

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

In the Matter of the Petition for
Reinstatement of Revoked Certificate of:

JOHN RUSSELL BURNETT, JR.,

Petitioner.

OAH No. 2007110787

DECISION

This matter was heard before Robert Petersen, CPA, Vice President, and a quorum of the Board of Accountancy in San Francisco, California, on January 18, 2008. Donald A. Driftmier, CPA, President, recused himself from participation in this matter. Administrative Law Judge Steven C. Owyang, Office of Administrative Hearings, presided.

Attorney Stephanie S. Perkins, Chapman, Glucksman & Dean, PC, represented petitioner John Russell Burnett, Jr., who was present.

Scott J. Harris, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

FACTUAL FINDINGS

1. On February 1, 1991, the Board of Accountancy issued to petitioner John Russell Burnett, Jr., Certified Public Accountant (CPA) certificate number 57908.
2. On August 12, 1999, the board's executive officer filed an accusation alleging cause for discipline against CPA certificate number 57908.
3. In a decision that took effect on December 30, 1999, the board found that petitioner had failed to return client records and to perform contracted services. The board additionally found that although petitioner had only registered with the board to practice under his personal name, he had used other names for his accountancy office in Gold River, California. The board determined that petitioner had violated Business and Professions Code sections 5100, subdivisions (c) (gross negligence) and (h) (breach of fiduciary

responsibility), 5037, subdivision (b) (work papers), and 5060 (firm name), and California Code of Regulations, title 16, sections 67 (name) and 68 (work papers). The board revoked CPA certificate number 57908.

4. On October 31, 2007, petitioner filed a petition for reinstatement of his revoked certificate, with accompanying supporting documents. Pursuant to discussions with the board's staff, petitioner on December 10, 2007, resubmitted his petition with additional supporting documents.

5. In 1988, petitioner graduated from California State University, Sacramento, with a bachelor's degree in business administration, concentration in accounting. He became a CPA in 1991. He became self-employed in 1994 and successfully managed his practice for several years.

6. Around the summer of 1998, petitioner began to experience emotional difficulties and depression stemming from a failed personal relationship. Petitioner acknowledges that he abused alcohol and drugs (cocaine), lost contact with reality, was unable to meet everyday demands, and by October 1998 was unable to manage his accounting practice. He was unable to adequately respond to his clients' demands. He closed his practice in November 1998. The board revoked his certificate effective December 30, 1999.

7. Petitioner further acknowledges that he: shut down and stopped all meaningful contact with society; stopped communicating with his family, friends, and clients; lost his accounting practice, home and belongings; and, exhausted his life savings. The worst part of petitioner's descent took place from 1998 to 2002.

8. With the help of his mother, petitioner returned all client files to his clients within a few months of closing his practice. He has made or offered to make restitution to his clients and returned all fees that had been collected for non-performed services.

9. Petitioner was convicted of several crimes. In 1998 and 1999, he was convicted of making annoying phone calls. In 2001, he was convicted of petty theft; this involved petitioner's theft of a razor during a period when he was homeless. In 2002, he had criminal convictions for being under the influence of a controlled substance, for driving under the influence of a controlled substance, and for driving in disregard for safety and evading the police. Each of these convictions has been set aside and dismissed pursuant to Penal Code section 1203.4.

10. Petitioner entered rehabilitation and received counseling and therapy for his depression and substance abuse. The birth of his son in 2002 was a turning point in petitioner's life that gave him added incentive to recover from his depression and substance abuse.

11. Psychotherapist Steven R. Winn, Dr. PH, MFT, treated petitioner in 1998 and evaluated him in 2007. Letters from Dr. Winn state that there is no evidence that petitioner's past problems are manifestations of a character disorder. Dr. Winn concluded instead that petitioner's choices and conduct were aberrational and that petitioner has made a successful recovery.

12. Marriage and Family Therapist Lori Ann Renfro, MS, began treating petitioner in 2001, while he was participating in an alcohol and drug treatment program. Renfro opined that petitioner has undergone sufficient recovery such that he is able to manage the stresses that previously impacted his professional life. Renfro further opined that she is not aware of any factors that would prevent petitioner from resuming his career in public accounting.

13. Petitioner has completed continuing education and is current on CPE requirements. He has passed the professional ethics examination.

