

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALLAN GUTTENTAG,

Respondent.

Case No. AC-2007-12

OAH No. L2007020742

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on August 21, 2007, in Los Angeles, California.

Linda Sun, Deputy Attorney General, represented complainant Carol Sigmann.

Fredrick M. Ray, Attorney at Law, represented respondent.

Complainant seeks to discipline respondent's certified public accountant certificate on the grounds that respondent suffered a criminal conviction. Respondent presented evidence in mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, State of California.

2. On April 30, 2001, the Board issued certified public accountant certificate number 81163 to respondent. The certificate has not been previously disciplined, and expires on August 31, 2008, unless renewed.

3. On May 1, 2006, in the United States District Court, District of Arizona, in the matter of United States of America v. Allan Guttentag, case number CR-04-0539-PHX-MHM, respondent was convicted, on his plea of guilty, of one count of violating Title 18, United States Code, section 371 (conspiracy to commit fraud), a felony. The court placed respondent on probation for two years on terms and conditions that included payment of a \$3,000 fine.

4. The circumstances surrounding the conviction are as follows. From on or about September 1996 to on or about December 1999, while employed as the comptroller of a series of companies controlled by Angelo Tullo (Tullo), respondent conspired with Tullo and others to defraud and obtain money from investors doing business with one of Tullo's companies. Respondent created fictitious books and incorporated two fraudulently-created companies that were used to misrepresent company finances and activities to potential investors. Respondent had been socially acquainted with Tullo, a neighbor, since 1992. He was recruited to "straighten out" Tullo's companies' payroll systems. Tullo experienced financial difficulties after planned business developments did not materialize. Respondent cooperated in Tullo's ensuing scheme to defraud potential investors out of fear for his physical safety and that of his family.

5. The crime of which respondent was convicted involved dishonest conduct, and, therefore, is substantially related to the qualifications, functions, and duties of a certified public accountant.

6. Respondent cooperated with federal authorities in the investigation and prosecution of his co-conspirators. In July 1999, respondent reported the scheme to Tullo's absentee partner, who in turn reported Tullo to federal authorities. Respondent was contacted by the Federal Bureau of Investigations in early 2000, and fully cooperated in the investigation that led to indictments against respondent, Tullo, and four others. In a letter dated February 8, 2007, Assistant United States Attorney Howard D. Sukenic described respondent as "extremely forthcoming," and stated that respondent's participation and cooperation was essential in bringing others to justice.

7. Respondent also assisted defrauded investors who filed civil litigation to recover their investments. Respondent reviewed documents and provided testimony regarding the scheme, including his own involvement. Respondent did so without any offer of benefit from the plaintiffs. Respondent testified on behalf of the plaintiffs for two days in the 28-day civil trial. The attorney for the plaintiffs, Scott Goldberg, testified that without respondent's assistance and compelling testimony, a settlement in favor of plaintiffs would not have been possible.

8. In his part in the civil lawsuit settlement, respondent agreed to pay approximately \$45,000 to the investors, and is paying such restitution at the rate of \$400 per month.

9. Respondent expressed sincere remorse and regret for his conduct. He candidly admitted his involvement in the conspiracy to defraud the investors. He has learned from his mistakes, and vowed not to repeat them.

10. Respondent has been in psychotherapy with Judy Mann, M.F.C.C. (Mann), since March 2001. Respondent also received treatment from a psychiatrist, who diagnosed him with major depressive disorder. Respondent meets with Mann on a monthly basis, or more frequently if needed. Respondent has obtained the tools necessary to address his depression and to deal with future challenges. In a letter dated August 11, 2007, Mann notes that respondent has demonstrated guilt about his past conduct and is presently doing well.

11. David N. Glaser, M.D. (Glaser), performed a comprehensive psychiatric evaluation of respondent on November 8, 2005, which included the administration of several psychological tests, review of criminal records, and interview of respondent. Dr. Glaser opined that respondent's depression made him vulnerable and contributed to his participation in Tullo's scheme. The depression is in remission and respondent's judgment is not presently compromised by such condition. Respondent has expressed remorse and guilt over his participation, and has tried to make amends. He has learned from the incident and continues to gain insight in psychotherapy. Psychological testing did not reveal anti-social or sociopathic personality traits. Because of these factors, Dr. Glaser opined, respondent is very unlikely to engage in the same or similar dishonest conduct.

