

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

In the Matter of the Accusation Against:

GUTENTAG, MARK STEVEN

9250 Reseda Blvd., #664

Northridge, CA 91324

California Public Accountant License

No. 27622

Respondent.

Case No.: AC-2013-42

OAH No.: 2014080731

DECISION AND ORDER

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

This Decision shall become effective on July 5, 2015

It is so ORDERED on June 5, 2015.



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

MARK STEVEN GUTENTAG,

Certified Public Accountant License
No. 27622,

Respondent.

Case No. AC-2013-42

OAH No. 2014080731

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge, heard this matter on May 1, 2015, at the Office of Administrative Hearings in Los Angeles, California.

Katherine M. Messina, Deputy Attorney General, appeared and represented complainant Patti Bowers, Executive Director of the California Board of Accountancy, Department of Consumer Affairs (the Board).

Respondent Mark Steven Gutentag appeared and represented himself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On March 30, 1979, the Board issued Certified Public Accountant License number 27622 to respondent. The Board presented a certification that showed that the license expired on May 31, 2014. Because the certification pre-dates the expiration date, the evidence cannot support a finding of the current status of the license. Notwithstanding any change in the status of the license, the Board maintains jurisdiction over the license pursuant to Business and Professions Code section 5109.

2. On June 2, 2014, complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

3. In 1990, while his daughter was in kindergarten, respondent befriended Dennis Lawton (Lawton), the parent of a boy in the same school. Over the years, respondent developed a professional relationship with Lawton, who was in the insurance business. Lawton regularly provided insurance-related advice and products to respondent's clients and accounting firm.

4. Late in 2005, Lawton introduced respondent to Bruce Friedman (Friedman), owner of Diversified Lending Group (DLG). Lawton had been to presentations given by Friedman and became an independent agent of DLG. Friedman was seeking investors in investment notes at interest rates of 9 and 12 percent under one-year and five-year contracts. Respondent was a partner in an accounting firm with a clientele of high net worth individuals. Lawton offered to pay respondent a commission for any clients who invested in DLG based on his recommendation.

5. To research the investment opportunity, respondent had several meetings with Friedman to learn the details of the investment. He interviewed references, all of whom confirmed DLG's regular compliance with the investment contract terms. He reviewed financial information, including a certified financial audit and a private letter ruling issued by the Internal Revenue Service. Respondent spoke with officers at Jackson National Life Insurance Company (Jackson National), the insurance company that provided annuity collateral assignments to secure the nine percent investment, who gave assurances that the security interests were valid and enforceable. Respondent spoke with a high-ranking executive with another insurance company who gave Friedman a glowing personal reference.

6. Beginning in 2006, respondent began presenting DLG as an investment opportunity to his clients. Respondent made no guarantees and never represented to a client that the investment was risk-free. When a client decided to invest, respondent helped complete and submit the application. Clients paid all investment funds directly to DLG and DLG provided all of the documentation directly to the client.

7. Respondent referred 27 investors who collectively invested \$6,469,133 in the nine percent secured notes and \$8,982,721 in the 12 percent unsecured notes. Between 2006 and 2008, Lawton paid respondent commissions in the total amount of \$750,000 to \$900,000 based on total investments in DLG of \$15,451,854. Respondent also invested in DLG.

8. Respondent did not disclose in writing to any client that DLG would pay him a commission based on his referral of the client to DLG. Respondent testified that he verbally told clients that he would be paid commissions and that he did not know about the Board's written disclosure requirements. His testimony that he verbally told clients is given little weight because the conduct, even if true, was insufficient to comply with the disclosure requirements. However, his testimony that he did not know that he was required to furnish written disclosure statements to existing clients is given full credit. From 1980 to 2009, respondent worked for an accounting firm with a concentration in real estate transactions. He was otherwise licensed to sell non-real estate securities, such as annuities. He had never taken commissions from accounting clients. The weight of the evidence shows that

respondent's activities in relation to DLG were outside his normal practice and that his failure to comply with the regulations was the result of professional negligence. No evidence was presented to show that respondent willfully withheld information about his commissions in order to deceive clients.

