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

In the Matter of the Accusation Against: FELIX RODOLFO WASSER 14945 Ventura Blvd., Suite 222 Sherman Oaks, CA 91403 and FELIX R. WASSER & ASSOCIATES, AN ACCOUNTANCY CORPORATION, Certified Public Accountant Certificate No. 24043 And COR 4602 Respondent.	Case No. AC-2009-6 OAH No. 2009061429

DECISION AND ORDER

The attached Proposed Decision and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on December 24, 2010.

It is so ORDERED on November 24, 2010

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against: **FELIX RODOLFO WASSER** **Certified Public Accountant Certificate No. 24043** **and** **FELIX R. WASSER & ASSOCIATES, AN ACCOUNTANCY CORPORATION,** **Certified Public Accountancy Corporation Certificate No. COR 4602** **Respondents.**	**Case No. AC 2009-6** **OAH No. 2009061429**

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on August 24, 2010.

Patti Bowers (Complainant) was represented by Christina Thomas, Deputy Attorney General.

Felix Rodolfo Wasser (Respondent) was represented by Robert A. Levinson, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

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FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

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

2. On December 10, 1976, the Board issued to Respondent Certified Public Accountant (CPA) Certificate No. 24043. The certificate was in full force and effect at all relevant times. It is scheduled to expire on October 31, 2011, unless renewed.

3. On November 21, 1998, the Board issued to Felix R. Wasser & Associates, An Accountancy Corporation, Certified Public Accountancy Corporation Certificate No. 4602. Respondent was the sole shareholder of that corporation. The certificate was in full force and effect at all relevant times. It expired on November 30, 2008. The Board retains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

4. The essential facts of this case are undisputed. Respondent and his corporation served as the accountant for his client Barbara Fields (Fields) and her corporation, The Barbara Fields Buying Office, Inc. (BFBO), for over a decade. Over the course of their business relationship, Fields' business grew and, as it grew, the amount of work Respondent performed for Fields also grew. Based on the amount of work he performed for Fields, Respondent's rate increased from $500 per month to $3,500 per month over the course of their business relationship. On a date not disclosed by the evidence, Fields permitted Respondent to become a signatory on her business bank account. She also authorized Respondent to invest "excess funds" into Certificates of Deposit for her.

5. In or around 2005, Respondent encountered personal financial difficulties. He dealt with those problems by taking advances from the "excess funds" in Fields' corporate account instead of investing those funds for her benefit. Over a 2.5-year period, between January 14, 2005, and July 2, 2007, in 45 separate transactions, Respondent withdrew approximately $202,250 of Fields' money and used it for his own personal expenses. Respondent did not attempt to hide the fact that he was converting those funds for his own use. He maintained a meticulous record of the advances he took and the few payments he returned to the account, indicating that the advances were, for the most part, in his name or were made to a payee easily identifiable as Respondent. Respondent made the withdrawals without Fields' knowledge or consent. At the administrative hearing, Respondent admitted that the financial pressures he was experiencing caused the "lines of responsibility" regarding separation of funds to become "very blurred." (Respondent's terms.)

6. On or about July 5, 2007, Fields and Respondent terminated their business relationship. On July 6, 2007, with the understanding that his records would be transferred to another accountant, Respondent wrote to Fields admitting his wrongdoing. The letter read:

> Advance Account
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> This is an account that I have used commencing January 2005 for purposes of maintaining a schedule of funds advanced to my office. The advances were reduced by direct deposits made into your main operating bank account or by the offset of monthly retainer for services rendered.
>
> This was never discussed with you and for this I apologyze [*sic*], I should have been upfront but it was never meant to be a permanent situation, unfortunately it has remained active but not increasing.
>
> I am submitting a detail schedule to you, which you can also get from your Quickbooks file.
>
> I assure you that I did not mean to cover this up in any way and there are no hidden items anywhere else, this is the entire schedule, the account is right on the books and it is clearly labeled as advances.
>
> I plan on paying the entire amount due you including interest computed on the daily balance no later than July 31, 2007.
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> Once again, I am truly sorry, this was never meant to harm you nor to cause you damage. These were excess funds that I used rather than investing them in a certificate of deposit.

