

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

In the Matter of the Accusation Against:

**DAZHANG LI, also known as  
BEN D. LI,**

Certified Public Accountant Certificate  
Number 79650,

Respondent.

Case No. AC-2011-20

OAH No. 2013020570

**DECISION AFTER RECONSIDERATION**

This matter was heard by Mark Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on June 4, 2013.

Patti Bowers (Complainant) was represented by Alvaro Mejia, Deputy Attorney General.

Dazhang Li (Respondent) was represented by Jonathan K. Golden, Attorney at Law.

Oral and documentary evidence was received. The parties stipulated to the truth of all factual allegations in the Accusation. The parties offered evidence and argument relating to the penalty to be imposed, if any. The record was closed, and the matter was submitted for decision on June 4, 2013.

The proposed decision of the Administrative Law Judge was submitted to the California Board of Accountancy (Board) on September 30, 2013. The Board adopted said proposed decision on November 27, 2013. On December 10, 2013, Complainant filed a Petition for Reconsideration, arguing that the Board's departure from its minimum standards on penalty was not supported by the evidence in this case or articulated in the decision adopted by the Board. On December 23, 2013, the Board issued an Order Granting Reconsideration. On January 28, 2014, the Board issued an Order Fixing Date for Submission of Argument. Written argument having been

received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Government Code sections 11517 and 11521, hereby decides this matter as follows:

### FACTUAL FINDINGS

1. Complainant brought the Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, on December 16, 2011.
2. On August 25, 2000, the Board issued Certified Public Accountant (CPA) Certificate Number 79650 to Respondent. Respondent's CPA certificate currently is valid and will expire on September 30, 2014, unless renewed. Complainant presented no evidence demonstrating that the Board previously disciplined Respondent's certificate.
3. On April 19, 2010, in the United States District Court, Central District of California, case number CR 08-01397, Respondent was convicted, upon his plea of guilty, of one felony count of violating Title 18, United States Code, section 4 (misprision of felony – knowledge of the commission by another of a felony, to wit, visa fraud, 18 U.S.C. § 1546(a), and some affirmative act of concealment). The court placed Respondent on probation for a term of one year and ordered him to pay a total fine of \$25,000 and a special assessment of \$100.
4. As part of his plea agreement with the United States Attorney's Office, Respondent agreed and stipulated to the following statement of facts:

“On or about January 18, 2006, Joseph Wu committed visa fraud, in violation of Title 18, United States Code, Section 1546(a), by sending to the United States Citizenship and Immigration Services (“USCIS”) a work visa petition (Form I-129) for alien beneficiary L. Zhuge. The petition contained false representations that Zhuge would be employed full-time as a software developer by New Century Business Services (“New Century”), from February 1, 2006, to January 31, 2009, at an annual salary of \$42,000. At the time, Wu knew that Zhuge would not be so employed by New Century in any capacity. In exchange for filing the fraudulent petition, Zhuge paid to Wu and others approximately \$6,000. Due to the false statements in the petition regarding the availability and details of the purported job at New Century, USCIS issued a work visa for Zhuge on or about February 15, 2006.

“Knowing that Wu had committed visa fraud with respect to the petition for Zhuge, defendant [Respondent], who was the owner and President of New Century, did not report the crime to law enforcement authorities. Instead, when interviewed by federal law enforcement officers on May 2, 2008, at the New

Century office in the City of Industry, California, defendant [Respondent] falsely stated that Zhuge had worked for New Century. Defendant did so for the purpose of concealing from the officers the aforementioned visa fraud.” (Exhibit 4.)