14. Petitioner is employed as a tax manager at the Sides & Rathkamp, LLP, public accounting firm.

15. Petitioner submitted letters of recommendation from Ramon J. Sides, CPA, and Douglas Rathkamp, CPA, of Sides & Rathkamp, LLP. He has also submitted letters from Douglas K. Scheier, MBA (Tax), CPA, Bruce R. Inman, CPA, and attorney Mark D. Cudney. The letters attest to petitioner's rehabilitation, professional skills, work ethic, integrity, responsibility, and moral character.

16. Petitioner is willing to pay the board's investigative costs of \$11,411.67. Although he does not have sufficient funds to pay the full amount at once, he is willing to immediately commence installment payments.

LEGAL CONCLUSIONS

Petitioner has established to the satisfaction of the board that he has rehabilitated himself to the extent that it would not be against the public interest to restore his certificate upon appropriate probationary terms and conditions.

The board recognizes that petitioner has received ongoing counseling and therapy. He will be required, however, to be evaluated by a psychiatrist prior to resuming practice. Petitioner will thereafter be required to be evaluated annually by a psychiatrist. If the evaluating psychiatrist determines that ongoing treatment is required to ensure that petitioner remains fit to practice, petitioner shall undergo such ongoing treatment. Petitioner shall also be required to submit to alcohol and drug screening.

ORDER

The petition of John Russell Burnett, Jr., for reinstatement of his CPA certificate is granted subject to the following probationary terms and conditions:

1. Petitioner shall be on probation for a period of three years from the effective date of this decision.
2. Petitioner shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.
3. Petitioner shall reimburse the board \$11,411.67 for its investigation and prosecution costs. The payment may be made on an installment plan, the terms of which shall be determined in consultation with the board or its representatives.
4. Petitioner shall submit, within 10 days of completion of the quarter, written reports to the board on a form obtained from the board. Petitioner 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 petitioner's compliance with all the terms and conditions of probation. Petitioner shall immediately execute all release of information forms as may be required by the board or its representatives.
5. Petitioner 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.
6. Petitioner shall fully comply with the terms and conditions of the probation imposed by the board and shall cooperate fully with the board's representatives in the monitoring and investigation of petitioner's compliance with probation terms and conditions.
7. Petitioner shall be subject to, and shall permit, a practice investigation of petitioner'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.
8. Petitioner shall comply with all final orders resulting from citations issued by the board.

9. In the event petitioner should leave California to reside or practice outside this state, petitioner 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.
10. If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and deny reinstatement of his certificate. If an accusation or a petition to revoke probation is filed against petitioner 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.
11. Within six months of the effective date of this decision, petitioner shall undergo a comprehensive psychological evaluation. The evaluation shall be conducted by a psychiatrist of petitioner's choosing, but one approved by the board prior to petitioner's undergoing the evaluation. Petitioner shall have the psychiatrist promptly submit the evaluation report to the board or its designated representatives. Petitioner is responsible for the costs of evaluation and reports. Petitioner shall not engage in practice as a CPA until notified by the board that he has been found to be mentally fit to practice.
12. In the event the psychiatrist determines that ongoing treatment is required to ensure that petitioner remains fit to practice, petitioner shall undergo and continue treatment by a licensed psychiatrist of petitioner's choice, and approved by the board or its designee, until the treating psychiatrist certifies in writing in a report to the board or its designated representatives that treatment is no longer necessary. Petitioner shall promptly notify the board of any cessation of treatment or change in psychiatrist. Petitioner is responsible for the costs of treatment and reports.
13. Whether or not petitioner receives ongoing treatment, he shall undergo an annual comprehensive psychological evaluation during the period of probation. The first annual evaluation shall be conducted 12 months after the evaluation ordered in paragraph 10. The evaluation shall be ^{ms} conducted by a psychiatrist of petitioner's choosing, but one approved by the board prior to petitioner's undergoing the evaluation. Petitioner shall have the psychiatrist promptly submit the evaluation report to the board or its designated representatives. Petitioner is responsible for the costs of evaluation and reports.

14. Petitioner, at any time during the period of probation, shall fully cooperate with the board or its representatives in the supervision and investigation of compliance with the terms and conditions of probation, and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or controlled substances. Petitioner is responsible for all costs associated with this investigation and testing.
15. Upon successful completion of probation, petitioner's license will be fully restored.

