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

11 In the Matter of the Accusation Against:

Case No. AC 2009 31

12 KIYOSHI HATANAKA
13 39 Red Bud
14 Aliso Viejo, CA 92656

DEFAULT DECISION AND ORDER

15 Certified Public Accountant Certificate
No. 73188

[Gov. Code, §11520]

16
17 Respondent.

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19 FINDINGS OF FACT

20 1. On or about June 22, 2009, Complainant Patti Bowers, in her official capacity as the
21 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
22 filed Accusation No. AC 2009 31 against Kiyoshi Hatanaka (Respondent) before the California
23 Board of Accountancy.

24 2. On or about March 22, 1997, the California Board of Accountancy (Board) issued
25 Certified Public Accountant Certificate No. 73188 to Respondent. The Certified Public
26 Accountant Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2009, unless renewed.

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1 3. On or about July 7, 2009, Denise Hosman, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Accusation No. AC 2009 31, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 39
5 Red Bud, Aliso Viejo, California 92656. In response, the Department of Justice received an
6 unsigned letter stating that Respondent is now "in jail" at 45396-112, F.S.L. La Tuna, P.O. Box
7 6000, Anthony, NM 88021. F.S.L. La Tuna is a Federal Correctional Institution. Therefore, on
8 or about July 17, 2009, Denise Hosman, an employee of the Department of Justice, served by
9 Certified and First Class Mail a copy of the Accusation No. AC 2009 31, Statement to
10 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
11 11507.6, and 11507.7 to that address. In response, a signed Domestic Mail Return Receipt
12 acknowledging receipt of the Accusation package was received by the Department of Justice.

13 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

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

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

21 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
22 Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
23 AC 2009 31.

24 6. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
26 agency may take action based upon the respondent's express admissions or upon other evidence
27 and affidavits may be used as evidence without any notice to respondent.

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Exhibit A

Accusation No. AC 2009 31

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14 Aliso Viejo, CA 92656

A C C U S A T I O N

15 Certified Public Accountant Certificate No.
CPA 73188

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 22, 1997; the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number CPA 73188 to Kiyoshi Hatanaka (Respondent). The
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on October 31, 2009, unless renewed.

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JURISDICTION

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

4. Section 5100 states in relevant 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:

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

"....

"(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."

5. Section 5106 states:

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

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 7. California Code of Regulations, title 16, section 99 provides in relevant part:

4 “For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to
5 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act
6 shall be considered to be substantially related to the qualifications, functions or duties of a
7 certified public accountant or public accountant if to a substantial degree it evidences present or
8 potential unfitness of a certified public accountant or public accountant to perform the functions
9 authorized by his or her certificate or permit in a manner consistent with the public health, safety,
10 or welfare. Such crimes or acts shall include but not be limited to those involving the following:

11 “(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

12 “. . . .

13 “(d) Violation of any of the provisions of Chapter 1, Division III of the Business and
14 Professions Code or willful violation of any rule or regulation of the board.”

15 8. California Code of Regulations, title 16, section 99.1 provides:

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

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

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

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

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

1 made from Soka's bank accounts and accounts in which its investments were held. Beginning in
2 1999 and continuing to early January 2006, Respondent caused approximately \$1,756,000 to be
3 transferred from Soka's bank and investment accounts to bank accounts he controlled.
4 Respondent withdrew those funds from the accounts that he controlled, and then used those funds
5 for his own benefit.

6 13. As terms of sentencing, the court ordered Respondent to be imprisoned for a term of
7 thirty-seven (37) months, to pay a special assessment of \$100.00, and to pay restitution in the
8 amount of \$1,756,000. The court further ordered that upon release from imprisonment,
9 Respondent is to be placed on supervised release for three (3) years under terms and conditions
10 including: comply with all the rules and regulations of the U.S. Probation Office and General
11 Order 318; pay the special assessment and restitution; not be employed in any capacity wherein
12 he has custody, control or management of his employer's funds; not be employed in any position
13 that requires licensing and/or certification by any local, state or federal agency, without prior
14 approval of the Probation Officer; notify the California Board of Accountancy of his conviction
15 in this matter within 30 days of sentencing and provide proof to the Probation Officer of
16 compliance with this instruction; comply with the immigration rules and regulations of the United
17 States; cooperate in the collection of a DNA sample; attend meetings of Gamblers Anonymous;
18 and apply monies received from income tax refunds greater than \$500, lottery winnings,
19 inheritance, judgments, and any anticipated or unexpected financial gains to the outstanding
20 court-ordered financial obligation.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct - Fiscal Dishonesty)

23 14. Respondent is subject to disciplinary action under Code section 5100, subsection (i)
24 for fiscal dishonesty. The circumstances are set forth in paragraphs 11 through 13, above, which
25 are incorporated here by this reference.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Embezzlement)

3 15. Respondent is subject to disciplinary action under Code section 5100, subsection (k)
4 for embezzlement. The circumstances are set forth in paragraphs 11 through 13, above, which are
5 incorporated here by this reference.

6 PRAYER

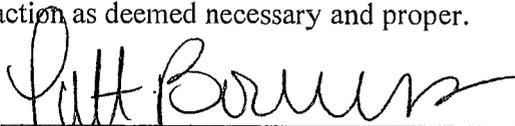
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the California Board of Accountancy issue a decision:

9 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
10 Accountant Certificate Number CPA 73188, issued to Kiyoshi Hatanaka;

11 2. Ordering Kiyoshi Hatanaka to pay the California Board of Accountancy the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 5107;

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

15 DATED: June 22, 2009



16 PATTI BOWERS
17 Executive Officer
18 California Board of Accountancy
19 Department of Consumer Affairs
20 State of California
21 Complainant