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

In the Matter of the Accusation Against:

DAVID ALAN HOYT
P.O. Box 364
Twain Harte, CA 95383

Certified Public Accountant No. 91391

and

HOYT TAX & BUSINESS SOLUTIONS,
P.O. Box 364
Twain Harte, CA 95383

Fictitious Name Permit No. 2059

Respondents.

Case No. AC-2015-11

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 10, 2014, Complainant Patti Bowers, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2015-11 against Hoyt Tax & Business Solutions, David Alan Hoyt (Respondent) before the California Board of Accountancy. (Accusation attached as Exhibit A.)

2. On or about February 14, 2005, the California Board of Accountancy (CBA) issued Certified Public Accountant No. 91391 to Respondent. The Certified Public Accountant expired on November 30, 2013, and has not been renewed.

3. On or about May 5, 2010, the California Board of Accountancy issued Fictitious Name Permit No. 2059 to Respondent. The Fictitious Name Permit will expire on December 1, 2015, unless renewed.

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1 4. On or about November 12, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. AC-2015-11, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to California Code of
5 Regulations, title 16, section 3, is required to be reported and maintained with the CBA.
6 Respondent's address of record was and is: P.O. Box 364, Twain Harte, CA 95383.

7 5. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 6. Government Code section 11506 states, in pertinent part:

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 AC-2015-11.

19 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the CBA finds
25 Respondent is in default. The CBA will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the CBA's offices regarding the allegations contained in Accusation No. AC-2015-11, finds
that the charges and allegations in Accusation No. AC-2015-11, are separately and severally,
found to be true and correct by clear and convincing evidence.

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

This Decision shall become effective on April 26, 2015.

It is so ORDERED March 27, 2015



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

11639708.DOCX
DOJ Matter ID:SA2014118055

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JANSEN
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. AC-2015-11

13 **DAVID ALAN HOYT**
P.O. Box 364
Twain Harte, CA 95383

ACCUSATION

14 **Certified Public Accountant No. 91391**

15 **and**

16 **HOYT TAX & BUSINESS SOLUTIONS**
P.O. Box 364
17 Twain Harte, CA 95383

18 **Fictitious Name Permit No. 2059**

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about February 14, 2005, the California Board of Accountancy issued Certified
26 Public Accountant Number 91391 to David Alan Hoyt (Respondent). The Certified Public
27 Accountant expired on December 1, 2013, and has not been renewed.

28 ///

1 "(1) A copy of the licensee's working papers, to the extent that those working papers
2 include records that would ordinarily constitute part of the client's records and are not otherwise
3 available to the client.

4 "(2) Any accounting or other records belonging to, or obtained from or on behalf of, the
5 client which the licensee removed from the client's premises or received for the client's account.
6 The licensee may make and retain copies of documents of the client when they form the basis for
7 work done by him or her."

8 7. Section 5050 states in pertinent part:

9 "(a) Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of
10 Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy
11 in this state unless the person is the holder of a valid permit to practice public accountancy issued
12 by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section
13 5096)."

14 8. Section 5051 states in pertinent part:

15 "Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in
16 the practice of public accountancy within the meaning and intent of [Chapter 1 of Division 3
17 (commencing with Section 5000)] if he or she does any of the following:

18 "(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge,
19 science, and practice of accounting, and as qualified and ready to render professional service
20 therein as a public accountant for compensation.

21 "(b) Maintains an office for the transaction of business as a public accountant.

22 "(c) Offers to prospective clients to perform for compensation, or who does perform on
23 behalf of clients for compensation, professional services that involve or require an audit,
24 examination, verification, investigation, certification, presentation, or review of financial
25 transactions and accounting records..."

26 9. Section 5100 states in pertinent part:

27 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
28 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing

1 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
2 conduct that includes, but is not limited to, one or any combination of the following causes:

3 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same
4 or different engagements, for the same or different clients, or any combination of engagements or
5 clients, each resulting in a violation of applicable professional standards that indicate a lack of
6 competency in the practice of public accountancy or in the performance of the bookkeeping
7 operations described in Section 5052.

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

10 **CALIFORNIA CODE OF REGULATIONS**

11 10. California Code of Regulations, title 16, section 52, subdivision (a) states:

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

15 11. California Code of Regulations, title 16, section 68 states:

16 "A licensee, after demand by or on behalf of a client, for books, records or other data,
17 whether in written or machine sensible form, that are the client's records shall not retain such
18 records. Unpaid fees do not constitute justification for retention of client records.

19 "Although, in general the accountant's working papers are the property of the licensee, if
20 such working papers include records which would ordinarily constitute part of the client's books
21 and records and are not otherwise available to the client, then the information on those working
22 papers must be treated the same as if it were part of the client's books and records."