DATED: February 7, 2008



Robert Petersen, Vice President
Board of Accountancy

1 BILL LOCKYER, Attorney General
of the State of California
2 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
3 Office of the Attorney General
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, California 94255-2550
5 Telephone: (916) 445-7376

6 **Attorneys for Complainant**

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

11 In the Matter of the Accusation Against:

Agency Case No.: AC-99-27

12 JOHN RUSSELL BURNETT, JR.
4728 Kingbird Way
Sacramento, California 95842

**DEFAULT DECISION AND
ORDER; DECLARATION OF
DEPUTY ATTORNEY GENERAL
JESSICA M. AMGWERD**

13 Certified Public Accountant
14 Certificate No.: 57908

15 Respondent.

16
17 Respondent John Russell Burnett, Jr., CPA ("Respondent"), was served with the
18 following: Accusation No. AC-99-27; Statement to Respondent; the Notice of Defense form as
19 provided by Government Code sections 11503 and 11505. Respondent failed to file a Notice of
20 Defense pursuant to Government Code §11506. Respondent is in default. The default of
21 Respondent having been duly noted, the Board of Accountancy ("Board") has determined that
22 Respondent waived his right to a hearing to contest the merits of the Accusation. Further, this
23 Board will take action on the Accusation and evidence herein without a hearing, and makes the
24 following findings of fact:

25 **FINDINGS OF FACT**

26 1. The Accusation was made and filed on August 12, 1999, by Carol
27 Sigmann, in her official capacity as Executive Officer, Board of Accountancy, Department of
28 Consumer Affairs, State of California.

1 2. On or about February 1, 1991, the Board issued Certified Public
2 Accountant Certificate number 57908 to Respondent. The certificate expired on July 1, 1995
3 through October 24, 1995 due to the following:

- 4 a. The renewal fee, required by the Business and
5 Professions Code 5070.6, was not paid.
- 6 b. Declaration of compliance with continuing
7 education regulations was not submitted.

8 3. On or about October 25, 1995, said certificate was renewed through June
9 30, 1997. From July 1, 1997 through February 4, 1998, the certificate was expired due to the
10 reasons set forth in paragraphs 2 a and b above. On February 5, 1998, the certificate was
11 renewed through June 30, 1999. The certificate expired on June 30, 1999, for the reasons set
12 forth in paragraphs 2 a and b, and currently is in a delinquent status.

13 4. Accusation No. AC-99-27 is based upon Respondent's failure to return
14 client records and/or perform contracted services. Additionally, although Respondent has only
15 registered with the Board to practice under his personal name, Respondent used the following
16 names for his accountancy office located at 11344 Coloma Road, Suite 825, Gold River,
17 California 95670:

- 18 Burnett & Company,
- 19 Burnett & Company, CPA's, and
- 20 Burnett & Company Certified Public Accountant

21 5. Accusation No. AC-99-27 alleged Respondent violated the following
22 statutes: California Business and Professions Code §5100(c) [gross negligence], §5100(h)
23 [breach of fiduciary responsibility], §5037(b) [work papers], §5060 [firm name], and Title 16 of
24 the California Code of Regulations §67 [name] and §68 [work papers]. There is sufficient
25 evidence to support the allegations that Respondent violated these statutes.

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SUFFICIENCY OF PLEADING AND SERVICE OF PLEADING

The Declaration of Deputy Attorney General Jessica M. Amgwerd, attached hereto and incorporated by reference, states that the evidence is sufficient to support the filing of a pleading in this case and that service of the pleading on Respondent was accomplished in accordance with the California Administrative Procedure Act.

LOCATION OF RECORD

The record on which this Default Decision and Order is based is located at the Sacramento office of the Board of Accountancy.

ORDER

WHEREFORE, for the aforesaid causes, the Board of Accountancy makes its order revoking Certified Public Accountant Number CPA 57908, heretofore issued to Respondent John Russell Burnett, Jr.

Respondent shall not be deprived of making any further showing by way of mitigation. However, such showing must be made to the Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, California 95815-3832, prior to the effective date of this Decision.

This Decision shall become effective on the 30th day of December, 1999.
Executed this 30th day of November, 1999.