### *Substantial Relationship Analysis*

5a. The conviction of misprision of a felony may be a basis for disciplining Respondent’s CPA certificate if it bears a substantial relationship to the qualifications, functions, or duties of the accountancy profession. The Board has adopted criteria to aid it in determining whether a crime or act is substantially related at Title 16, California Code of Regulations section 99:

“For the purposes of denial, suspension, or revocation of a certificate . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

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

Respondent’s counsel has argued that, since Respondent’s crime did not occur in connection with the practice of accountancy or involve moral turpitude categorically (Respondent’s Hearing Brief, Exhibit A), there is no “nexus” between his crime and the qualifications, functions, or duties of the profession. Complainant, however, established this nexus and did not have to demonstrate that Respondent committed, or was an accessory, to visa fraud.

5b. New Century purportedly acted as a staffing company, employing bookkeepers, accountants, and computer software engineers, whom it made available to perform work for third party companies as needed. New Century received “reimbursement” from the companies for these services. New Century actively sponsored employees who wanted work visas. Respondent hired Wu, an immigration consultant, to help fill out the visa applications of New Century’s employees. Up to one quarter of New Century’s Employees obtained H-1B visas allowing them to work in the United States. New Century also acted on behalf of other companies that wanted to sponsor employees applying for work visas.

5c. In February 2006, New Century helped Zhuge complete an application for a work visa, representing to USCIS authorities that it employed Zhuge. Respondent signed the paperwork for New Century. Respondent insists he intended to employ Zhuge in 2006, yet New Century never paid any wages to Zhuge. Respondent had knowledge of this fact in 2008 when he provided a false statement to law enforcement authorities who questioned him about Zhuge’s employment with New

Century. Based on these facts and circumstances, Respondent's offense of concealing the visa fraud involves dishonesty and evidences potential unfitness to perform CPA duties and functions. This crime is substantially related to the qualifications, functions, and duties of a CPA.

#### *Mitigation and Rehabilitation Evidence*

6a. Respondent paid the criminal fine and assessment. He completed the terms of probation and was released in mid-2011. He admitted that, as the President and sole owner of New Century, he was responsible for misrepresentations his company made to USCIS. Respondent, however, placed blame on Wu and others, rather than himself. Respondent did not acknowledge that his company, New Century, facilitated the visa fraud perpetrated by Wu and Zhuge.

6b. Respondent, in his testimony, minimized his participation and involvement in New Century's employment of Zhuge. His business partner, Tony Wang (Wang), knew Zhuge in college and recommended that Respondent hire Zhuge. Zhuge had only a student visa. Zhuge told Respondent he was educated as a software engineer, but he wanted to work for Countrywide Mortgage Company. Zhuge purportedly accepted Respondent's offer of employment for \$42,000, intending to work both jobs. Respondent said that, later in 2006, Zhuge did not want to come to work at New Century. Respondent asserted that Wang had been responsible for overseeing Zhuge's work at New Century and, thus, Respondent was not aware that Zhuge never worked in any paid capacity for New Century and that, in May 2008, he did not know that Zhuge had not worked for New Century Business Services. (AR 42:7-22.) He stated that he was "just a signer" with respect to H1-B visas and "overlooked" his responsibilities to make sure he complied with federal rules and regulations with respect to visa petitions (AR 23:5; 55:11-18.) Respondent's assertion that he was unaware of Zhuge's circumstances at New Century was not persuasive, because there is a reasonable probability that Respondent, as President, knew the details of New Century's employees, their status, and their salary payments. At the very least, Respondent failed to make any inquiry regarding Zhuge's employment status before making the false statement to law enforcement authorities, although he testified that, at the present time, he would monitor employment and payroll issues more closely. In addition, Respondent's plea agreement directly contradicts respondent's statements at hearing about not knowing about Zhuge's true employment status. In his plea agreement, Respondent expressly admits that he knew "Wu had committed visa fraud with respect to the petition for Zhuge" and that when interviewed by federal law enforcement officers on May 2, 2008, he "falsely stated that Zhuge had worked for New Century." Respondent's denials and attempts to explain away his misconduct call into question his credibility and statements regarding rehabilitation.

