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

In the Matter of the Accusation Against: David B. Greenberg 19800 MacArthur Blvd., #1050 Irvine, CA 92612 Certified Public Accountant Certificate No. CPA 61580 Respondent.	Case No. A-2008-14/AC-2009-16 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 17, 2008, Complainant Patti Bowers, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. A-2008-14 against David B. Greenberg (Respondent) before the California Board of Accountancy.

2. On or about May 14, 1992, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. CPA 61580 to Respondent. The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and expired on September 30, 2005, and has not been renewed.

3. On or about October 27, 2008, Ryan M. Mallard, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. AC-2008-14, Statement to Respondent, Notice of Defense, Request for Discovery, and

Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 19800 MacArthur Blvd #1050, Irvine, CA 92612, and on November 12, 2008, to 511 S. Ocean Blvd. Delray Beach, FL 33483, another address found for Respondent after employing a Lexis search. A copy of the Accusation and Declarations of Service are attached as Exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency, in its discretion, may nevertheless grant a hearing."

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. A-2008-14.

7. California Government Code section 11520 states, in pertinent part: "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence before it, finds that the allegations in Accusation No. A-2008-14 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent David B. Greenberg has subjected his Certified Public Accountant Certificate No. CPA 61580 to discipline.

2. Service of Accusation No. A-2008-14 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the commission of fraud, dishonesty, and gross negligence in the practice of public accountancy (Business and Professions Code [B&P] section 5100(c), failure to observe professional standards in performance of tax engagements (Board Rule 58 and B&P section 5100(g)), conspiracy with unlicenced persons to violate the Accountancy Act (B&P sections 125 and 5100), and filing a false income tax return and knowingly preparing and disseminating false and fraudulent financial information (B&P sections 5100(i) and 5100(j), as alleged in the Accusation.

ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 61580, heretofore issued to Respondent, DAVID B. GREENBERG, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 23, 2009.

It is so ORDERED January 23, 2009.

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

(Accusation No. A-2008-14 and Declarations of Service)

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

In the Matter of the Accusation Against: DAVID B. GREENBERG 19800 MacArthur Blvd. #1050 Irvine, CA 92612 Certified Public Accountant No. 61580 Respondent.	Case No. A-2008-14 (Greenberg) In re: KPMG Tax Shelters **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 14, 1992, the California Board of Accountancy issued Certified Public Accountant Number 61580 to David B. Greenberg (Respondent). This certificate expired on September 30, 2005.

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of Section 5100 of the Business and Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may

revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including willful violations of the Accountancy Act and willful violations of rules and regulations promulgated by the Board.

4. Business and Professions Code[1] Sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board of its authority to investigate, or to institute or continue a disciplinary proceeding against a licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY AND REGULATORY PROVISIONS

5. Section 5100 states:

"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.

. . .

"(g) Willful violation of this chapter or any rule or regulation promulgated by the

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

board under the authority granted under this chapter.

. . .

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

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

6. Licensees are required by Board Rule 5 to comply with all Board rules, including Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards.

APPLICABLE PROFESSIONAL STANDARDS

7. Professional standards or standards of practice pertinent[2] to this Accusation include, without limitation:

A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)[3] including: (1.) Section 10.21 Knowledge of Client's Omission. Section 10.21 provides that:

> "[a] practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

(2.) Section 10.22 Diligence as to Accuracy. Section 10.22(a) provides that, in general, a practitioner must exercise due diligence as to accuracy:

> "(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
>
> (2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

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2. All references herein to standards and other authoritative literature are to the versions in effect at the time the tax shelters were being developed, marketed or sold.

3. 31 CFR 10 is also referred to as "Circular 230" or Section 10 of the IRS Regulations. Among other things, Circular 230 governs practice by CPAs before the IRS.

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service."

(3.) Section 10.34 Standards for Advising with Respect to Tax Return Positions and for Preparing or Signing Returns. Section 10.34(a) provides that a practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the "realistic possibility standard") unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service.