9. One of the investors was Revon Wolf (Wolf). In the past, respondent prepared tax returns for Wolf, but respondent had not provided accounting services for Wolf in more than 10 years. Respondent's business partner referred Wolf to respondent about the DLG investments. Respondent met with Wolf to describe the two investment opportunities. Respondent described his research of the investment set forth at Factual Finding 5. Respondent recommended to Wolf the nine percent note because the contract was secured with a collateral assignment by Jackson National, whereas the 12 percent note had no similar collateral assignment. Wolf chose to invest in both notes under four investment contracts with DLG in the total amount of \$250,000; Wolf invested \$150,000 in the nine percent notes and \$100,000 in the 12 percent notes. Respondent had meetings with Wolf to help complete and submit all four contracts. Two of the contracts were executed on March 14, 2008, and the remaining two contracts were executed on May 28, 2008. Wolf made all checks payable to DLG.

10. Lawton paid respondent commissions of \$16,254 for Wolf's investments in DLG. Wolf did not pay respondent for any services rendered and did not inquire how respondent was being paid for the time spent counseling Wolf about the investment. Wolf testified that he did not know that respondent would be paid a commission and that, if he had known, he would not have made the investment. The testimony is given little weight. Wolf would inquire about respondent's compensation if it were material to his course of conduct. The evidence shows that Wolf was motivated by the prospect of earning an interest rate that he acknowledged was "too good to be true," that Wolf invested in the 12 percent unsecured notes contrary to respondent's recommendation, and that respondent's financial interests in the transaction were immaterial to Wolf.

11. On March 6, 2009, the Securities and Exchange Commission (SEC) seized control of DLG based on evidence that the operation was an unlawful Ponzi scheme. Friedman was arrested and prosecuted for engaging in investment fraud and DLG collapsed. Wolf lost his entire investment. All other clients lost the principal amounts invested in DLG, except for the few investors who closed their accounts before the seizure. Friedman died in prison while criminal proceedings were pending.

12. On October 1, 2010, the Board received a consumer complaint from Wolf. Wolf complained that respondent failed to perform adequate due diligence and should have discovered that DLG was a Ponzi scheme. Wolf also complained that respondent failed to notify him that he was receiving commissions for recommending an investment in DLG.

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13. On October 5, 2010, the Board assigned the matter to an investigator to consider the complaint filed by Wolfe. The investigator requested information and documents from respondent. Respondent cooperated with the investigation by furnishing written explanations to questions and producing documents in his possession.

14. On January 31, 2013, after completing its investigation, the Board held an Investigative Hearing. Respondent appeared and testified at the hearing. The Board found no grounds to discipline respondent for failing to perform adequate due diligence. The Board found cause to discipline respondent under Business and Professions Code section 5100 for failing to obtain signed disclosure statements relating to commissions for recommending investments in DLG.

15. Respondent has no other record of discipline in 36 years of licensure, except for two brief periods when he allowed his license to expire for failing to act timely to renew his license.

16. Respondent was subject to disciplinary action by the Financial Industry Regulatory Authority (FINRA). In January 2000, respondent was registered as an investment company products/variable principle and an investment company products/variable representative. From September 14, 2004, through April 14, 2008, respondent was registered as a general securities representative with the firm Morgan Peabody, Inc. Respondent made none of the investments in DLG through Morgan Peabody because he did not believe the investments were securities. The omission was grounds for discipline.

17. On November 9, 2010, respondent executed a letter of acceptance, waiver and consent, without admitting or denying the findings of FINRA. As a result, respondent was barred from associating in any capacity with any FINRA member firm.

18. At this hearing, respondent demonstrated remorse and convincingly expressed that he was "extremely mortified" by the consequences of his actions. As a result of the losses sustained by his clients, respondent lost his position at the accounting firm where he worked for 29 years. Respondent conducts a small tax and counseling practice out of his residence. He no longer advises clients about investment opportunities and credibly testified that he will never take commissions again. He also lost his entire investment in DLG.

19. Complainant incurred reasonable costs in the amount of \$11,931 in its investigation of respondent's case. The complainant incurred reasonable costs in the amount of \$3,745 in its prosecution of the case. The total sum of reasonable investigation and enforcement costs is \$15,676.

LEGAL CONCLUSIONS

1. The complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. Business and Professions Code section 5100, subdivision (g), provides that the Board may discipline a licensee for a willful violation of the Business and Professions Code or any rule or regulation promulgated by the Board under its authority.