6c. In mitigation, Respondent has no previous record of discipline with the Board and Respondent has received no complaints regarding his CPA services. He is a part-time accountant for Henubar Energy Corporation, an exporter of lubricating oil from the United States to China. He also performs accounting and tax work for

Sequoia Group. He earns approximately \$5,000 net income per month from accounting work. New Century reduced its operation and now does only a small amount of bookkeeping work. Respondent maintained that, if any accounting client did not want to follow the law, he would not keep them on as a client.

6d. Respondent was divorced in 2006. He has two children, ages 15 and 10, who live with their mother. Respondent has been current in paying child support. He has spent a large amount of time over the past two years in China, caring for his elderly and sick father.

#### *Complainant's Costs*

7. Complainant incurred its own investigation costs of \$3,475.46 and an additional \$4,100.00 for legal services provided by the Department of Justice, for a total of \$7,575.46. The Administrative Law Judge in this matter found that these costs were deemed reasonable. No evidence was provided that Respondent would be unable to pay the costs of investigation in this matter.

### LEGAL CONCLUSIONS

Based upon the foregoing factual findings and after a review of the record in this matter, the Board makes the following legal conclusions:

1. Complainant must prove her case by clear and convincing evidence to a reasonable certainty. Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Business and Professions Code<sup>1</sup> section 5100, subdivision (a), authorizes the Board, after notice and hearing, to suspend or revoke a CPA certificate for unprofessional conduct, which may include but is not limited to, conviction of any crime substantially related to the qualifications, functions, and duties of certified public accountant or a public accountant. Section 490 similarly authorizes the Board to suspend or revoke a CPA certificate on the grounds that that CPA has been convicted of a substantially related crime.

3. Cause exists by clear and convincing evidence to suspend or revoke Respondent's certificate as a certified public accountant pursuant to sections 5100, subdivision (a), and 490, for conviction of a crime of dishonesty that is substantially

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<sup>1</sup> All statutory references are to the Business and Professions Code, unless specified otherwise.

related to the qualifications, functions, and duties of a CPA, by reason of factual finding numbers 2 through 5, and legal conclusion numbers 1 and 2.

### *Considerations Regarding the Appropriate Penalty in this Case*

4. Pursuant to California Code of Regulations, title 16, section 98, the Board has adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines). The Guidelines specify that the following factors should be considered in assessing administrative penalties in a given case:

1. Nature and extent of actual and potential consumer harm.
2. Nature and extent of actual and potential harm to clients.
3. Nature and severity of the violation.
4. The role of the person in the violation.
5. The person's attitude toward his or her commission of the violations.
6. Recognition of wrongdoing.
7. Person's history of violations.
8. Nature and extent of cooperation with the Board's investigation.
9. The person's ability to pay the administrative penalty.
10. The level of administrative penalty necessary to deter future violations.
11. Nature and extent to which the person has taken corrective action to ensure the violation will not recur.
12. Nature and extent of restitution to consumers harmed by violations.
13. The violations involve sanctions by other government agencies or other regulatory licensing bodies, i.e., Internal Revenue Service, Securities and Exchange Commission, and Public Company Accounting Oversight Board.
14. Other aggravating or mitigating factors.

5. Misprision of a felony is a serious offense because it demonstrates "gross indifference to the duty to report known criminal behavior." *Robles-Urrea v. Holder* (9th Cir. 2012) 678 F. 3d 702, 710, citing *Roberts v. United States* (1980) 445 U.S. 552, 558). The crime does not require a specific intent to accomplish a particular purpose. Respondent's crime, perhaps, was that of the irresponsible citizen rather than derived from some baser motive. Still, the concealment of a felony, with no known motive, has a rational relationship to Respondent's qualifications to be a CPA. A CPA is required to uphold high ethical standards. Honesty and integrity are fundamental to the profession and the maintenance of professional relationships. The public relies on a CPA for honest opinions when attesting to the soundness and credibility of financial statements, including assuring that statements are free from material misstatement. A CPA's conduct must be beyond reproach, both in relationships with the public and with government agencies such as the IRS. Respondent's misconduct raises concerns about ethics and honesty in his practice.

