

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

In the Matter of the Accusation Against:

Case No. AC-2014-45

DAVID HONG-NIN CHAN
1845 Rose Avenue
San Marino, CA 91108
Certified Public Accountant Certificate No.
35013

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

April 26, 2015

It is so ORDERED

March 27, 2015.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. AC-2014-45

11 **DAVID HONG-NIN CHAN**
12 **1845 Rose Avenue**
San Marino, CA 91108
13 **Certified Public Accountant Certificate No.**
35013

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Respondent.
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16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Gregory J. Salute,
23 Supervising Deputy Attorney General.

24 2. Respondent David Hong-Nin Chan ("Respondent") is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about June 11, 1982, the California Board of Accountancy issued Certified
27 Public Accountant Certificate No. 35013 to David Hong-Nin Chan (Respondent). The Certified
28

1 Public Accountant Certificate was in full force and effect at all times relevant to the charges
2 brought in Accusation No. AC-2014-45 and will expire on March 31, 2015, unless renewed.

3 JURISDICTION

4 4. Accusation No. AC-2014-45 was filed before the California Board of Accountancy
5 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 August 26, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. AC-2014-45 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. AC-2014-45. Respondent has also carefully read, and understands the effects of
13 this Stipulated Settlement and Disciplinary Order.

14 7. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. AC-2014-45.

26 10. Respondent agrees that his Certified Public Accountant Certificate is subject to
27 discipline and he agrees to be bound by the CBA's probationary terms as set forth in the
28 Disciplinary Order below.

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 35013 issued
3 to Respondent David Hong-Nin Chan (Respondent) is revoked. However, the revocation is
4 stayed and Respondent is placed on probation for three years on the following terms and
5 conditions.

6 1. **Obey All Laws**

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

9 2. **Cost Reimbursement**

10 Respondent shall reimburse the CBA \$2796.08 for its investigation and prosecution costs.
11 The payment shall be made in 10 quarterly payments (due with quarterly written reports), with
12 the final payment being due six months before probation is scheduled to terminate.

13 3. **Submit Written Reports**

14 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
15 CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury,
16 such other written reports, declarations, and verification of actions as are required. These
17 declarations shall contain statements relative to respondent's compliance with all the terms and
18 conditions of probation. Respondent shall immediately execute all release of information forms
19 as may be required by the CBA or its representatives.

20 4. **Personal Appearances**

21 Respondent shall, during the period of probation, appear in person at interviews/meetings as
22 directed by the CBA or its designated representatives, provided such notification is accomplished
23 in a timely manner.

24 5. **Comply With Probation**

25 Respondent shall fully comply with the terms and conditions of the probation imposed by
26 the CBA and shall cooperate fully with representatives of the CBA in its monitoring and
27 investigation of the respondent's compliance with probation terms and conditions.

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1 **6. Practice Investigation**

2 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
3 professional practice. Such a practice investigation shall be conducted by representatives of the
4 CBA, provided notification of such review is accomplished in a timely manner.

5 **7. Comply With Citations**

6 Respondent shall comply with all final orders resulting from citations issued by the CBA.

7 **8. Tolling of Probation for Out-of-State Residence/Practice**

8 In the event respondent should leave California to reside or practice outside this state,
9 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
10 California residency or practice outside the state shall not apply to reduction of the probationary
11 period, or of any suspension. No obligation imposed herein, including requirements to file
12 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
13 or otherwise affected by such periods of out-of-state residency or practice except at the written
14 direction of the CBA.

15 **9. Violation of Probation**

16 If respondent violates probation in any respect, the CBA, after giving respondent notice and
17 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
18 stayed. If an accusation or a petition to revoke probation is filed against respondent during
19 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
20 probation shall be extended until the matter is final.

21 The CBA's Executive Officer may issue a citation under California Code of Regulations,
22 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
23 licensee on probation.

24 **10. Completion of Probation**

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

26 **11. Restricted Practice**

27 Respondent shall be prohibited from providing audit, review, and compilation services until
28 Respondent provides proof that a peer review has been accepted by a Board recognized peer

1 review program provider.