3. Generally, a licensee shall not accept a fee or commission for referring a client to the products or services of a third party. (Bus. & Prof. Code, § 5061, subd. (a)(2).) A licensee may, however, accept a fee or commission for providing a client with the products or services of a third party where those products or services are provided in conjunction with professional services and the licensee complies with the disclosure requirements. (Bus. & Prof. Code, § 5061, subd. (b).)

4. California Code of Regulations, title 16, section 56 sets forth the disclosure requirements applicable to a licensee who may receive a fee or commission pursuant to Business and Professions Code section 5061. The licensee must furnish to the client, at or prior to the time the recommendation of the product or service is made, a written disclosure statement in 12 point type or larger that contains the following information:

- (A) The fact that the fee or commission is to be paid for professional services and that a fee or commission cannot be accepted solely for the referral of the client to the products or services of a third party.
- (B) A description of the product or service which the licensee is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship of the licensee to the third party, a description of any fee or commission which may be received by the licensee, including, but not limited to, any supplemental fee or commission or other compensation allocable to the client being provided with the product or service of the third party.
- (C) The dollar amount or value of the fee or commission payments or the basis on which the payments shall be computed.

5. Cause exists to discipline the respondent's license under Business and Professions Code section 5100 because he violated Business and Professions Code section 5061 when he willfully accepted commissions without furnishing his clients with a written disclosure statement in compliance with California Code of Regulations, title 16, section 56. (Factual Findings 7.)

6. In evaluating the rehabilitation of a licensee and his present eligibility for a license, the Board must consider criteria set forth in California Code of Regulations, title 16, section 99.1. Relevant in this matter are the following criteria: the nature and severity of the act or offense; evidence of any acts committed subsequent to the offense under consideration which also could be considered as grounds for denial, suspension or revocation; time elapsed since commission of the offense; and evidence of rehabilitation.

7. In this case, respondent recommended to 27 of his clients that they invest in DLG and was paid substantial commissions based on those referrals. Because respondent did not make written disclosure of his financial interest in the investments, clients were not adequately informed that respondent's advice may have been influenced by his prospect of making hundreds of thousands of dollars in supplemental income. In this regard, respondent took advantage of his clients for personal gain. His recommendations resulted in financial damage to his clients because they lost their entire investment when the SEC seized control of DLG. (Factual Findings 11.)

8. However, the evidence shows that respondent performed adequate due diligence and had no reason to know that DLG was an unlawful Ponzi scheme. Respondent was not implicated in the criminal charges brought against Friedman and he has no criminal record. Respondent has no record of Board discipline in 36 years of licensure. His failure to make written disclosure of his commissions was the result of professional negligence, but not willful deceit. Respondent credibly demonstrated remorse for his conduct and persuasively testified that he will not accept commissions again. (Factual Findings 18.) Based on the foregoing, the public will be adequately protected by probationary terms that will enable the Board to monitor respondent's ongoing rehabilitation.

9. Business and Professions Code section 5107, subdivision (a), provides that a licensee may be directed to pay the Board for its reasonable costs of the investigation and enforcement of the action if the licensee is found to have committed a violation of the licensing act.

10. Complainant incurred reasonable costs in the amount of \$15,676 to investigate and enforce this complex case involving more than \$15 million in losses to consumers. Although the cost amount is substantial, it is less than two percent of the profits respondent derived from his misconduct. Although respondent's practice has been reduced to a home-based operation, this decision allows him to continue to practice and earn fees for his services as a certified public accountant. Respondent used the hearing process to assert a meritorious challenge to the revocation of his license. However, he presented no evidence to show that he is unable to pay in installments. In these circumstances, ordering recovery of the Board's costs, to be paid in installments over the term of probation, does not unfairly penalize respondent. (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45.) Accordingly, respondent is liable to reimburse the Board for costs in the amount of \$15,676, payable in quarterly payments with the final payment being due one year before probation is scheduled to terminate.

ORDER

Certified Public Accountant License number 27622 issued to respondent Mark Steven Gutentag is revoked. However, revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

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

2. **Cost Reimbursement.** Respondent shall reimburse the Board \$15,676 for its investigation and prosecution costs. The payment shall be made in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate.

