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

In the Matter of the Petition for Reinstatement by: JACK R. SOWELL, Petitioner.	Case No. SI-2016-55 OAH No. 2016030112

DECISION

This matter was heard before a quorum of the California Board of Accountancy (the Board), Department of Consumer Affairs, State of California, in Anaheim, California, on March 18, 2016.

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, presided over the hearing.

Carl W. Sonne, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General, as authorized by Government Code section 11522.

Petitioner Jack R. Sowell appeared and represented himself.

The matter was submitted at the conclusion of the hearing.

FACTUAL FINDINGS

1. On September 26, 1975, the Board issued to petitioner Certified Public Accountant (CPA) Certificate Number 22144.

2. On August 7, 1995, Carol B. Sigmann, in her official capacity as the Executive Officer of the Board, filed an Accusation against petitioner in case number AC-95-21, on grounds of gross negligence, unprofessional conduct, and the conviction of a crime substantially related to the qualifications, functions, and duties of a CPA.

3. Specifically, petitioner was grossly negligent in performing audit work for two entities in that the audit reports were defective and his working papers were deficient.

Petitioner issued an unqualified audit report and, within a few months thereafter, both entities filed for relief under Chapter 11 of the Bankruptcy Code. In addition, petitioner performed the audits and prepared the auditor's reports when he was not independent of the two entities. On January 12, 1995, petitioner pled guilty and was convicted of aiding and abetting mail fraud.

4. On May 11, 1995, petitioner executed a Stipulation for Revocation and Order, admitting the truth of each and every allegation of the Accusation and acknowledging that cause existed to discipline his license. The Board waived its right to collect costs of investigation and prosecution from respondent.

5. On September 6, 1995, the Board revoked petitioner's CPA license by its Decision and Order dated August 7, 1995.

6. On December 15, 2015, petitioner filed a Petition for Reinstatement of Revoked Certificate.

7. In support of his petition, petitioner presented a continuing education worksheet reporting 60 hours of continuing education completed between August 20, 2013, and December 9, 2015, along with seven certificates of completion. He also presented a Tax Professional Personal Account statement reflecting educational courses completed with the California Tax Education Council (CTEC). Petitioner presented proof of his attendance at update seminars presented by Spidell Publishing Inc., and tax seminars at the Internal Revenue Service and the National Association of Tax Professionals.

8. Petitioner also presented four reference letters from clients and others familiar with his character. All character witnesses knew of petitioner's disciplinary record. Attorney Steven Feldman wrote "[Petitioner] has always performed his work for me in a professional and ethical manner." Attorney Araceli Tovar wrote "[Petitioner] has the moral qualifications, competency and knowledge to be a qualified licensee to practice public accountancy in accordance with this Board's standards." Enrolled Agent Rocelynn Estrellon wrote "[Petitioner] has always responded to his duties ethically and has maintained his professional responsibilities." Enrolled Agent Julie Fagan wrote "I know firsthand that [petitioner's] clients have complete admiration for him and that he is will respected within his community."

9. In his sworn testimony, petitioner acknowledged that he engaged in wrongful acts in connection with audits of a mortgage company. He explained that certain malfeasance "got past" him because he "got too cocky." Petitioner expressed remorse for his conduct and recognized that he "disgraced the profession." Petitioner credibly testified that, at the time of the criminal trial, he offered to pay restitution to the victims, but the prosecution rejected the offer as a resolution of the criminal matter. Petitioner was convicted and placed on probation. He paid all court-ordered fines and successfully completed the terms of his probation.

10. Petitioner explained that he did not contemplate filing for reinstatement for 20 years because he built a practice as a registered tax preparer with CTEC. However, CPA licensure has become required to provide certain ongoing services that did not require CPA licensure in the past. In particular, petitioner has provided services for existing clients in trust

and estate tax compliance and he seeks to avoid a disruption in these services by the reinstatement of his CPA license.

11. Petitioner currently represents 400 individual clients and 100 business clients in tax return preparation and offers in compromise. He developed his practice only from the referrals of existing clients and does not advertise. He performs no attestation services, including compilations, reviews, and audits. If reinstated, petitioner asserted no objection to a restriction from performing audits and attestation services.