12. Respondent is 57 years old. He obtained his Bachelor of Arts, his Masters of Business Administration, and his advanced accounting degree from New York University, New York. He has thereafter worked as an accountant, sometimes running his own business, in New York, New Jersey, and Arizona, before moving to California in 2000. He has been employed for Terrill Oberman, C.P.A. (Oberman), for approximately two-and-one-half years. Oberman testified that he works closely with respondent and that respondent is a very competent accountant. Oberman trusts respondent, whom he described as a conservative accountant.

13. Respondent separated from his wife in February 1997, soon after respondent had started working for Tullo. He has three sons, aged 28, 26, and 22. Respondent's oldest son moved in with him shortly after the separation, and the other two followed within one year. Respondent has been responsible for supporting the children, and had a four-year alimony obligation. The youngest, Mark Guttentag, attends the California State University, Northridge, and testified at the hearing. Respondent has provided details regarding the crime and has, repeatedly, admonished him about making the same mistake. His father has always provided for the family's needs and has tried to steer the children in the correct path. Mark Guttentag is proud of his father and may follow his footsteps into the field of accounting.

14. Respondent has performed significant community service. He has been performing free accounting services for Hands for Hope, a not-for-profit organization that provides services to single parents and underprivileged children. He has also performed services free of charge for Community Action of Ventura, the primary anti-poverty agency in Ventura County.

15. The Board incurred \$6,219.80 in costs to investigate and prosecute this matter, which costs are reasonable.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Business and Professions Code sections 490 and 5100, subdivision (a), to suspend or revoke respondent's license because he was convicted of a crime substantially related to the qualifications, functions, and duties of an accountant, as set forth in factual finding numbers 3, 4, and 5.

2. All evidence presented in mitigation and rehabilitation has been considered. Despite the seriousness of the crime, the underlying acts ended approximately seven years ago. More importantly, respondent recognized that his actions were wrong and has taken steps to make amends for his actions, exposing himself to significant criminal and civil sanctions. Respondent engaged in the misconduct at a vulnerable time in his life and under threat of harm to his family. He has addressed the underlying vulnerability and has learned from his errors. The conviction involved an isolated event, and similar or related dishonest conduct is unlikely to be repeated. In these circumstances, respondent has presented sufficient rehabilitation to warrant continued licensure. Nevertheless, because of the seriousness of the crime, a period of Board monitoring is warranted. The order that follows is adequate for the protection of the public and no additional conditions of probation are warranted.

3. Cause exists pursuant to Business and Professions Code section 5107 to order respondent to reimburse the Board for its reasonable costs of investigation and prosecution, in the sum of \$6,219.80, as set forth in factual finding numbers 3, 4, 5, and 15, and legal conclusion number 1.

ORDER

Certified Public Accountant License number 81163, issued to respondent Allan Guttentag, is revoked; however, the revocation is stayed and respondent's license is placed on probation for five years upon the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. **Cost Reimbursement.** Respondent shall reimburse the Board \$6,219.80 for its investigation and prosecution costs. The payment shall be made in quarterly amounts during the first two years of probation.

2. **Submit Written Reports.** Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. The respondent 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 respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

3. **Personal Appearances.** Respondent 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.

4. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the respondent's compliance with probation terms and conditions.

5. **Practice Investigation.** Respondent shall be subject to, and shall permit, a practice investigation of the respondent'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.

6. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

7. **Tolling of Probation for Out-of-State Residence/Practice.** In the event respondent should leave California to reside or practice outside this state, respondent 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.

8. **Violation of Probation.** If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent 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.

9. **Completion of Probation.** Upon successful completion of probation, respondent's license will be fully restored.

10. **Restitution.** Respondent shall continue to make the agreed-upon restitution to the investor victims.

11. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination during the first year of probation.

If respondent fails to pass said examination within the time period provided or within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said exam, has submitted proof of same to the Board, and has been notified by the Board that he or she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.

Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of respondent's license.

DATED: 9/19/07

A handwritten signature in black ink, appearing to read 'Samuel D. Reyes', written in a cursive style.