6. Respondent has presented mitigating evidence and evidence of rehabilitation. The events leading to his conviction occurred more than five years ago. He has satisfied the terms of his criminal probation. He has suffered no other convictions since 2010. However, the record reflects that Respondent has not fully embraced his culpability with regard to the crime for which he was convicted. Respondent's denials of wrongdoing and attempts to minimize and explain away his misconduct in the face of a federal conviction are of concern to the Board. Such denials show a lack of personal accountability and lack of awareness of what he did wrong, and render Respondent's testimony regarding his rehabilitation unconvincing. (Factual Finding number 6.) Respondent had an opportunity to protest the charges against him in federal court. Respondent is not now free to attack or impeach the judgment of the federal courts in this forum. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 302.)<sup>2</sup> Nevertheless, Respondent has not been implicated directly in the visa fraud scheme nor been found to have obstructed justice and Respondent asserts that he would monitor employment and payroll issues more closely in the future.

7. The Board's Guidelines set forth a recommend minimum penalty for a substantially-related felony conviction of: revocation stayed; actual suspension from practice for 120 days, and three years' probation along with terms and conditions of probation. The maximum penalty set forth in the Guidelines is outright revocation. In light of the foregoing Findings of Fact and Legal Conclusions, outright revocation is not warranted, but a penalty must be imposed sufficient to impress upon Respondent the seriousness of the violation and allow the Board to monitor his practice. Upon reconsideration, the public welfare will be protected by the imposition of a probationary period in which Respondent can further demonstrate his rehabilitation, as well as a substantial suspension, consistent with the minimum penalty set forth in the Guidelines.

8. Cause exists pursuant to section 5107, subdivision (a), to order Respondent to reimburse the Board the sum of \$7,575.46 as its reasonable costs of investigation and prosecution in this matter. (Factual finding number 7; legal conclusion numbers 1 through 7.)

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<sup>2</sup> According to the California Supreme Court in *Arneson v. Fox* (1980) 28 Cal.3d 440, 452, convictions are conclusive proof of guilt of the specific offense charged in the indictment:

Appellant continues to assert that administrative discipline would be improper in the absence of any positive proof of his wrongful intent beyond the indictment and nolo conviction themselves. Yet as we have seen, the nolo conviction stands as conclusive proof of appellant's guilt of the specific offense charged in the indictment. No extrinsic independent evidence thereof need be introduced. Nor is appellant permitted to impeach that conviction.

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant Certificate Number 79650, issued to Respondent, Dazhang Li, is revoked pursuant to legal conclusion numbers 1 through 7 separately and for all of them. However, revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

**1. Actual Suspension:**

Certified Public Accountant Certificate No. 79650, issued to Respondent, is suspended for 120 days. The term of Respondent's suspension shall begin on the effective date of this decision and order and shall continue day-to-day thereafter for 120 days. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

**2. Obey All Laws**

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

**3. Submit Written Reports**

Respondent shall submit, within 10 days of completion of the quarter, beginning with the first quarter following the effective date of the Decision, written reports to the Board on a form obtained from the Board. 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.

**4. 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.

**5. 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.

**6. 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.

**7. Comply With Citations**

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

**8. 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.

**9. 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.

**10. Completion of Probation**

Upon successful completion of probation, Respondent's license will be fully restored.

**11. Ethics Course/Examination**

Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination within one year of the effective date of the Board's final decision.

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 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.

## **12. Continuing Education Courses**

Respondent shall complete professional education courses as specified by the Board or its designee at the time of Respondent's first probation appearance. The professional education courses shall be completed within a period of time designated and specified in writing by the Board or its designee, which time frame shall be incorporated as a condition of this probation. This shall not be in addition to continuing education requirements for relicensing.