12. Respondent has engaged in charitable activities in his community, helping rebuild athletics fields and fundraising for scholarships for boys and girls. There is no evidence of any criminal conviction or unlawful conduct in the 21 years since the Board revoked his license.

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

2. Business and Professions Code section 5115, subdivision (a), provides that a person may petition the Board for reinstatement of a revoked license after a period of not less than one year has elapsed from the effective date of the decision revoking the license.

3. A person seeking reinstatement of a revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.)

4. In cases involving unprofessional conduct, the Board may permanently restrict or limit the practice of a licensee, prohibiting the licensee from performing or engaging in enumerated acts of public accountancy. (Bus. & Prof. Code, §§ 5100.5, subd. (a), and 5051.)

5. The Board considered the rehabilitation criteria for the restoration of a revoked certificate under California Code of Regulations, title 16, section 99.1. The Board found petitioner's expression of remorse to be credible. He acknowledged the wrongfulness of his past actions, and the Board found that his attempt to pay restitution was in good faith. The Board was impressed that petitioner has developed a large practice without advertising. There is no evidence of any conviction or unlawful conduct in the 21 years since the effective date of the Decision and Order revoking petitioner's license. Petitioner demonstrated to the Board a genuine commitment to maintaining high professional standards by the amount of continuing education courses he has completed. The character reference letters credibly portray petitioner as professional and ethical and demonstrate his full rehabilitation.

6. The Board determined that practice restrictions are necessary to protect the public if petitioner is reinstated. Petitioner lacks actual experience in audits and attestation services, not having engaged in those services in over 20 years. Moreover, petitioner testified that he does not intend to provide services in audits, reviews, compilations, or attestation engagements and consented to the imposition of restrictions from performing these services.

7. Cause exists under Business and Professions Code section 5115, subdivision (a), to grant petitioner's petition for reinstatement subject to a permanent restricted practice order under Business and Professions Code section 5100.5, prohibiting petitioner from performing audits, reviews, compilations, or attestation engagements. (Factual Findings 1-8.)

ORDER

1. The petition for reinstatement filed by petitioner Jack R. Sowell is hereby granted and, subject to his satisfaction of all other conditions of licensure, petitioner's certificate shall be restored, subject to the following restricted practice order under Business and Professions Code section 5100.5.

2. It is further order that Petitioner shall be prohibited from performing audits, reviews, compilations, or attestation engagements. Petitioner shall be prohibited from performing the above mentioned services permanently or until such time as petitioner successfully petitions the Board for reinstatement of the privilege to engage in any of the services or acts restricted by this Order.

This Decision shall become effective on July 3, 2016.

IT IS SO ORDERED this 3rd day of June, 2016.

Katrina L. Salazar, CPA
President
California Board of Accountancy

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

In the Matter of the Accusation Against: JACK RICKMAN SOWELL 411 Canyon Solana Beach, CA 92075 Respondent.	NO. AC-95-21 STIPULATION FOR REVOCATION AND ORDER

Carol B. Sigmann, Executive Officer of the Board of Accountancy of the State of California ("Board"), by and through her attorney, Daniel E. Lungren, Attorney General of the State of California, by Susan A. Lanoue, Deputy Attorney General, and Jack Rickman Sowell ("respondent"), by and through his attorney D. Reuben Buck Esq., hereby stipulate as follows:

1. Respondent has received and read Accusation No. AC-95-21, which is being filed concurrently with this stipulation. Respondent understands the nature of the charges alleged in the Accusation and that the charges and allegations constitute cause for imposing discipline upon respondent's license to practice which was issued by the Board.

2. Respondent and his counsel are aware of each of respondent's rights, including the right to a hearing on the charges and allegations, the right to confront and cross-examine witnesses who would testify against respondent, the right to present evidence in his favor and call witnesses on his behalf, or to testify, his right to contest the charges and allegations, and other rights which are accorded to respondent pursuant to the California Administrative Procedure Act (Gov. Code, § 11500 et seq.), including the right to seek reconsideration, review by the superior court, and appellate review.

3. Respondent freely and voluntarily waives each and every one of the rights set forth in paragraph 2.

4. Respondent understands that in signing this stipulation rather than contesting the accusation, he is enabling the Board to issue the following order without further process.

