporated herein. The
20 Accusation charges respondent with violations of Board Rule 65 in
21 conjunction with Section 5100(f); Section 5100(i); and 5100(g).
22 Paragraph 12 of the Accusation contains matters alleged in
23 aggravation of penalty.

24 9. On or about January 18, 1995, Victoria Rivera, an
25 employee of the Office of the Attorney General, sent by
26 registered mail a copy of Accusation No. AC-95-3, Statement to
27 Respondent, Government Code sections 11507.5, 11507.6, and

1 11507.7, the Notice of Defense form, and a Request for Discovery,
2 to respondent's address of record with the Board which was and is
3 P. O. Box 1095 Fintas, 51011 Fintas, KUWAIT. The package was
4 returned to the Office of the Attorney General by the USPS on
5 March 27, 1995, with a notation on the package in what appears to
6 be Arabic script. The USPS employee who delivered the package to
7 the Office of the Attorney General was unable to elaborate on the
8 meaning of the notation. The above-described service was
9 effective as a matter of law pursuant to the provisions of
10 California Government Code section 11505, subdivision (c).

11 10. Respondent failed to file a Notice of Defense
12 after service upon him of the Accusation and therefore waived his
13 right to a hearing on the merits of Accusation No. AC-95-3.

14 11. Pursuant to its authority under Government Code
15 section 11520, and based on the evidence before it, the Board
16 finds that the factual allegations contained in the Accusation
17 No. AC-95-3 are true, to wit:

18 Respondent John Joseph Mohalley was suspended indefinitely
19 from practice before the Securities and Exchange Commission
20 on September 30, 1993, for improper conduct. The
21 circumstances are that respondent served as Chief Financial
22 Officer of Vintage Group, Inc., from February 1986 through
23 March 1989, and as director from February 1986 until January
24 1988. Respondent owned 3,367 shares of Vintage's common
25 stock from February 1986 through April 1990, and options to
26 purchase additional shares, which options respondent
27 exercised shortly after auditing Vintage's financial

1 statements for the fiscal year ended April 30, 1989, and re-
2 auditing Vintage's financial statements for the fiscal years
3 ended April 30, 1988 and April 30, 1987.

4 While Coopers & Lybrand had performed the audits of Vintage
5 for the 1987 and 1988 fiscal years and had issued qualified
6 opinions, the replacement audit reports for 1987 and 1988
7 and the 1989 audit report prepared by respondent, intended
8 to supersede those performed by Coopers & Lybrand, contained
9 unqualified opinions. Respondent was unable to produce work
10 papers for the re-audits and the audit.

11 In preparing the audits in question, respondent falsely
12 represented himself and his accounting firm as "independent"
13 auditors of Vintage Group, Inc.'s financial statements for
14 the fiscal years ended April 30, 1987, 1988 and 1989,
15 notwithstanding the fact that respondent compiled the
16 financial statements that were the subject of the audit,
17 that respondent was an officer of the entity during the
18 relevant financial period, and that respondent was a
19 shareholder of the company during the relevant financial
20 period. Respondent had reason to know that the financial
21 statements and audit report would be included in Vintage's
22 required periodic filings with the SEC and would be
23 disseminated to the public in connection with the company's
24 public offer and sale of securities. Respondent consented to
25 the use of the financial statements and audit report in this
26 manner.

27 12. In SEC Administrative Proceeding File No. 3-8296,

1 respondent was barred, effective February 18, 1994, from
2 association with any broker, dealer, municipal securities dealer,
3 investment advisor, or investment company, based upon
4 respondent's violations of federal securities laws, including his
5 willful aiding and abetting of Vintage's failure to comply with
6 Regulation E and resulting violation of Section 5 of the
7 Securities Act of 1933; his willful aiding and abetting of
8 Vintage's violations of Section 13(a) of the Exchange Act and
9 Rules 12b-20, 13a-01 and 13a-13 thereunder, and his willful
10 aiding and abetting of Vintage's violations of Section 17(a) of
11 the Securities Act, Section 10(b) of the Exchange Act, and Rule
12 10b-5 thereunder.

13 Further, respondent consented, in Civil Action No.
14 C933540VRW, in United States District Court for the Northern
15 District of California, to the issuance of an order of permanent
16 injunction and to the entry of final judgment thereon by the SEC,
17 enjoining him from future violations of securities laws and
18 barring him from acting as an officer or director of any issuer
19 having a class of securities registered pursuant to Section 12 of
20 the 1934 Act or required to file reports pursuant to Section
21 15(d) of the 1934 Act.

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DETERMINATION OF ISSUES

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1. Respondent is subject to discipline in a default proceeding pursuant to section 11520 of the California Government Code by reason of the Findings of Fact 5 through 9 above.