B. American Institute of Certified Public Accountants (AICPA) *Code of Professional Conduct*, which includes Section I - Principles and Section II - Rules. Both the Principles (Articles III and VI) and the Rules are relevant to the allegations herein. For example, Rule 102 (Integrity and Objectivity), provides that:

> "In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others."

C. AICPA *Statements on Standards* for Tax Standards[4], including:

(1.) TS Section 100 - Tax Return Positions.

(2.) TS Section 600 - Knowledge of Error: Return Preparation.

(3.) TS Section 800 - Form and Content of Advice to Tax Payers.

D. The Internal Revenue Code, including:

(1) 26 U.S.C. §6111 ("Section 6111), which governs the registration of tax shelters.

(2) 26 U.S.C. §6112 ("Section 6112), which imposes certain obligations on the organizer or seller of a "potentially abusive tax shelter."

(3) 26 U.S.C. §6662 ("Section 6662"), which imposes significant penalties on taxpayers for the understatement of income tax, for example, where the relevant facts affecting

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4. The AICPA *Statements on Standards*, Tax Standards, are codified as "TS" with section numbers, e.g., TS Section 100.

an item's tax treatment were not adequately disclosed in the return and where there exists no reasonable basis for the tax treatment, or where there existed no basis for reasonable belief that tax treatment of a shelter was more likely than not the proper treatment.

Cost Recovery

8. Code Section 5107(a) provides in pertinent 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 have committed a violation or violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of investigation and prosecution of the case.

Public Protection

9. Code Section 5000.1 provides as follows: "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

FACTUAL BACKGROUND

10. The subject matter of this Accusation is respondent's participation in the development, promotion, and implementation of certain tax shelter schemes by himself and other KPMG[5] personnel, including senior partners and members of top management, which assisted

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5. At all times relevant to this Amended Accusation, KPMG was a limited liability partnership headquartered in New York, New York, with more than 90 offices nationwide, of which several are in California. Among the California KPMG offices during the time period relevant herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek. KPMG was one of the largest auditing firms in the world, providing audit services to many of the largest corporations in the United States and elsewhere. KPMG also provided tax services to corporate and individual clients, some of whom were very wealthy. These tax services included, but were not limited to, preparing federal and state tax returns, providing tax planning and tax advice, and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise Tax Board ("FTB") audits, and in Tax Court litigation

high net worth United States citizens to evade Unites States individual income taxes on billions of dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax shelters.[6]/,[7]/

11. At all times relevant to this Accusation, respondent was an employee of KPMG LLP[8]. First employed by the firm as a direct entry tax partner in or about 1999, respondent worked in KPMG's Los Angeles, California and Orange County, California offices. Respondent left KPMG in or about August 2003.[9]

12. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of Facts attached to the Deferred Prosecution Agreement which KPMG entered with the federal government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the Board, KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached to the DPA (which was incorporated into Accusation AC-2006-28),

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with the IRS.

6. The portion of KPMG's tax practice that specialized in providing tax advice to individuals, including wealthy individuals, was known as Personal Financial Planning, or "**PFP**." The KPMG group focused on designing, marketing, and implementing tax shelters for individual clients was known at different times as **CaTS** ("Capital Transaction Strategies"), and **IS** ("Innovative Strategies").

7. KPMG personnel also formed alliances, operating agreements, and/or joint ventures with outside persons, including former partners, employees, and others. KPMG also worked with law firms/lawyers and with banks in implementing the FLIP, OPIS, BLIPS and SOS tax shelter transactions. Significant activity and coordination regarding the design and implementation of the tax shelters took place by California licensees or on behalf of California taxpayers.

8. KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating several offices in California. KPMG was engaged in providing tax services to corporate and individual clients and providing audit services to corporate, governmental and other clients. The Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective January 18, 2008. It is further referenced in paragraph 12.