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7. The following day, Fields wrote to Respondent:

> In order to avoid expensive litigation and unnecessary industry-wide publicity, I have begun a professional investigative process, outside the industry, to determine what you owe me. To set the record very straight, your fee was $2,500 per month. No additional fees were agreed on[1].
>
> Therefore,
> a) I expect a pay-back of any fees taken over $2,500 per month
> b) Reimbursement of ALL unauthorized personal deductions from my account.
> c) Repayment of the professional charges I am incurring to establish the indebtedness of your company to me.
> d) 10% interest on the total dollars withdrawn from my account without my express signature and authorization.
>
> I have no desire to make this issue public and affect your professional status . . . but I will! If this issue is not settled to my satisfaction [*sic*]. (Emphasis in text.)

8. An accounting by Respondent indicated that, as of July 2, 2007, Respondent owed Fields $70,565.49 in funds he had taken and not paid back, plus interest.

9. Respondent borrowed money from family and friends and, on July 19, 2007, re-paid Fields $70,565.49 via wire transfer.

10. On or about July 24, 2007, Respondent received a letter from Floyd and Associates, Fields' new accountant, requesting an explanation of what appeared to be unauthorized withdrawals from Fields' account. Respondent forwarded a worksheet to Floyd and Associates disclosing all of the withdrawals he had made. The withdrawals exceeded those discovered by the Floyd firm.

11. Respondent subsequently learned that he owed Fields an additional $8,000, which appeared on the June 30, 2007, bank statement. The bank statement had not been received by the time Respondent and Fields terminated their professional relationship. It is unclear why that transaction did not appear on Respondent's ledger that contained transactions through July 2, 2007, and was current through July 5, 2007.

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[1] Fields was incorrect on that point. On September 3, 2006, Respondent placed her on actual notice of a monthly rate increase to $3,500, effective October 1, 2006.

12. Fields later retained another accounting firm. That firm did not discover any additional unauthorized withdrawals by Respondent.

13. Attempts at an informal settlement proved unsuccessful and, on August 14, 2007, Fields filed a civil lawsuit against Respondent alleging causes of action for Conversion and Breach of Fiduciary Duty.

14. A mediation was held on November 21, 2007. Respondent settled the case for payment of $155,000. Of that sum, $25,000 was due on or before December, 7, 2007, $5,000 was due on or before January 15, 2008, $75,000 was due on or before December 15, 2008, and the balance was due in monthly payments of $5,000. Fields refused to settle the case unless Respondent's debt was not dischargeable in bankruptcy. To that end, Respondent agreed that the following recital would be included in the settlement agreement:

> Wasser admits that he stole in excess of $78,000.00 from Barbara Fields and/or Barbara Fields Buying Office, Inc.

15. Respondent is current on his payments to Fields but still owes her approximately $85,000.

16. In the instant Accusation, Complainant alleges three causes for discipline: Fraud and Dishonesty pursuant to Business and Profession Code[2] section 5100, subdivision (c), Breach of Fiduciary Duty pursuant to section 5100, subdivision (i), and Embezzlement, Theft, and/or Misappropriation of Funds pursuant to section 5100, subdivision (k). At the administrative hearing, Respondent stipulated to the truth of the allegations in the second cause for discipline (Breach of Fiduciary Duty), but denied that he engaged in fraudulent or dishonest conduct, embezzlement, theft, or misappropriation of funds as alleged in the first and third causes for discipline.

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[2] All statutory references are to the Business and Professions Code unless otherwise specified.

17. Respondent admits that his actions with respect to withdrawing funds from Fields' bank account for his own use were unjustifiable. He sought to gain insight into his actions by attending meetings of Debtors Anonymous and Al-Anon. He continues with the Al-Anon meetings today, but no longer attends Debtors Anonymous meetings. In the various meetings, Respondent learned that his actions had been completely out of character, and that, because he was empowered with signatory authority for Fields' account, he lost perspective of what did and did not belong to him. Respondent did not explain why he chose to attend Al-Anon meetings instead of seeking more traditional psychological counseling or psychotherapy for the conduct in which he engaged. At the administrative hearing, Respondent testified that he took the money because of personal financial difficulties, but later testified that he did not know why he took the money.

18. Respondent's certificates have not been subject to discipline before or since the instant action. Respondent has vowed to never accept signatory responsibility for a client's bank account again.

19. Respondent is remorseful for his wrongdoing. However, he maintains that, although he took the money without Fields' knowledge or consent, he did not steal it because he recorded all of the withdrawals he made. He further believes that Fields would have given him the money had he asked her for it. That testimony was not convincing for the following reasons.

a. For the reasons set forth in the Legal Conclusions below, Respondent is found to have committed fraud and theft on several occasions.

b. Only Fields could confirm that she would have granted her consent for Respondent to withdraw the funds. Respondent did not call Fields to testify at the hearing. Therefore, Respondent's testimony on that issue is viewed with distrust. (Evid. Code, 412.)

c. The fact that Fields filed both a civil lawsuit and a complaint with the Board against Respondent for taking her money leaves open the question of whether she would have consented to his taking it had he requested it.