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No.: AC-2007-12

ALLAN GUTTENTAG,

OAH No.: L2007020742

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its Decision in the above-entitled matter.

This Decision shall become effective December 26, 2007.

IT IS SO ORDERED november 26, 2007.

BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By T. Stewart

rfm

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6375
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. AC-2007-12

12 **ALLAN GUTTENTAG**
20906 Germain Street
13 Chatsworth, CA 91311

ACCUSATION

14 Certified Public Accountant License
No. CPA 81163

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy (Board), Department of
21 Consumer Affairs, State of California.

22 2. On or about April 30, 2001, the Board issued Certified Public Accountant
23 License Number CPA 81163 to Allan Guttentag (Respondent). The Certified Public Accountant
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on August 31, 2008, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 5100 of the Code states:

6 "After notice and hearing the board may revoke, suspend, or refuse to renew any
7 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
8 (commencing with Section 5080), or may censure the holder of that permit or certificate for
9 unprofessional conduct that includes, but is not limited to, one or any combination of the
10 following causes:

11 "(a) Conviction of any crime substantially related to the qualifications, functions
12 and duties of a certified public accountant or a public accountant."

13 5. Section 5106 of the Code states:

14 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is
15 deemed to be a conviction within the meaning of this article. The record of the conviction shall
16 be conclusive evidence thereof. The board may order the certificate or permit suspended or
17 revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal or when an order granting probation is
19 made, suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of
21 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the
22 accusation, information or indictment."

23 6. Section 490 of the Code states:

24 "A board may suspend or revoke a license on the ground that the licensee has been
25 convicted of a crime, if the crime is substantially related to the qualifications, functions,
26 or duties of the business or profession for which the license was issued. A conviction
27 within the meaning of this section means a plea or verdict of guilty or a conviction
28 following a plea of nolo contendere. Any action which a board is permitted to take

1 following the establishment of a conviction may be taken when the time for appeal has
2 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
3 granting probation is made suspending the imposition of sentence, irrespective of a
4 subsequent order under the provisions of Section 1203.4 of the Penal Code."

5 7. Section 5107 of the Code states:

6 "(a) The executive officer of the board may request the administrative law judge,
7 as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
8 certificate found to have committed a violation or violations of this chapter to pay to the board all
9 reasonable costs of investigation and prosecution of the case, including, but not limited to,
10 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

11 **CAUSE FOR DISCIPLINE**

12 **(Conviction)**

13 8. Respondent is subject to disciplinary action under sections 490 and 5100,
14 subdivision (a) of the Code, in that Respondent was convicted of a crime substantially related to
15 the practice of accountancy, as follows:

16 9. On or about May 1, 2006, in Case No. CR 04-00539-004-PHX-MHM,
17 entitled *United States of America vs. Allan Guttentag*, Respondent pled guilty and was convicted
18 of one count of a violation of Title 18, United States Code, Section 371 (conspiracy to commit
19 offense or defraud US), a felony, in the United States District Court, District of Arizona.

20 10. The circumstances are that in or about September of 1996, Respondent
21 was hired to serve as the comptroller of American Business Funding Corp. (ABF). From in or
22 about September, 1996, to in or about December, 1999, Respondent conspired with others to
23 knowingly devise and execute a scheme to defraud and obtain money from investors doing
24 business with ABF. The conspiracy involved, among other things, the creation of fictitious
25 clients and debtors in such a manner that it would attract substantial interest from investors and
26 significant investment capital. A substantial portion of this investment capital was subsequently
27 and illegally diverted to benefit Respondent and his co-conspirators.

28 ///

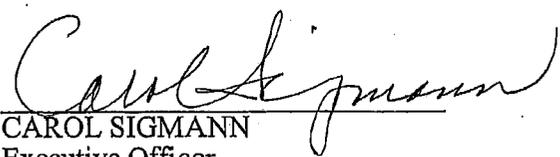
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant License Number CPA 81163, issued to Allan Guttentag;
2. Ordering Allan Guttentag to pay Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Taking such other and further action as deemed necessary and proper.

DATED: January 16, 2007



CAROL SIGMANN
Executive Officer
California Board of Accountancy
State of California
Complainant

LA2006601857/ 60179651.2.wpd