3. **Submit Written Reports.** Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. 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 or 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 Board 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 Board.

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. The Board's Executive Officer may issue a citation under California Code of Regulations, Section 95, to respondent for any violation of a term or condition contained in this decision.

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

DATED: May 14, 2015


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. AC-2013-42

11 **MARK STEVEN GUTENTAG**

12 9250 Reseda Blvd., # 664
13 Northridge, CA 91324

ACCUSATION

14 Certified Public Accountant License No. 27622

15 Respondent.

16
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 2. On or about March 30, 1979, the California Board of Accountancy ("CBA") issued
22 Certified Public Accountant License Number 27622 to Mark Steven Gutentag ("Respondent").

23 The Certified Public Accountant License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on May 31, 2014, unless renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

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

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4. Section 5100 of the Code 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:

...

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.”

5. Section 5109 of the Code 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, the placement of a license on a retired status, 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.”

6. Section 5061 of the Code states:

“(a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not:

(1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client, or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a third party for providing the products or services of that third party to a client, or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client, or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

1 (3) An examination of prospective financial information.

2 For purposes of this subdivision, "director" means any person as defined
3 under Section 164 of the Corporations Code and "officer" means any individual
4 reported to a regulatory agency as an officer of a corporation. However, "director"
5 and "officer" does not include a director or officer of a nonprofit corporation, or a
6 corporation that meets the board's definition of small business, as specified by
7 regulation.

8 (d) A person engaged in the practice of public accountancy who is not
9 prohibited from performing services for a commission, or from receiving a
10 commission, and who is paid or expects to be paid a commission, shall disclose that
11 fact to any client or entity to whom the person engaged in the practice of public
12 accountancy recommends or refers a product or service to which the commission
13 relates.

14 (e) The board shall adopt regulations to implement, interpret, and make
15 specific the provisions of this section including, but not limited to, regulations
16 specifying the terms of any disclosure required by subdivision (d), the manner in which
17 the disclosure shall be made, and other matters regarding the disclosure that the board
18 deems appropriate. These regulations shall require, at a minimum, that a disclosure
19 shall comply with all of the following:

20 (1) Be in writing and be clear and conspicuous.

21 (2) Be signed by the recipient of the product or service.

22 (3) State the amount of the commission or the basis on which it will be
23 computed.

24 (4) Identify the source of the payment and the relationship between the
25 source of the payment and the person receiving the payment.

26 (5) Be presented to the client at or prior to the time the recommendation
27 of the product or service is made.

28 (f) For purposes of this section, fee includes, but is not limited to, a
commission, rebate, preference, discount, or other consideration, whether in the form
of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any
accounting practice or retirement payments to individuals presently or formerly
engaged in the practice of public accountancy or payments to their heirs or estates."

7. Section 5035.2 of the Code provides:

"'Client', as used in any context in this chapter, means any person for
whom public accountancy services are performed or to whom financial products,
financial services, or securities are sold or provided at the licensee's public
accountancy practice or through referral to any other location or business in which the
certified public accountant has a material interest."

8. Section 5116 of the Code provides:

"(a) The board, after appropriate notice and an opportunity for hearing,
may order any licensee or applicant for licensure or examination to pay an

1 administrative penalty as provided in this article as part of any disciplinary proceeding
or other proceeding provided for in this chapter.

2 (b) The board may assess administrative penalties under one or more
3 provisions of this article. However, the total administrative penalty to be paid by the
licensee shall not exceed the amount of the highest administrative penalty authorized
4 by this article.

5 (c) The board shall adopt regulations to establish criteria for assessing
6 administrative penalties based upon factors, including, but not limited to, actual and
potential consumer harm, nature and severity of the violation, the role of the person in
7 the violation, the person's ability to pay the administrative penalty, and the level of
administrative penalty necessary to deter future violations of this chapter.

8 (d) Administrative penalties assessed under this article shall be in addition
to any other penalties or sanctions imposed on the licensee or other person, including,
9 but not limited to, license revocation, license suspension, denial of the application for
licensure, denial of the petition for reinstatement, or denial of admission to the
10 licensing examination. Payment of these administrative penalties may be included as a
condition of probation when probation is ordered.