A.E. Mikkelsen
Harry E. Mikkelson
Board President
Board of Accountancy
Department of Consumer Affairs
State of California

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ORIGINAL

1 BILL LOCKYER, Attorney General
of the State of California
2 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
3 Office of the Attorney General
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, California 94255-2550
5 Telephone: (916) 445-7376

6 **Attorneys for Complainant**

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

10 In the Matter of the Accusation Against:

Agency Case No.: AC-99-27

11 JOHN RUSSELL BURNETT, JR.
4728 Kingbird Way
12 Sacramento, California 95842

**DECLARATION OF DEPUTY
ATTORNEY GENERAL
JESSICA M. AMGWERD
REGARDING SUFFICIENCY
AND SERVICE OF ACCUSATION**

13 Certified Public Accountant
14 Certificate No.: 57908

15 Respondent.

16
17 I, JESSICA M. AMGWERD, declare:

18 1. I am a Deputy Attorney General employed by the State of California,
19 Department of Justice. My business address is 1300 "I" Street, Suite 125, Sacramento,
20 California 95814. I am the attorneys of record for Complainant in this proceeding.

21 2. I have reviewed the evidence in this case and find it legally sufficient to
22 support the pleading filed in this matter.

23 3. John Russell Burnett, Jr. (hereinafter "Respondent"), has been a licensee
24 of the Board of Accountancy (hereinafter "Board") and was issued Certificate No. CPA No.
25 57908 on February 1, 1991. The certificate is currently in a delinquent status, and has
26 not been renewed. The address of record on file with the Board for Respondent is as follows:

27 **JOHN RUSSELL BURNETT, JR.**
4728 Kingbird Way
28 Sacramento, CA 95842

1 4. On August 12, 1999, Accusation No. AC-99-27 was filed by the Board
2 against Respondent. The Accusation alleged Respondent in 1997 and 1988, violated the
3 following statutes: Business and Professions Code §5100(c)[gross negligence], §5100(h)
4 [breach of fiduciary responsibility], §5037(b) [work papers], §5060 [firm name], and Title 16 of
5 the California Code of Regulations §67 [name], and §68 [work papers].

6 5. On August 17, 1999, at my direction, the Accusation together with
7 supporting papers and information, was sent via first class and certified mail, Number P970 212
8 088 to John Russell Burnett, 4728 Kingbird Way, Sacramento, CA 95842. In addition, on
9 August 17, 1999, at my direction, the Accusation together with supporting papers and
10 information, was sent via first class and certified mail to Paul L. Cass, Esq., Number P970 211
11 087. Mr. Cass is counsel for Respondent. Mr. Cass has received his two packages.

12 6. The first class and certified letters mailed to Respondent were both
13 returned. The post office placed the following information on these envelopes:

14 “Moved left no address
15 Unable to forward
16 Return to sender”

17 7. No response to these mailings has been received by this office, nor has a
18 Notice of Defense been filed by Respondent. Likewise, Respondent’s Counsel has not filed a
19 Notice of Defense on behalf of his client. Mr. Cass has left a phone message to me on
20 September 9, 1999, informing me that he is unable to locate his client. Under Government
21 Code §11506, a Respondent has fifteen (15) days after receiving a copy of the Accusation to
22 respond; if Respondent fails to do so, Respondent waives the right to a hearing.

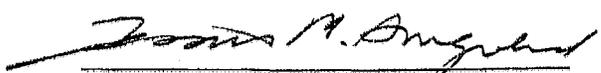
23 Furthermore, pursuant to Government Code section 11505(c), service is
24 effective when the Accusation is mailed to the licensee at the last address filed with the Board,
25 whether or not the licensee has actual knowledge of the Accusation. In this case, Respondent
26 and his counsel failed to respond to the Accusation within fifteen (15) days of mailing, or at any
27 other time.

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The statements contained herein are based upon my personal knowledge and, if called as a witness in this matter, I could and would testify competently thereto. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10 day of September, 1999, at Sacramento, California.


JESSICA M. AMGWERD
Deputy Attorney General

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1 BILL LOCKYER, Attorney General
of the State of California
2 JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
3 Office of the Attorney General
1300 "T" Street, Suite 125
4 Sacramento, California 94244-2550
Telephone: (916) 445-7376
5

6 Attorneys for Complainant
7

8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation and Petition to) Case No. AC-99-27
12 Revoke Probation Against:)

ACCUSATION

13 JOHN RUSSELL BURNETT, JR.
4728 Kingbird Way
14 Sacramento, California 95842
15 Certified Public Accountant
Certificate No. 57908
16 Respondent.
17

18 CAROL SIGMANN alleges:

19 1. Complainant, Carol Sigmann, is the Executive Officer of the California
20 State Board of Accountancy (hereinafter the "Board") and brings this petition solely in her
21 official capacity.