Failure to satisfactorily complete the required courses as scheduled or failure to complete the same no later than 100 days prior to the termination of probation shall constitute a violation of probation.

## **13. Active License Status**

Respondent shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

## **14. Cost Reimbursement**

Respondent shall reimburse the Board \$7,575.46 for its investigation and prosecution costs. The payment shall be made in equal monthly payments of \$500 each, with the first installment due on the 30th day of the first full month after the effective date of the Board's final decision, and continuing thereafter each month for 14 additional monthly payments, with the final payment in the amount of \$575.46 being due at least six months before probation is scheduled to terminate.

## **15. Notification to Clients/Cessation of Practice**

In orders that provide for a cessation or suspension of practice, Respondent shall comply with procedures provided by the California Board of

Accountancy or its designee regarding notification to, and management of, clients.

This Decision shall become effective on May 23, 2014.

IT IS SO ORDERED this 25<sup>th</sup> day of April, 2014.

  
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Michael M. Savoy, CPA, President  
California Board of Accountancy

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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-2011-20

12 **DAZHANG LI**  
**aka BEN D. LI**  
13 17800 Castleton Street, #180  
14 City of Industry, CA 91748

**ACCUSATION**

15 Certified Public Accountant Certificate No. 79650

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 25, 2000, the CBA issued Certified Public Accountant Certificate  
23 No. 79650 to Dazhang Li, also known as Ben D. Li ("Respondent"). The Certified Public  
24 Accountant Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on September 30, 2012, unless renewed.

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1 CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime)

3 10. Respondent is subject to disciplinary action under Code sections 490 and 5100,  
4 subdivision (a), in conjunction with California Code of Regulations, title 16, section 99, in that on  
5 or about April 19, 2010, Respondent was convicted of a crime substantially related to the  
6 qualifications, functions or duties of a certified public accountant or public accountant, as  
7 follows:

8 a. On or about April 19, 2010, after pleading guilty, Respondent was convicted of one  
9 felony count of violating Title 18, United States Code, section 4 [misprision of felony –  
10 knowledge of commission by another of a felony, to wit, Visa Fraud, 18 U.S.C §1546(a)] in the  
11 criminal proceeding entitled *United States of America v. Dazhang Li aka "Ben D. Li"* (C.D. Cal.,  
12 2008, No. CR 08-01397 MMM). The Court placed Respondent on one (1) year probation with  
13 special conditions for probation and supervised release.

14 b. The circumstances underlying the conviction are detailed under the factual basis of  
15 the plea agreement for Respondent Li, in the criminal proceeded entitled above, as follows:

16 On or about January 18, 2006, Joseph Wu committed visa fraud, in violation of Title  
17 18, United States Code, Section 1546(a), by sending to the United States Citizenship  
18 and Immigration Services ("USCIS") a work visa petition (Form I-129) for alien  
19 beneficiary L. Zhuge. The petition contained false representations that Zhuge would  
20 be employed full-time as a software developer by New Century Business Services  
21 ("New Century"), from February 1, 2006 to January 31, 2009, at an annual salary of  
22 \$42,000. At the time, Wu knew that Zhuge would not be so employed, and, in fact,  
23 Zhuge was never employed by New Century in any capacity. In exchange for filing  
24 the fraudulent petition, Zhuge paid to Wu and others approximately \$6,000. Due to  
25 the false statements in the petition regarding the availability and details of the  
26 purported job at New Century, USCIS issued a work visa for Zhuge on or about  
27 February 15, 2006.

28 Knowing that Wu had committed visa fraud with respect to the petition for Zhuge,  
defendant, who was the owner and President of New Century, did not report the crime  
to law enforcement authorities. Instead, when interviewed by federal law  
enforcement officers on May 2, 2008, at the New Century office in the City of  
Industry, California, defendant falsely stated that Zhuge had worked for New  
Century. Defendant did so for the purpose of concealing from the officers the  
aforementioned visa fraud.

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