2 **12. Ethics Continuing Education**

3 By June 30, 2015, Respondent shall complete four hours of continuing education in course
4 subject matter pertaining to the following: a review of nationally recognized codes of conduct
5 emphasizing how the codes relate to professional responsibilities; case-based instruction focusing
6 on real-life situational learning; ethical dilemmas facing the accounting profession; or business
7 ethics, ethical sensitivity, and consumer expectations. Courses must be a minimum of one hour
8 as described in California Code of Regulations Section 88.2. If respondent fails to complete said
9 courses by June 30, 2015, respondent shall so notify the CBA and shall cease practice until
10 respondent completes said courses, has submitted proof of same to the CBA, and has been
11 notified by the CBA that he or she may resume practice. Failure to complete the required courses
12 no later than June 30, 2015, shall constitute a violation of probation. The ethics courses (hours) to
13 be completed are to be in addition to the courses (hours) required for re-licensure.

14 **13. Regulatory Review Course**

15 By June 30, 2015, Respondent shall complete a CBA-approved course on the provisions of
16 the California Accountancy Act and the California Board of Accountancy Regulations specific to
17 the practice of public accountancy in California emphasizing the provisions applicable to current
18 practice situations. The course also will include an overview of historic and recent disciplinary
19 actions taken by the CBA, highlighting the misconduct which led to licensees being disciplined.
20 The course shall be a minimum of two hours.

21 If respondent fails to complete said course within the time period provided, respondent shall
22 so notify the CBA and shall cease practice until respondent completes said course, has submitted
23 proof of same to the CBA, and has been notified by the CBA that he or she may resume practice.
24 Failure to complete the required course no later than June 30, 2015, shall constitute a violation of
25 probation. The regulatory review course is in addition to the courses required for re-licensure.

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14. Peer Review

During the period of probation, all audit, review, and compilation reports and work papers shall be subject to peer review by a Board-recognized peer review program provider pursuant to California Business and Professions Code Section 5076 and California Code of Regulations, Title 16, Division 1, Article 6, at respondent's expense. The specific engagements to be reviewed shall be at the discretion of the peer reviewer. The peer review shall be completed by June 30, 2015 and failure to complete peer review by that time frame shall constitute a violation of probation. Within 45 days of the peer review report being accepted by a Board-recognized peer review program provider, respondent shall submit to the CBA a copy of the peer review report, including any materials documenting the prescription of remedial or corrective actions imposed by the Board-recognized peer review program provider. Respondent shall also submit, if available, any materials documenting completion of any or all of the prescribed remedial or corrective actions.

15. Continuing Education Courses

Respondent shall complete and provide proper documentation of completion of sixteen hours of accounting and auditing continuing education courses each year Respondent is on probation for a total of 48 additional continuing education hours. The sixteen hours of continuing education courses shall be completed by December 31st of each year of probation. This shall be in addition to Respondent completing continuing education requirements for re-licensure. Failure to satisfactorily complete the required courses as scheduled shall constitute a violation of probation.

16. Samples - Audit, Review or Compilation

During the period of probation, if the respondent undertakes an audit, review or compilation engagement, the respondent shall submit to the CBA as an attachment to the required quarterly report a listing of the same. The CBA or its designee may select one or more from each category and the resulting report and financial statement and all related working papers must be submitted to the CBA or its designee upon request.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED:

2/23/15



DAVID HONG-NIN CHAN
Respondent

ENDORSEMENT

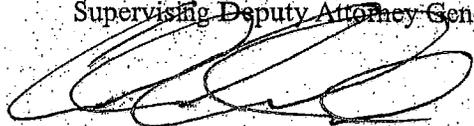
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

Dated:

2/23/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



GEOFF WARD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2014-45

1 KAMALA D. HARRIS
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2 Marc D. Greenbaum
Supervising Deputy Attorney General
3 Gregory J. Salute
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. AC 2014-45

12 **DAVID HONG-NIN CHAN CPA**
13 **1845 Rose Avenue**
San Marino, CA 91108

ACCUSATION

14 **Certified Public Accountancy Certificate**
15 **No. 35013**

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 ("Board"), Department of
22 Consumer Affairs ("Department").