22 I.

23 LICENSE HISTORY

24 2. On or about February 1, 1991, the Board issued Certified Public
25 Accountant certificate number CPA 57908 to JOHN RUSSELL BURNETT, JR. (hereinafter
26 "Respondent"). The certificate expired on July 1, 1995 through October 24, 1995 due to the
27 following:

28 ///

- 1 (a) The renewal fee, required by the Business and Professions Code 5070.5, was not paid.
- 2
- 3 (b) Declaration of compliance with continuing education regulations was not submitted.
- 4 3. On or about October 25, 1995, said certificate was renewed through June
- 5 30, 1997, upon receipt of the renewal fee and declaration of compliance with continuing
- 6 education requirements. July 1, 1997 through February 4, 1998, the certificate was expired due
- 7 to the reasons set forth in paragraph 2 (a) and (b). On February 5, 1998, the certificate was
- 8 renewed through June 30, 1999.

9 II.

10 STATUTES AND REGULATIONS

11 4. Business and Professions Code section 5100, provides a licensee may be
12 disciplined for the following:

- 13 (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the
- 14 performance of the bookkeeping operations described in Section 5052.
- 15
- 16 (h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

17 5. California Business and Professions Code section 5037(b) provides the
18 following:

19 **§ 5037. Licensee's ownership of papers; furnishing papers and records to clients**

- 20 ...
- 21 * (b) A licensee shall furnish to his or her client or former client, upon request and reasonable notice:
- 22
- 23 (1) A copy of the licensee's working papers, to the extent that those working papers include records that
- 24 would ordinarily constitute part of the client's records and are not otherwise available to the client.
- 25
- 26 (2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the
- 27 licensee removed from the client's premises or received for the client's
- 28

1 account. The licensee may make
2 and retain copies of documents of
3 the client when they form the basis
4 for work done by him or her.

5 6. California Business and Professions Code section 5060 provides the
6 following:

7 **§ 5060. Name of person or firm; false or misleading use**

- 8 (a) No person or firm may practice public
9 accountancy under any name which is false or
10 misleading.
- 11 (b) No person or firm may practice public
12 accountancy under any name other than the name
13 under which the person or firm holds a valid
14 permit to practice issued by the board.
- 15 (c) Notwithstanding subdivision (b), a sole proprietor
16 may practice under a name other than the name set
17 forth on his or her permit to practice, provided the
18 name is registered by the board, is in good
19 standing, and complies with the requirements of
20 subdivision (a).
- 21 (d) The board may adopt regulations to implement,
22 interpret, and make specific the provisions of this
23 section including, but not limited to, regulations
24 designating particular forms of names as being
25 false or misleading.

26 7. California Code of Regulations, Title 16, section 68 provides the
27 following:

28 **Section 68. Retention of Client's Records.**

A licensee, 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.

1 8. California Code of Regulations, Title 16, section 67, provides the
2 following:

3 **Section 67. Approval of Use of Fictitious Name.**

4 No permit holder shall practice as a principal under a name other
5 than his or her own name until such name has been registered
6 with the board and approved by the board as not being false or
7 misleading.

8 9. Pursuant to Business and Professions Code section 118(b), the
9 suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall
10 not, during any period within which it may be renewed, restored, reissued or reinstated, deprive
11 the Board of its authority to institute or continue a disciplinary proceeding against the licensee
12 upon any ground provided by law or to enter an order suspending or revoking the license or
13 otherwise taking disciplinary action against the licensee on any such ground.

14 10. Business and Professions Code section 5107 provides for recovery by the
15 Board of all reasonable costs of investigation and prosecution of the case, including, but not
16 limited to, attorneys' fees in specified disciplinary actions, including violations of Business and
17 Professions Code section 5100 (c) and (h). A certified copy of the actual costs, or a good faith
18 estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable
19 costs of investigation and prosecution of the case.

20 **III.**

21 **GENERAL BACKGROUND**

22 11. Respondent contracted with the following individuals to perform various
23 services, such as income tax preparation, payroll and sales tax returns:

- 24 ● Greg L. Phelps (Custom Home Accessories)
- 25 ● Paula A. Dutra (Bob's Glass)
- 26 ● Steve J. Neptune (O.M.S. Pharmacy)
- 27 ● Luita C. Auslan, CFO (Carden Sunrise Christian School, Inc.)
- 28 ● John H. Nesbitt
- Scott W. Mathews (Mathews Manufacturing Co., Inc.)