9. Several other KPMG personnel, including partners, managers, associates, and employees, participated in various tax shelter transactions referred to herein, and will be referred to as "KPMG tax personnel." Others not employed at KPMG, including banks, lawyers and law firms, and other individuals and entities, also participated in various tax shelter transactions referred to herein.

"through the conduct of certain KPMG tax leaders, partners, and employees, during the period from 1996 through 2002, KPMG assisted high net worth individuals to evade individual income taxes on billions of dollars by developing promoting, and implementing unregistered and fraudulent tax shelters. A number of KPMG tax partners engaged in conduct that was unlawful and fraudulent...". (Accusation, Paragraph 57, quoting DPA.)[10]

13. Respondent was a tax partner at KPMG between 1999 and 2002, the period relevant herein. He participated in the above-described scheme, consisting of:

A. devising, marketing, and implementing fraudulent tax shelters;

B. preparing and causing to be prepared, and filing and causing to be filed with the IRS false and fraudulent U.S. individual income tax returns containing the fraudulent tax shelter losses; and

C. fraudulently concealing those shelters from the IRS.

SOS Tax Shelters

14. The fraudulent tax shelter transactions which are the subject matter of this Accusation are **SOS** ("Short Option Strategy"), and its variants, described below.[11]/,[12]/

15. Respondent was involved in approximately 66 SOS transactions[13], of which, at

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10. See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11 of Stipulation AC-2006-28 for detail.

11. During the relevant time period, KPMG personnel, some of its clients, and others involved in various tax shelter transactions prepared, signed and filed tax returns that falsely and fraudulently claimed a significant amount of money in phony tax losses generated by various tax shelter transactions including SOS. A significant proportion of the taxpayers who filed tax returns with KPMG's assistance using these tax shelters were California taxpayers.

12. The SOS shelters were referred to by various names, including Short Option Strategy, Spread Option Strategy, Split Option Strategy, SOS, Binary Option, Digital Option, Gain Mitigator, Loss Generator, COINS, BEST, and FX Transaction (hereinafter "SOS"). The SOS shelters generated at least $1.9 billion in phony tax losses. KPMG's gross fees from SOS transactions were at least $17 million. SOS was marketed and sold from at least in or about 1998 through at least in or about 2002 to at least 165 wealthy individuals.

13. SOS and its variants were designed to generate substantial capital and ordinary tax losses through a series of pre-arranged transactions that involved the clients "investing" in virtually offsetting foreign currency option positions with a bank, sometimes transferring the offsetting positions to a partnership or other entity, and then withdrawing from the transaction, claiming a loss in the desired amount.

least 12 were transacted in the state of California by California residents. In addition, respondent performed his own SOS transaction and was generally involved in at least 14 other SOS transactions that former KPMG partners undertook for their own accounts.

16. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, **unless** the tax benefit was supported by an **independent opinion** relied on by the taxpayer in good faith that the **tax benefit was "more likely than not"** to survive IRS challenge.

17. SOS opinion letters, and other associated documents, were false and fraudulent in a number of ways well known to KPMG and its associates, including the following:

a. They falsely and misleadingly described SOS as an investment, when in truth and in fact, it was a tax shelter designed and marketed to generate tax losses in order to eliminate income taxes for wealthy clients and garner substantial fees and income for KPMG and others.

b. They falsely claimed that the client would have entered into the option positions independent of the other steps that made up SOS, when in truth and in fact, the clients would not have entered into those positions absent the anticipated tax losses to be generated.

c. They falsely claimed that the option positions were contributed to a partnership or other entity to "diversify" the client's "investment" when in truth and in fact, the contribution was simply a necessary step in the tax shelter, was executed for the purpose of generating the tax loss, and was not executed to "diversify" any "investment."

d. They falsely claimed that the offsetting option positions were entered into for "substantial non-tax business reasons," and were contributed to the partnership or other entity for "substantial non- tax business reasons," when in truth and in fact, the transactions were undertaken in order to generate the phony tax losses SOS purported to generate and not for any "substantial non-tax business reason."