23 2. On or about June 11, 1982, the California Board of Accountancy issued Certified
24 Public Accountancy Certificate Number 35013 to David Hong-Nin Chan. The Certified Public
25 Accountancy Certificate will expire on March 31, 2015, unless renewed.

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28 ///

JURISDICTION

1
2 3. This Accusation is brought before the California Board of Accountancy ("Board"),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 5109 states:

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

12 5. Section 5116 states:

13 "(a) The board, after appropriate notice and an opportunity for hearing, may order any
14 licensee or applicant for licensure or examination to pay an administrative penalty as provided in
15 this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

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

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

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

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

3 **STATUTES**

4 6. Section 5076, subdivision (a), states:

5 “(a) In order to renew its registration in an active status or convert to an active status, a
6 firm, as defined in Section 5035.1¹, shall have a peer review report of its accounting and auditing
7 practice accepted by a board-recognized peer review program no less frequently than every three
8 years.”

9 7. Section 5100 states, in pertinent part:

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

14 ...

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

17

18 **REGULATORY PROVISIONS**

19 8. California Code of Regulations, title 16, section 40, subdivision (c) which was in
20 effect on or about July 1, 2011², states:

21 “(c) Should a firm begin performing services as defined in Section 39(a) of this Article after
22 the operative date prescribed by Section 45(b), the firm shall have a peer review report accepted
23 by a Board-recognized peer review program within 18 months of the completion of the services.”

24 9. California Code of Regulations, title 16, section 41, states:

26 _____
27 ¹ Section 5035.1 of the Code defines the term “[f]irm” as a sole proprietorship, a
28 corporation, or a partnership.

² This regulation has since been amended and no longer includes subdivision (c).

1 “A firm shall enroll with a Board-recognized peer review program provider, and shall
2 cooperate with the Board-recognized peer review program provider with which the firm is
3 enrolled to arrange, schedule, and complete a peer review, in addition to taking and completing
4 any remedial or corrective actions prescribed by the Board-recognized peer review program
5 provider.”

6 10. California Code of Regulations, title 16, section 45, states:

7 “(a) Beginning on January 1, 2014, at the time of renewal, a licensee shall report to the
8 Board specific peer review information as required on Form PR-1 (Rev. 1/12), which is hereby
9 incorporated by reference.

10 (b) Prior to January 1, 2014, the date for existing California licensees to report peer review
11 results, on the form indicated in subsection (a), shall be based on the licensee's license number
12 according to the following schedule: for license numbers ending with 01-33 the reporting date is
13 no later than July 1, 2011; for license numbers ending with 34-66 the reporting date is no later
14 than July 1, 2012; for license numbers ending with 67-00 the reporting date is no later than July 1,
15 2013.

16 (c) A licensee's willful making of any false, fraudulent, or misleading statement, as part of,
17 or in support of, his/her peer review reporting shall constitute cause for disciplinary action
18 pursuant to Section 5100(g) of the Accountancy Act. Failure to submit a completed Form PR-1
19 (Rev. 1/12) shall be grounds for non-renewal or disciplinary action pursuant to Section 5100(g) of
20 the Accountancy Act.”

21 11. California Code of Regulations, title 16, section 52, states:

22 “(a) A licensee shall respond to any inquiry by the Board or its appointed representatives
23 within 30 days. The response shall include making available all files, working papers and other
24 documents requested.

25 (b) A licensee shall respond to any subpoena issued by the Board or its executive officer or
26 the assistant executive officer in the absence of the executive officer within 30 days and in
27 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

28

1 (c) A licensee shall appear in person upon written notice or subpoena issued by the Board
2 or its executive officer or the assistant executive officer in the absence of the executive officer.

3 (d) A licensee shall provide true and accurate information and responses to questions,
4 subpoenas, interrogatories or other requests for information or documents and not take any action
5 to obstruct any Board inquiry, investigation, hearing or proceeding."

6 **COST RECOVERY**

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

8 "The executive officer of the board may request the administrative law judge, as part of the
9 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
10 found to have committed a violation or violations of this chapter to pay to the board all reasonable
11 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees,
12 The board shall not recover costs incurred at the administrative hearing."