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- 1 ● Mike Macaulay (Car Systems)
- 2 ● Richard D. Cox (River City Paper Co.)

3 12. Notwithstanding Respondent's agreement to perform the various services
4 for the eight (8) clients indicated in the preceding paragraph, Respondent abandoned his
5 accountancy practice and failed to return these clients' personal Records. The clients requested
6 on several occasions the return of their documents; however, Respondent did not respond. As a
7 result, the Board had to intervene and assist the eight (8) clients in finally obtaining their
8 documents from Respondent.

9 13. On October 16, 1997 Mailbox Specialities, d.b.a. Custom Home
10 Accessories ("Custom") through Mr. Phelps, hired Respondent to perform accounting work for
11 Custom. In 1998, Respondent failed to complete the contracted accounting services for
12 Custom, namely:

- 13 ● Sales tax return for the quarter ended September 30, 1998;
- 14 ● Payroll tax returns for the quarter ended September 30, 1998;
- 15 ● Partnership tax returns for year ended December 31, 1997;
- 16 ● Third quarter profit and loss statement and balance sheet;
- 17 ● Monthly accounting services.

18 As a result of Respondent's failure to prepare an extension to file the partnership
19 income tax return for the year ended December 31, 1997, as contracted for, Custom was
20 assessed a \$300 penalty by the IRS for failing to file the income tax return by the April 15, 1998
21 filing date.

22 14. Respondent was engaged to perform accounting services for Bob's Glass
23 through Paula Dutra that included, *inter alia*, preparation of monthly bank reconciliations and
24 financial statements, and quarterly payroll and sales tax returns. Respondent failed to prepare
25 Bob's payroll tax returns for the quarter ended September 30, 1998, which were due November
26 2, 1998. As a result of Respondent's failure to perform the agreed upon services, delinquent
27 payroll tax returns were submitted to the requisite taxing agency. Ms. Dutra became aware in

28 ///

1 October 1998, that Respondent had abandoned his accounting practice. Ms. Dutra tried
2 unsuccessfully to retrieve company records that were in the Respondent's possession.

3 15. Steve Neptune, owner/shareholder of O.M.S. Pharmacy, engaged the
4 Respondent to prepare corporation income tax returns for 1997, and his personal income tax
5 returns for 1996 and 1997. Respondent also agreed to provide O.M.S. Pharmacy with monthly
6 accounting services for \$200 a month. Despite paying \$2,400 for income tax services and ten
7 (10) payments of \$200 each for monthly accounting services, Respondent failed to perform the
8 agreed upon services.

9 16. Respondent was engaged to perform accounting services for Carden
10 Sunrise Christian School, Inc. ("Carden") through Luita C. Auslan, CFO that included, *inter*
11 *alia*, monthly bookkeeping services including preparation of compiled financial statements and
12 preparation of quarterly payroll tax returns. Respondent failed to prepare Carden's payroll tax
13 returns for the quarter ended September 30, 1998, which were due November 2, 1998. As a
14 result of Respondent's failure to perform the agreed upon services., delinquent payroll tax
15 returns were submitted to the requisite taxing agency.

16 17. Respondent was engaged to perform accounting services for Richard D.
17 Cox, owner/shareholder of River City Paper Co., Inc., that included, *inter alia*, preparation of
18 corporation and personal income tax returns. Mr. Cox became aware in October 1998 that
19 Respondent had abandoned his accounting practice. Mr. Cox tried unsuccessfully to retrieve
20 company records that were in the Respondent's possession.

21 18. In July 1998, John H. Nesbitt engaged the respondent to prepare his 1997
22 federal and state income tax returns and gave the respondent his original tax documentation.
23 As the final October 15, 1998, tax deadline approached, Mr. Nesbitt tried unsuccessfully to
24 contact the Respondent. Respondent failed to perform the agreed upon service. As a result, the
25 tax deadline was missed subjecting Mr. Nesbitt to potential penalties and interest charges. Mr.
26 Nesbitt became aware in November 1998, that the Respondent had abandoned his accounting
27 practice, and he was unable to retrieve his records from the Respondent.

28 ///

1 19. Respondent was engaged by Scott W. Mathews, shareholder of Mathews
2 Manufacturing Company, Inc. ("Mathews Inc."), to prepare his personal and the company's
3 corporate income tax returns for 1997. As a result of the engagement, Mr. Mathews gave the
4 Respondent personal tax documents. Mr. Mathews became aware that the Respondent had
5 abandoned his accounting practice. Mr. Mathews tried unsuccessfully to retrieve his personal
6 tax documents that were in the Respondent's possession.