5. Admissions made by respondent herein are for purposes of this proceeding, for any other disciplinary proceedings by the Board, and for any petition for reinstatement, reduction of penalty, or application for relicensure, and shall have no force or effect in any other case or proceeding.

6. It is understood by respondent that, in deciding whether to adopt this stipulation, the Board may receive oral and written communications from its staff and the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the Board, the stipulation will not become effective and may not be used for any purpose, except

for this paragraph, which shall remain in effect.

7. Respondent admits that each and every allegation of Accusation No. AC-95-21 is true and that cause exists thereby to impose discipline upon his license. A true and correct copy of Accusation No. AC-95-21 is attached to this stipulation as Exhibit A and is hereby filed in this matter.

8. The Board waives its right to collect cost reimbursement (including attorneys' fees) from respondent based on the investigation and prosecution of this action.

9. Based upon the foregoing, it is stipulated and agreed that the Board may issue the following as its decision in this case:

ORDER

IT IS HEREBY ORDERED that Certificate number 22144 issued to Jack Rickman Sowell is revoked.

IT IS FURTHER ORDERED that, pursuant to Government Code section 11522, respondent may petition the Board for

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reinstatement of his license after a period of not less than one year has elapsed from the effective date of this decision.

I concur in the stipulation and order:

DATED: 5/15/95

DANIEL E. LUNGREN, Attorney General
of the State of California

Susan A. Lanoue
Deputy Attorney General

Attorneys for Complainant

DATED: 5/11/95

McKenna and Cuneo

D. Reuben Buck
Attorney for Respondent

I have carefully read and fully understand the stipulation and order set forth above. I have discussed the stipulation and order with my attorney D. Reuben Buck, Esq. I understand that in signing this stipulation I am waiving my right to a hearing on the charges set forth in the Accusation in this matter. I further understand that in signing this stipulation the Board shall enter the foregoing order revoking my right to practice as a certified public accountant in the State of California.

DATED: 5/11/95

JACK RICKMAN SOWELL
Respondent

DECISION AND ORDER
OF THE BOARD OF ACCOUNTANCY

The foregoing Stipulation and Order, in No. AC-95-21, is hereby adopted as the Order of the California Board of Accountancy. An effective date of September 6, 1995, has been assigned to this Decision and Order.

Made this 7th day of August, 1995.

FOR THE BOARD OF ACCOUNTANCY

SAL:sl
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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JACK RICKMAN SOWELL 411 Canyon Solana Beach, CA 92075 License No. 22144 Respondent.	NO. AC-95-21 ACCUSATION

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

PARTIES

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 September 26, 1975, the Board issued Certificate No. 22144 (Certified Public Account) to Jack Rickman Sowell ("respondent"), and at all times relevant herein, said license was, and currently is, in full force and effect.

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Exhibit 19

JURISDICTION

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

a. Section 5100 provides, 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 unprofessional conduct.

b. Section 5100(c) provides, in part, that unprofessional conduct includes, but is not limited to, dishonesty, fraud or gross negligence in the practice of public accountancy.

c. Section 5107 provides, in 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 be in violation of section 5100(c) 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.

d. Section 5100(f) provides that unprofessional conduct includes, but is not limited to, "Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

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e. Section 5100(a) provides that unprofessional conduct includes, but is not limited to: "Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant."

f. Section 490 provides that: "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

4. This accusation is made in reference to Title 16, California Code of Regulations ("CCR") section 65, which states:

"A licensee or a firm of which the licensee is a partner or shareholder shall not express an opinion on or issue a report on review services with respect to financial statements of an enterprise unless the licensee and the licensee's firm are independent with respect to such enterprise. Independence shall be determined by assessing

the accountant's financial, promotional, managerial and other relationships with the enterprise to determine whether, in the circumstances, his or her opinion would be considered independent, objective and unbiased by one who had knowledge of all the facts."

CHARGES AND ALLEGATIONS

5. Respondent is subject to disciplinary action pursuant to Code section 5100 based on the following:

6. In or about 1990, respondent was hired to perform independent audits of two related businesses, Naimpro, Inc. and Naimco-Clairemont, Inc. for the year ended June 30, 1990 and to prepare audit reports. These two corporations, along with several other entities, were part of a business operation known as Pioneer Mortgage. Respondent issued an unqualified audit report for Naimpro, Inc. Respondent also prepared an unqualified audit report for Naimco-Clairemont, Inc., which he claims was in draft format, although the report was not so labeled. Within a few months thereafter, both entities and several other Pioneer Mortgage businesses filed for Chapter 11 Bankruptcy.