18. Respondent employed this false and fraudulent documentation in order to assist clients in claiming the phony tax shelter losses on tax returns and in evading taxes. Respondent

issued opinion letters or caused others to issue opinion letters that falsely claimed that the tax losses purportedly generated by SOS were more likely than not to withstand IRS challenge to enable their fraudulent SOS tax losses and, thereby, evade taxes.

Fraudulent Concealment of Tax Shelters

19. In addition to preparing and causing to be prepared false and fraudulent documentation relating to and implementing the shelter transactions, and in addition to preparing and causing to be prepared tax returns that fraudulently incorporated the phony tax shelter losses, respondent participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or knew or should have known that the steps would have the effect of concealing the shelters from the IRS. The steps taken included, but were not limited to, the following:

(1.) not registering the tax shelters with the IRS as required by law[14];

(2.) preparing and causing to be prepared tax returns that fraudulently concealed the phony losses from the IRS; and

(3.) attempting to conceal from the IRS the tax shelter losses and transactions with sham attorney-client privilege claims.

Failing to Register Tax Shelters

20. Under the law in effect at all times relevant to this Accusation, an organizer of a tax shelter was required to "register" the shelter by filing a form with the IRS describing the transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities claiming a benefit from the shelter were required to include with their income tax returns a form disclosing that they had participated in a registered tax shelter, and disclosing the assigned

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14. Under the law in effect at all times relevant to this Accusation, an organizer of a tax shelter was required to "register" the shelter by filing a form with the IRS describing the transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities claiming a benefit from the shelter were required to include with their income tax returns a form disclosing that they had participated in a registered tax shelter, and disclosing the assigned registration number. Notwithstanding these legal requirements, KPMG and its personnel, and others, caused the entities with which they were associated not to register as required any of the tax shelters they devised, marketed and implemented, and thereby ensured that registration numbers would not be included on returns relating to unregistered shelters.

registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided not to register the tax shelters based on a "business decision" that to register the shelters would hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement to register the shelters.

Tax Evasion

21. Respondent attempted to conceal his fraudulent tax shelter activities from the IRS by attempting to cloak communications regarding those activities, and certain activities themselves, with the attorney-client privilege by purporting to have tax shelter clients engage a law firm to provide legal advice, with the law firm then purporting to engage KPMG to work under direction of that law firm. Normally, this arrangement would create an attorney-client privilege because the accountant would be working directly under the direction of an attorney. But this particular arrangement was a sham because the clients did not directly engage the law firm, and, in many instances, they never even spoke to anyone at the law firm. The purpose of respondent's arrangement was to conceal the fraudulent tax shelter from the IRS by enabling all of the work for the shelter to be protected by the attorney-client privilege.

22. On at least one occasion respondent and another KPMG tax partner set up a sham attorney client relationship by purportedly engaging the law firm but claimed that another individual, a former KPMG employee at the time, authored the opinion letter for the KPMG tax partner at the direction of the law firm, when in truth and in fact, respondent authored the opinion letter and was not acting at the direction of the law firm.

FIRST CAUSE FOR DISCIPLINE

Fraud in the Practice of Public Accountancy [Business and Professions Code § 5100(c)]

23. The matters alleged in paragraphs 10 through 22 are re-alleged as though fully set forth.

24. Respondent, serving as the engagement partner for, or involved in, a number of tax shelter transactions, among them those listed above, participated in employing various means to conceal from the IRS and other taxing authorities the fraudulent tax shelters. Respondent's

license is therefore subject to disciplinary action based on his involvement or acquiescence in:

A. The failure of KPMG to register the tax shelters as required;

B. The preparation of, or causing to be prepared, false or fraudulent documentation supporting the implementation of the tax shelters; and/or

C. The implementation of the tax shelters, including but not limited to preparing and/or causing to be prepared or participating in the preparation and/or filing of tax returns that fraudulently concealed the phony losses from the IRS.