23 12. California Code of Regulations, title 16, section 95.4 states:

24 "The failure of a licensee to comply with a citation containing an assessment of
25 administrative fine, an order of correction or abatement or both an administrative fine and an order
26 of correction or abatement after this citation is final and has been served in accordance with the
27 provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation
28 or suspension of the license or permit."

1 COST RECOVERY

2 13. Section 5107(a) of the Code states:

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

8 FIRST CAUSE FOR DISCIPLINE

9 (Gross Negligence)

10 14. Respondent is subject to disciplinary action for unprofessional conduct under section
11 5100, subdivision (c), in that Respondent committed acts of gross negligence by abandoning his
12 client in the middle of audits being conducted by the Internal Revenue Service (IRS) and the
13 California Franchise Tax Board (FTB). The circumstances are as follows:

14 15. The Complainant, M.S., originally had her business and personal taxes prepared by the
15 Respondent's father. Beginning in the 2010 tax year, Respondent took over the business due to
16 his father's illness and death.

17 16. In 2013, M.S. was notified that her personal tax return for 2010 was being audited by
18 the IRS, and that her 2009 tax return for one of her businesses was being audited by the FTB.

19 17. Respondent had all of M.S. and her businesses' tax records, and agreed to represent
20 M.S. and her business before the IRS and the FTB. M.S. completed a power of attorney form, so
21 that Respondent could communicate with the IRS and FTB on her behalf. Respondent failed to
22 supply the IRS or FTB with the power of attorney form, and failed to represent M.S. or her
23 business in the IRS and FTB audits.

24 SECOND CAUSE FOR DISCIPLINE

25 (Failure to Return Client Records)

26 18. Respondent is subject to disciplinary action for unprofessional conduct as defined by
27 section 5100, subdivision (g), in that Respondent willfully violated section 5037 and California
28 Code of Regulations, title 16, section 68 by retaining client records and failing to provide them to

1 the client within a reasonable time period after the client's request. The circumstances are as
2 follows:

3 19. After the events described in paragraphs 15-17, above, and incorporated herein as
4 though fully set forth, M.S. requested Respondent return her business and personal tax records.
5 Respondent failed to respond to her request.

6 20. On or about January 7, 2014, the California Board of Accountancy (CBA) also
7 demanded that Respondent return M.S.'s business and personal tax records to her. Respondent
8 failed to comply with the CBA's demand.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Failure to Respond to CBA Inquiry)**

11 21. Respondent is subject to disciplinary action for unprofessional conduct as defined by
12 section 5100, subdivision (g), in that Respondent willfully violated California Code of Regulations,
13 title 16, section 52, subdivision (a), by failing to respond to CBA inquiries. The circumstances are
14 as follows:

15 22. On or about January 7, 2014, a CBA representative sent a letter via certified and first
16 class mail to Respondent notifying him of the complaint filed by M.S., and requesting a response
17 no later than February 6, 2014. Respondent signed for the letter on January 9, 2014. Respondent
18 failed to contact the CBA in response to this letter.

19 23. On or about June 6, 2014, a CBA representative attempted to contact Respondent via
20 telephone at his telephone number of record. Respondent did not answer the telephone and the
21 CBA representative was unable to leave a voice mail due to the voice mail box being full.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Practice of Accountancy Without Permit)**

24 24. Respondent is subject to disciplinary action for unprofessional conduct as defined by
25 section 5100, subdivision (g), in that Respondent willfully violated section 5050, subdivision (a),
26 by practicing accountancy while his license was expired. The circumstances are that on or about
27 December 1, 2013, Respondent's license expired. After the expiration of his license, Respondent
28 continued to advertise his services as a Certified Public Accountant (CPA) through his website.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Citation)

3 25. Respondent is subject to disciplinary action under California Code of Regulations, title
4 16, section 95.4, in that he has failed to comply with a citation containing a fine and order of
5 correction. The circumstances are that on or about November 12, 2013, citation number CT-
6 2014-624 was issued for failure of the licensee to respond to CBA inquiries regarding peer review.
7 The citation became final and effective on December 12, 2013. The Respondent failed to respond
8 to the citation, did not appeal, and has not paid the citation.

9 PRAAYER

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

- 12 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
13 Accountant Number 91391, issued to David Alan Hoyt;
- 14 2. Revoking or suspending or otherwise imposing discipline upon Fictitious Name Permit
15 Number 2059, issued to David Alan Hoyt for Hoyt Tax & Business Solutions;
- 16 3. Ordering David Alan Hoyt to pay the California Board of Accountancy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 5107;
- 19 4. Ordering David Alan Hoyt and Hoyt Tax & Business Solutions to pay the California
20 Board of Accountancy an administrative penalty pursuant to Business and Professions Code
21 section 5116;
- 22 5. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 11/10/2014

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

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