11 (e) All administrative penalties collected under this article shall be
12 deposited in the Accountancy Fund.”

13 REGULATORY PROVISIONS

14 9. California Code of Regulations, title 16, section 56 provides:

15 “(a) A licensee shall not accept any fee or commission permitted by
Business and Professions Code Section 5061 unless he or she complies with the
16 provisions of this section and Section 56.1

17 (b) A licensee who may receive a fee or commission pursuant to Business
and Professions Code Section 5061 shall furnish to the client, at or prior to the time
18 the recommendation of the product or service is made, a written disclosure statement
in 12 point type or larger that contains the following information:

19 (1) The fact that the fee or commission is to be paid for professional
20 services and that a fee or commission cannot be accepted solely for the referral of the
client to the products or services of a third party.

21 (2) A description of the product(s) or service(s) which the licensee is
22 recommending to the client, the identity of the third party that is expected to provide
the product or service, the business relationship of the licensee to the third party, a
23 description of any fee or commission which may be received by the licensee, including,
but not limited to, any supplemental fee or commission or other compensation
24 allocable to the client being provided with the product or service of the third party.
Where the product(s) or service(s) cannot be specifically identified at the time of the
25 initial disclosure, this information shall be included in a supplemental disclosure within
30 days of receipt of the fee or commission.

26 (3) The dollar amount or value of the fee or commission payment(s) or the
27 basis on which the payment(s) shall be computed.

28 (c) The written disclosure shall be on letterhead of the licensed firm or
shall be signed by the licensee. The disclosure statement shall be signed and dated by

1 the client and contain an acknowledgment by the client that the client has read and
2 understands the information contained in the disclosure. Supplemental disclosures as
3 described in subsection (b)(2) of Section 56 need not be signed by the client or by the
4 licensee. The licensee shall retain the disclosure statements for a period of five years
5 and shall provide copies to the client.”

6 10. California Code of Regulations, title 16, section 56.1 provides:

7 “The professional services which must be provided to the client in
8 conjunction with the products or services of a third party under Business and
9 Professions Code Section 5061(b) shall include consultation with the client regarding
10 the third party's product or service in relation to the client's circumstances.”

11 COST RECOVERY

12 11. Section 5107(a) of the Code states:

13 “The executive officer of the board may request the administrative law
14 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
15 holder of a permit or certificate found to have committed a violation or violations of
16 this chapter to pay to the board all reasonable costs of investigation and prosecution of
17 the case, including, but not limited to, attorneys' fees. The board shall not recover
18 costs incurred at the administrative hearing.”

19 CAUSE FOR DISCIPLINE

20 (Failure to Obtain Commission Disclosure Statements)

21 12. Respondent is subject to disciplinary action under section 5100, subdivision (g) of the
22 Code for violating section 5061 of the Code, in conjunction with California Code of Regulations
23 title 16, sections 56 and 56.1 in that Respondent failed to obtain signed disclosure statements as
24 required by the regulations referenced above. Specifically, while a partner in Warner, Corbett &
25 Gutentag, Respondent received commissions for recommending an investment with Diversified
26 Lending Group (“DLG”). Respondent failed to notify 27 clients that he was receiving
27 commissions for recommending an investment with DLG. In total, Respondent received between
28 \$750,000 and \$900,000 in undisclosed commissions.

DISCIPLINARY CONSIDERATION

13. To determine the degree of discipline, if any, to be imposed on Respondent,
Complainant alleges that Respondent was permanently barred from associating in any capacity
with any member firm of the Financial Industry Regulatory Authority (“FINRA”). The conduct
underlying the action by FINRA is that, while registered with FINRA through an association with
former member firm Morgan Peabody, Inc. (“MPI”), Respondent facilitated investments in DLG

1 that were not made through MPI. He did not provide MPI with written or other notice of those
2 investments and he did not obtain approval from MPI to facilitate those investments.

3 PRAYER

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

6 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
7 Accountant License Number 27622, issued to Mark Steven Gutentag;

8 2. Ordering Mark Steven Gutentag to pay the California Board of Accountancy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 5107;

11 3. Ordering Mark Steven Gutentag to pay the California Board of Accountancy an
12 administrative penalty pursuant to Business and Professions Code section 5116;

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

14
15 DATED: June 2, 2014

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

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