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Failure to Complete Peer Review)**

15 13. Respondent's certificate is subject to disciplinary action under Code section 5100,
16 subdivision (g), in conjunction with Code section 5076, subdivision (a), and California Code of
17 Regulations, title 16, sections 40, subdivision (c), section 41, and section 45, subdivision (c), in
18 that Respondent engaged in unprofessional conduct by failing to submit to the Board a completed
19 Peer Review Reporting Form and by failing to complete a peer review by an accepted Board-
20 recognized peer review program within 18 months of completing accounting and/or auditing
21 services. The circumstances are as follows:

22 a. In or about July 2010, the Board sent out a letter to all licensees advising them
23 of the requirement that all California licensed firms, including sole proprietorships, that perform
24 one or more accounting and auditing service using professional standards are required to undergo
25 peer review. The July 2010 letter also advised licensees that based on the license number, any
26 license number ending in 01 through 33 was required to submit a Peer Review Reporting Form
27 (PR-1) to the Board no later than July 1, 2011. Respondent was included in this July 2010 mailing
28

1 list. Since Respondent's license number ended in the number 13 it was subject to this
2 requirement.

3 b. On or about April 1, 2011, the Board sent a reminder letter to all licensees
4 advising them of the peer review requirement. Respondent was included in this April 1, 2011
5 mailing list. On or about September 12, 2011, the Board sent a third reminder letter to licensees
6 (including Respondent) advising them of the peer review requirement and that failure to report
7 peer review information by September 30, 2011, would result in a Citation and Fine or other
8 enforcement action. On or about February 23, 2012, Respondent was issued Citation No. CT-
9 2012-372 in the amount of \$250.00 for failing to respond to the Board's inquiries regarding peer
10 review requirements. On or about March 26, 2012, the Board received a Notice of Appeal from
11 Respondent. Respondent's appeal contained boxes checked which indicated that Respondent
12 needed additional time to complete a peer review.

13 c. On or about April 17, 2012, the Board sent Respondent a letter acknowledging
14 payment of the fine but also advising Respondent that the citation would not be closed until the
15 peer review was completed and that renewal of his license without having a peer review
16 completed could result in disciplinary action being taken against his license. On or about April 2,
17 2013, the Department received Respondent's renewal license application for the renewal period
18 which ended on March 31, 2013. Respondent signed Part B of the renewal form and marked
19 "yes" to the question, "Are you subject to the completion of 24 hours of A & A CE?"

20 d. On or about July 17, 2013, the Board sent Respondent a letter via certified and
21 regular mail requesting a completed Peer Review Reporting Form or information on the status of
22 his peer review, if not completed. Respondent signed for the certified mail on or about July 19,
23 2013. On or about August 30, 2013, Board staff returned a telephone call to Respondent who
24 stated that he was in the process of completing his peer review. Respondent was advised that he
25 needed to submit his response in writing to the Board. On or about January 28, 2014, Board staff
26 sent Respondent an email requesting a response to the Board's July 17, 2013 letter. Respondent
27 failed to respond to the email. On or about March 21, 2014, Board staff accessed the American
28 Institute of Certified Public Accountants database and discovered that Respondent was dropped

1 from the Peer Review program on or about December 9, 2013. To date, Respondent has failed to
2 complete a peer review and submit to the Board a peer review report accepted by a Board-
3 recognized peer review program.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Respond to Board Inquiry)**

6 14. Respondent's certificate is subject to disciplinary action under section 5100,
7 subdivision (g), in conjunction with California Code of Regulations, title 16, section 52, in that
8 Respondent engaged in unprofessional conduct by failing to completely respond to an inquiry by
9 the Board or its appointed representatives within 30 days and/or by failing to provide true and
10 accurate information in response to questions or other requests for information from the Board.
11 Paragraph 13 is incorporated hereto as though set forth herein.

12 **PRAYER**

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

15 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
16 Accountancy Certificate Number 35013, issued to David Hong-Nin Chan;

17 2. Ordering David Hong-Nin Chan to pay the California Board of Accountancy
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 5107;

20 3. Ordering David Hong-Nin Chan to pay the California Board of Accountancy an
21 administrative penalty pursuant to Business and Professions Code section 5116; and

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

DATED: August 20, 2014 *Patti Bowers*

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

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