1 2. Respondent is subject to disciplinary action
2 pursuant to section 5100(i) of the California Business and
3 Professions Code by reason of the fact that respondent falsely
4 represented himself and his accounting firm as independent
5 auditors in the audit report when that was not, in fact, the
6 case, as set forth in Findings of Fact number 10.

7 3. Respondent is subject to disciplinary action
8 pursuant to section 5100(f) of the California Business and
9 Professions Code on the grounds that he violated Board Rule 65,
10 by reason of the fact that he was not independent in the audit,
11 as set forth in Findings of Fact number 10 above,

12 4. Respondent is subject to disciplinary action
13 pursuant to section 5100(g) of the California Business and
14 Professions Code by reason of the fact that his right to appear
15 or practice before the SEC was revoked, as set forth in Findings
16 of Fact number 10 above.

17 5. The Finding of Fact set forth in paragraph 11 is
18 relevant to the penalty to be imposed in this matter.

19 6. Cause for revocation has been established,
20 separately and severally, based upon Determinations 1, 2, and 3,
21 above, and revocation is based upon each of them, and all of
22 them, and the matters in Determination 4 further support the
23 imposition of this penalty.

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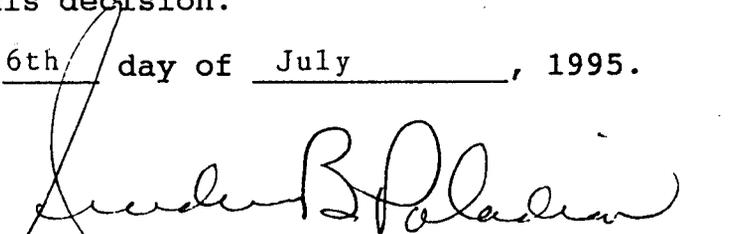
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ORDER OF THE BOARD OF ACCOUNTANCY

Certified Public Accountant Certificate number 20213, heretofore issued to respondent John Joseph Mohalley, is hereby revoked. Respondent's request that the Board accept the surrender of his license is denied.

An effective date of August 6, 1995, has been assigned to this Order. Pursuant to California Government Code section 11520, subdivision (b), respondent is entitled to make any showing by way of mitigation; however, such showing must be made in writing to the Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, California 95815, prior to the effective date of this decision.

Made this 6th day of July, 1995.



President
Board of Accountancy
Department of Consumer Affairs

03541110-SF94AD1198

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of the State of California
2 JEANNE COLLETTE WERNER
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8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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11 In the Matter of the Accusation) NO. AC-95-3
Against:)
12)
JOHN JOSEPH MOHALLEY) ACCUSATION
13 P. O. Box 1095 Fintas)
51011 Fintas, KUWAIT)
14)
Certified Public Accountant)
15 Certificate No. 20213)
Respondent.)
16

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18 Complainant Carol Sigmann, as cause for disciplinary
19 action, alleges:

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

23 LICENSE INFORMATION

24 2. On or about April 26, 1974, Certified Public
25 Accountant Certificate No. 20213 was issued by the Board to John
26 Joseph Mohalley ("respondent"), which certificate was in full
27 force and effect until its expiration on August 1, 1992.

1 In October of 1992, Mr. Mohalley requested that the Board
2 accept his "voluntary resignation" and indicated that he did not
3 intend to return to California in the "foreseeable future." The
4 Board has not acted upon this request.

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6 STATUTES AND REGULATIONS

7 3. California Business and Professions Code ("Code")
8 Section 5100 provides that the Board may revoke, suspend or
9 refuse to renew any permit or certificate issued by the Board for
10 unprofessional conduct which includes, but is not limited to, one
11 or any combination of the following:

12 (f) Willful violation of this chapter or any rule or
13 regulation promulgated by the board under the authority
14 granted under this chapter.

15 (g) Suspension or revocation of the right to practice
16 before any governmental body or agency.

17 (i) Knowing preparation, publication or dissemination of
18 false, fraudulent, or materially misleading financial
19 statements, reports or information.

20 4. Code Section 5107 provides, in part, that the Board
21 may request the administrative law judge, as part of the proposed
22 decision in a disciplinary proceeding, to direct any holder of a
23 permit or certificate in violation of specific provisions of
24 section 5100 to pay to the Board all reasonable costs of
25 investigation and prosecution of the case, including, but not
26 limited to, attorney's fees. A certified copy of the actual
27 costs, or a good faith estimate of costs where actual costs are

1 February 1986 through April 1990, and options to purchase
2 additional shares, which options respondent exercised shortly
3 after auditing Vintage's financial statements for the fiscal year
4 ended April 30, 1989, and re-auditing Vintage's financial
5 statements for the fiscal years ended April 30, 1988 and April
6 30, 1987.