25. Incorporating by reference the matters alleged in paragraphs 24 and 25, cause for discipline of Respondent's license for fraud in the practice of public accountancy is established under Code Section 5100(c).

SECOND CAUSE FOR DISCIPLINE

Dishonesty in the Practice of Public Accountancy [Business and Professions Code § 5100(c)]

26. Complainant realleges paragraphs 10 through 22 above. Incorporating those matters by reference, cause for discipline of Respondent's license for dishonesty in the practice of public accountancy is established under Code Section 5100(c) based upon his dishonest acts, and omissions in the course of his participation, as described above, in the SOS tax shelters.

THIRD CAUSE FOR DISCIPLINE

Gross Negligence in the Performance of Tax Engagements [Business and Professions Code § 5100(c)]

27. Complainant realleges paragraphs 10 through 22 above. Incorporating those matters by reference, cause for discipline of Respondent's license for gross negligence in the practice of public accountancy is established under Code Section 5100(c) based upon his conduct, which constituted extreme departures from applicable professional standards.

FOURTH CAUSE FOR DISCIPLINE

Failure to Observe Professional Standards in Performance of Tax Engagements [Board Rule 58/Bus. & Prof. Code § 5100(g)]

28. Complainant realleges paragraphs 10 through 22. Incorporating those matters by

reference, cause for discipline of Respondent's license is established in that his failure to comply with professional standards applicable to tax engagements constitutes the willful violation of Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

FIFTH CAUSE FOR DISCIPLINE

Conspiracy with Unlicensed Person to Violate Accountancy Act
[Bus. & Prof. Code §125, 5100]

29. Complainant realleges paragraphs 10 through 22. Incorporating those matters by reference, cause for discipline of Respondent's license is established in that he conspired with unlicensed persons, including lawyers and others, to devise, market, and/or implement the fraudulent tax shelters, in violation of Code section 125. The conduct of respondent, as alleged, constitutes general unprofessional conduct under Code section 5100.

SIXTH CAUSE FOR DISCIPLINE

Filing False Income Tax Return
Fiscal Dishonesty [Bus. and Prof. Code Sections 5100(i)]
and
Knowing Preparation and Dissemination
of False and Fraudulent Financial Information
[Bus. and Prof. Code Section 5100(j)]

30. Complainant realleges paragraphs 10 through 22, above, and incorporates them herein by reference as if fully set forth at this point. Additional circumstances follow.

31. From 1999 through 2004, respondent used SOS tax shelter losses to evade the payment of income taxes due and owing on approximately $1.6 million of income he earned from KPMG as a partner, and approximately $21.5 million of income he earned from his tax shelter activities with a law firm.

32. Respondent's conduct as set forth in paragraphs 10 through 22, and 31 above, constitutes fiscal dishonesty, which is unprofessional conduct within the meaning of Code section 5100(i).

33. Respondent's conduct in preparing his tax return, as set forth in paragraph 32, above, constitutes the knowing preparation of false and/or fraudulent financial information, which is unprofessional conduct within the meaning of Code section 5100(j).

34. Respondent's conduct in filing his tax return, as set forth in paragraph 31, above, constitutes the knowing publication or dissemination of false and/or fraudulent financial information, which is unprofessional conduct within the meaning of Code section 5100(j).

PRAYER

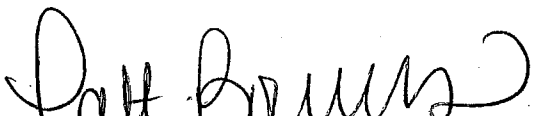
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Number 61580, issued to David B. Greenberg.

2. Ordering David B. Greenberg 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;

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

DATED: October 17, 2008



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

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