7 20. Respondent was engaged to perform accounting services for Mike
8 Macauley, owner of C.A.R. Systems ("CAR"), that included, *inter alia*, monthly bookkeeping,
9 and preparation of quarterly payroll tax returns. Respondent was paid \$500 for monthly
10 bookkeeping services; however, Respondent failed to perform the agreed upon services.
11 Respondent also failed to prepare CAR's payroll tax returns for the quarter ended September
12 30, 1998, which were due November 2, 1998. Mr. Macauley contacted the respondent and
13 requested that respondent return all of CAR's business records that were in the Respondent's
14 possession; however, the Respondent failed to return the records and then abandoned his
15 accounting practice.

16 21. Respondent has failed to register with the Board to practice under a
17 name other than his own, which is as follows: John Russell Burnett, Jr. Although Respondent
18 was only permitted to practice under his name, he nevertheless used the following names for his
19 accountancy office located at 11344 Coloma Road, Suite 825, Gold River, California 95670:

20 "Burnett & Company"

21 "Burnett & Company, CPA's", and

22 "Burnett & Company Certified Public Accountants".

23 Respondent has not obtained permission to practice accounting under any other name except
24 under the name John Russell Burnett, Jr.

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1 IV.

2 VIOLATIONS

3 **B&P Code § 5100(c)**

4 (Gross Negligence)

5 22. By reference paragraphs 11 through 20 are incorporated herein.

6 Respondent committed gross negligence and violated Business and Professions Code §5100(c),
7 in failing to provide agreed upon services to clients. Further, Respondent committed gross
8 negligence in abandoning his practice without informing his clients, thereby causing severe
9 inconvenience and hardships to said clients.

10 **B&P Code § 5100(h)**

11 (Breach of Fiduciary Responsibility)

12 23. By reference paragraphs 11 through 20 are incorporated herein.

13 Respondent breached his fiduciary responsibility and violated Business and Professions Code §
14 5100(h), in abandoning his accountancy practice without notice and failing to return his clients'
15 Records.

16 **B&P Code § 5037(b)**

17 (Work Papers)

18 24. By reference paragraphs 11, 12, 14, 17, 18, 19, and 20 are incorporated
19 herein. Respondent violated Business and Professions Code § 5037(b), by failing to return
20 client books, Records, and/or documents upon request by his clients.

21 **B&P Code § 5060**

22 (Firm Name)

23 25. By reference paragraph 21 is incorporated herein. Respondent violated
24 Business and Professions Code § 5060(b). The only name which Respondent holds a valid
25 permit to practice accounting is under the name John Russell Burnett, Jr. Thus, by using the
26 names "Burnett & Company" "Burnett & Company, CPA's", and "Burnett & Company
27 Certified Public Accountants", Respondent has violated §5060(b). Furthermore, Respondent

28 ///

1 has not registered with the Board to practice under another name other than John Russell
2 Burnett, Jr.

3 Title 16 CCR, § 67.

4 (Name)

5 26. By reference paragraphs 21 and 25 are incorporated herein. Respondent
6 violated Title 16 of the California Code of Regulations, § 67, by using a firm name that has
7 neither been registered nor approved by the Board.

8 Title 16 CCR, § 68

9 (Work Papers)

10 27. By reference paragraphs 11, 12, 14, 17, 18, 19, and 20 are incorporated
11 herein. Respondent violated Title 16 of the California Code of Regulation, § 68, by failing to
12 return books, records or other data upon demand of his clients.

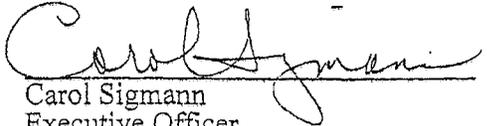
13 V.

14 PRAYER

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

- 17 1. Revoking, suspending, or otherwise imposing discipline upon Certified
18 Public Accountant Number CPA 57908 heretofore issued to respondent JOHN RUSSELL
19 BURNETT JR.;
- 20 2. Awarding the Board costs as provided by statute; and,
21 3. Taking such other and further action as the Board deems proper.

22
23 Dated: 8/12/99

24 

25 Carol Sigmann
26 Executive Officer
27 Board of Accountancy
28 Department of Consumer Affairs
State of California

Complainant