7 While Coopers & Lybrand had performed the audits of
8 Vintage for the 1987 and 1988 fiscal years and had issued
9 qualified opinions, the replacement audit reports for 1987 and
10 1988 and the 1989 audit report prepared by respondent, intended
11 to supersede those performed by Coopers & Lybrand, contained
12 unqualified opinions. Respondent was unable to produce work
13 papers for the re-audits and the audit.

14 8. In preparing the audits in question, respondent
15 falsely represented himself and his accounting firm as
16 "independent" auditors of Vintage Group, Inc.'s financial
17 statements for the fiscal years ended April 30, 1987, 1988 and
18 1989, notwithstanding the fact that respondent compiled the
19 financial statements that were the subject of the audit, that
20 respondent was an officer of the entity during the relevant
21 financial period, and that respondent was a shareholder of the
22 company during the relevant financial period. Respondent had
23 reason to know that the financial statements and audit report
24 would be included in Vintage's required periodic filings with the
25 SEC and would be disseminated to the public in connection with
26 the company's public offer and sale of securities. Respondent
27 consented to the use of the financial statements and audit report

1 in this manner.

2 9. Incorporating herein the allegations in paragraphs 7
3 and 8, respondent's certificate is subject to discipline under
4 Section 5100(g) in that, in SEC Administrative Proceeding File
5 No. 3-8192, respondent's right to appear or practice before the
6 SEC was revoked, effective September 30, 1993.

7 The Commission's order was based on, *inter alia*, on the
8 following:

9 a. Respondent compiled false and misleading quarterly and annual
10 financial statements for Vintage Group, Inc. for the fiscal years
11 1989 and 1990 that were not prepared in accordance with generally
12 accepted accounting principles and that overstated the net asset
13 value of Vintage's investment portfolio;

14 b. Respondent falsely represented himself and his accounting
15 firm as the "independent" auditors of Vintage's financial
16 statements for the fiscal year ended April 30, 1989,
17 notwithstanding the fact that he compiled the Vintage financial
18 statements that were the subject of the audit and that he was an
19 officer and shareholder of Vintage during the financial period
20 encompassed by the audit;

21 c. Respondent failed to perform the audit of Vintage's financial
22 statements for the fiscal year ended April 30, 1989, in
23 accordance with generally accepted auditing standards as
24 represented in his audit report;

25 d. Respondent knew when he compiled Vintage's financial
26 statements for fiscal years 1989 and 1990 and when he issued his
27 Vintage audit report for fiscal year 1989 that the financial

1 statements and the audit report would be included in Vintage's
2 periodic filings with the SEC and disseminated to the public in
3 connection with Vintage's public offer and sale of its
4 securities; and

5 e. Respondent consented to the use of the financial statements
6 and audit report in the manner set forth in d. above.

7 10. Incorporating herein the allegations in paragraphs
8 7, 8 and 9, respondent's certificate is subject to discipline
9 under Section 5100(f) in conjunction with Board Rule 65 by reason
10 of the fact that he was not independent in conducting the audit.

11 11. Incorporating herein the allegations in paragraphs
12 7, 8 and 9, respondent's certificate is subject to discipline
13 under Section 5100(i) in that respondent falsely represented
14 himself and his accounting firm as independent auditors in the
15 audit report.

16 12. It is alleged, in aggravation of penalty, that, in
17 SEC Administrative Proceeding File No. 3-8296, respondent was
18 barred, effective February 18, 1994, from association with any
19 broker, dealer, municipal securities dealer, investment advisor,
20 or investment company, based upon respondent's violations of
21 federal securities laws, including his willful aiding and
22 abetting of Vintage's failure to comply with Regulation E and
23 resulting violation of Section 5 of the Securities Act of 1933;
24 his willful aiding and abetting of Vintage's violations of
25 Section 13(a) of the Exchange Act and Rules 12b-20, 13a-01 and
26 13a-13 thereunder, and his willful aiding and abetting of
27 Vintage's violations of Section 17(a) of the Securities Act,

1 Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

2 Further, respondent consented, in Civil Action No.
3 C933540VRW, in United States District Court for the Northern
4 District of California, to the issuance of an order of permanent
5 injunction and to the entry of final judgment thereon by the SEC,
6 enjoining him from future violations of securities laws and
7 barring him from acting as an officer or director of any issuer
8 having a class of securities registered pursuant to Section 12 of
9 the 1934 Act or required to file reports pursuant to Section
10 15(d) of the 1934 Act.

11 PRAYER

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

- 15 1. Revoking or suspending Certified Public Accountant
16 Certificate Number 20213, heretofore issued to
17 respondent John Joseph Mohalley;
- 18 2. Awarding the Board costs as provided by statute;
19 and
- 20 3. Taking such other and further action as the Board
21 deems proper.

22 DATED: January 10, 1995
23 Carol Sigmann
24 Carol Sigmann
25 Executive Officer
26 Board of Accountancy
27 Department of Consumer Affairs
State of California

Complainant

27 03541110-SF94AD1198