7. Respondent was not independent of the Pioneer Mortgage entities at the time he performed the audits. Respondent was or had been vice president and chief financial officer of The Wolfe Group. Inc. and was a partner of that or another Wolfe entity. The Wolfe Group, Inc. was the general partner of Wolfe Development, Ltd., a limited partnership. In or about November 1988, respondent, acting on behalf of the two Wolfe Group entities, borrowed money from and signed promissory

notes to Naimco-Clairemont, Inc. Respondent guaranteed these loans in his individual capacity, and balances on these loans remained outstanding at the time of respondent's audit reports.

8. Respondent's audit reports for Naimpro, Inc. and Naimco-Clairemont, Inc. should have, but did not include explanatory paragraphs in each report describing the uncertainty about the ability of each entity to continue as a going concern for a reasonable period of time.

9. Respondent's audit reports were further defective in that the financial statement disclosures were incomplete, in, but not limited to, the following ways:

a. The financial statement disclosures for Naimpro, Inc. contained no disclosure as to the collectibility of the loan portfolio.

b. Note 3 to the financial statements for Naimpro, Inc. discusses the amounts of the trust deed notes receivable, but fails to disclose a material related party transaction -- that the largest investment of these trust deed notes (in the amount of $4,433,300) was based on a loan to a related entity.

c. The notes accompanying the financial statements for Naimpro, Inc. fail to disclose that the note receivable in the amount of $2,115,000, was comprised of notes from related companies and secured by a deed of trust from an officer of the Pioneer Mortgage entities.

d. Naimco-Clairemont's largest asset was a receivable generated by advances to related parties. There

was no disclosure in the notes to the financial statements as to the future collectibility and the financial viability of the companies to which this receivable relates.

10. Respondent's working papers for the two audits were deficient in the following respects:

a. Respondent failed to document proper planning of the audits or supervision of his staff in his working papers. For example, respondent did not sufficiently address and document the following items: (1) The entities' accounting policies and procedures; (2) The entities' legal obligations; (3) Preliminary assessment of the audit risk; and (4) Consideration of the financial statement items likely to require adjustment. In addition, the working papers do not document that respondent reviewed the work performed by his assistant to determine if it was adequately performed and to evaluate whether the results were consistent with the conclusions presented in the auditor's reports.

b. The work papers for both audits contained no evidence of study and evaluation of internal controls for the two entities.

c. The work papers did not contain sufficient documentation regarding tests of details of transactions and balances.

d. There was no documentation indicating that analytical procedures were performed.

e. There was no documentation of respondent's

evaluation of subsequent events that may have occurred after year end, but prior to the issuance of the financial statements and auditors' reports for the two entities.

11. On or about January 12, 1995 in Case no. 950048B, in the United States District Court, Southern District of California, respondent was convicted on his plea of guilty to one count of violating Title 18 U.S.C. §§ 2 and 1341 (aiding and abetting mail fraud.)

12. Respondent's conduct, as more particularly set forth in paragraphs 5 - 10 above, constituted gross negligence in violation of Code section 5100(c).

13. Respondent's conduct, as more particularly set forth in paragraphs 5 - 7 above, violated Code section 5100(f) and CCR section 65, in that respondent performed audits and prepared independent auditors' reports for one or both of the entities when he was not independent of those entities.

14. Respondent's conduct, as more particularly set forth in paragraphs 5 - 10 above, constituted unprofessional conduct in violation of Code section 5100 in that he performed audit work which did not meet professional standards and requirements.

15. Respondent's conduct, as more particularly set forth in paragraph 11 above, violated Code sections 5100(a) and 490 in that respondent was convicted of a crime which was substantially related to the qualifications, functions and duties of an accountant.

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

1. Revoking or suspending Certificate No. 22144 heretofore issued to respondent;

2. Ordering respondent to pay to the Board all reasonable costs of investigation and prosecution of this case, including, but not limited to, attorneys fees.

3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: August 7, 1995

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

Complainant