20. The Board incurred costs, including attorney's fees, in the total sum of $18,674.82, in connection with the investigation and prosecution of this action. The costs consist of $5,839.82 in investigation costs, and $12,835 in Attorney General fees. Those costs are deemed just and reasonable.

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LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's certified public accountant certificate and certified public accountancy corporation certificate pursuant to Business and Professions Code section 5100, subdivision (c), for fraud and/or dishonesty, as set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 19.

2. Cause exists to discipline Respondent's certified public accountant certificate and certified public accountancy corporation certificate pursuant to Business and Professions Code section 5100, subdivision (i), for breach of fiduciary duty, as set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 19.

3. Cause exists to discipline Respondent's certified public accountant certificate and certified public accountancy corporation certificate pursuant to Business and Professions Code section 5100, subdivision (k), for embezzlement, theft, and/or misappropriation of funds, as set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 19.

4. Cause exists to order Respondent to pay the costs claimed under section 5107, as set forth in Finding 20.

5. Because of the trust placed in them by the public which relies on their unique expertise, honesty is a characteristic of paramount importance for licensed professionals such as Respondent. In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, the Court stated:

> Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. (Citation.) The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. (Citations.)

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6. Similarly, In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176, the court stated:

> The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.

(See also, *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461.)

7. Respondent's claim that, although he took funds from Fields without her knowledge or consent, he is not guilty of fraud or theft, is spurious, as is evidenced by the following definitions:

a. "Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive."

(Civ. Code, § 1572.) (See also, *California Real Estate Loans, Inc. v. Wallace* (1993) 18 Cal. App. 4th 1575, 1581; *Stevens v. Marco* (1956) 147 Cal. App. 2d 357, 378.)

b. "Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted." (Pen. Code, § 503.)

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c. "Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . ." (Pen. Code, § 484, subd. (a).)

8. Respondent argues that he is not guilty of fraud, theft, or embezzlement because he disclosed his unauthorized withdrawals in the records of Fields' bank account. That rationale is not convincing. The man who robs a liquor store makes it clear to his victim that he is taking the money without the victim's consent, and he goes about his task openly. The fact that he does so, the fact he may have dire need for the money he takes, and the fact that he may intend to re-pay the liquor store when he is in a better financial position, do not make his act anything less than a theft.

9. California Code of Regulations, title 16, section 99.1, states:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

10. Respondent has made only a partial showing of rehabilitation pursuant to the above guidelines. His dishonest acts were severe by virtue of their large number, the lengthy period of time over which they occurred, the amount of money taken, and the fact that the acts were committed against Respondent's own client. Although there is no evidence of any wrongdoing after July 2007, it has been only approximately three years and one month since his last authorized withdrawal. Compared to the approximate two and one-half years over which he committed his dishonest acts, his wrongdoing is not temporally remote. Respondent is current on his payments to Fields. However, he still owes her approximately $85,000. He has sought to gain insight into his conduct through Al-Anon and Debtors Anonymous meetings.

11. What mitigation and rehabilitation Respondent has demonstrated is offset by three major factors in aggravation:

a. Respondent did not perform a single, isolated, dishonest act. He performed 45 dishonest acts over a two and one-half year period.

b. Respondent committed his dishonest conduct against his own client who trusted him so completely that she granted him signatory authority over her business bank account. Respondent used that authority to steal money from her.

c. Respondent did not offer any evidence that he ever intended to terminate his dishonest acts against his client and to re-pay the outstanding balance. He terminated his unauthorized withdrawals only because he had to when he lost access to the account and he knew another accountant would discover his thefts.

12. Respondent's numerous acts of dishonesty against his client, and the balancing of the aggravating, mitigating and rehabilitation factors, evince a finding that the public safety, welfare and interest cannot be adequately protected with Respondent's continued licensure.

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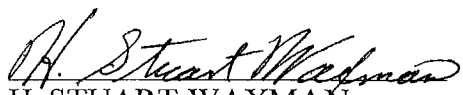
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Certified Public Accountant Certificate No. 24043, issued to Respondent, Felix Rodolfo Wasser, and Certified Public Accountancy Corporation Certificate No. 4602, issued to Respondent, Felix R. Wasser & Associates, An Accountancy Corporation, are revoked pursuant to Legal Conclusions 1, 2, and 3, separately and for all of them.

2. Respondent shall reimburse the Board $18,674.82 for its investigation and prosecution costs. The payment shall be made within 90 days of the date the Board's decision is final.

DATED: September 9, 2010



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: FELIX RODOLFO WASSER 14945 Ventura Blvd., Suite 222 Sherman Oaks, CA 91403 Certified Public Accountant Certificate No. 24043 and FELIX R. WASSER & ASSOCIATES, AN ACCOUNTANCY CORPORATION, 14945 Ventura Blvd., Suite 222 Sherman Oaks, CA 91403 Certified Public Accountancy Corporation Certificate No. COR 4602 Respondent.	Case No. AC-2009-6 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about December 10, 1976, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. 24043 to Felix Rodolfo Wasser

(Respondent). The Certificate was not valid November 1, 1997, through November 21, 1997, and at all other times, was in full force and effect. The Certified Public Accountant Certificate will expire on October 31, 2009, unless renewed.

3. On or about November 21, 1998, the Board issued Certified Public Accountancy Corporation Certificate No. COR 4602 to Felix R. Wasser & Associates, An Accountancy Corporation, with Felix Rodolfo Wasser, as sole shareholder (Respondent Corporation). The Corporation Certification was delinquent December 1, 2002, through January 22, 2003, and at all other times, was in full force and effect until its expiration on November 30, 2008, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 5100 states, in pertinent part:

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

. . . .

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

. . . .

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"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

. . . .

"(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses. . . ."

6. Section 5109 states:

"The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license."

COST RCOVERY

7. Section 5107, subdivision (a), states:

"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 have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

FIRST CAUSE FOR DISCIPLINE

(Fraud, Dishonesty)

8. Respondents are subject to disciplinary action under section 5100, subdivision (c), on the grounds of unprofessional conduct, in that Respondents committed fraudulent and dishonest acts in the practice of public accountancy. The circumstances are as follows:

a. Respondents were engaged by clients[1] B.F. and her corporation, BFBO

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1. Names have been omitted for purpose of privacy. The names and contact information for the client(s) involved in this Accusation will be disclosed upon receipt of a proper request for discovery.

(inclusively, hereinafter "Clients") as their accountant for over 10 years. Clients entrusted Respondents with authority over their corporation's bank account for the purposes of handling business transactions. During a two and one-half year period on or between January 14, 2005, through on or about July 2, 2007, in 45 separate transactions, Respondents breached their fiduciary responsibility by withdrawing approximately $202,250 of Clients' funds for their own personal use and benefit, without Clients' knowledge.

b. On or about July 5, 2007, Clients terminated their client relationship with Respondents, ending Respondents' fiduciary duty over Clients' funds and the corporation's bank account. At the termination of the client - accountant relationship, Clients requested their records. On or about July 6, 2007, Respondents disclosed their indiscretions, unauthorized banking transactions and breach of their fiduciary duty to Clients in a written memo and an accounting.

c. On or about November 21, 2007, as a result of civil litigation filed by Clients against Respondents, and alternative dispute resolution, mediation, the parties entered into a written settlement agreement. Within the stipulated settlement agreement, Respondents admitted to stealing funds from Clients in the excess amount of $78,000, and agreed upon terms for payment of a settlement amount of $155,000 to Clients.

SECOND CAUSE FOR DISCIPLINE

(Breach of Fiduciary Duty)

9. Respondents are subject to disciplinary action under section 5100, subdivision (i), on the grounds of unprofessional conduct, in that on or between January 14, 2005, through on or about July 2, 2007, Respondents knowingly breached their fiduciary responsibility with Clients. Complainant refers to and by this reference incorporates the allegations set forth in paragraph 8, subdivisions (a) - (c), inclusive, above, as though set forth fully.

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THIRD CAUSE FOR DISCIPLINE

(Embezzlement, Theft, Misappropriation of Funds)

10. Respondents are subject to disciplinary action under section 5100, subdivision (k), on the grounds of unprofessional conduct, in that on or between January 14, 2005, through on or about July 2, 2007, Respondents embezzled, stole, and/or misappropriated funds. Complainant refers to and by this reference incorporates the allegations set forth in paragraphs 8, subdivisions (a) - (c), and 9, inclusive, above, as though set forth fully.

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 Certificate No. 24043, issued to Respondent;

2. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountancy Corporation Certificate No. COR 4602, issued to Respondent Corporation;

3. Ordering Respondents to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

4. Taking such other and further action as deemed necessary and proper.

DATED: February 25th 2009

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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