

BEFORE THE MINNESOTA BOARD OF ACCOUNTANCY

In the Matter of Baker Tilly Virchow Krause, LLP
Respondent Permit Number: 01028

**STIPULATION AND
CONSENT ORDER
BOARD FILE NO. 2009-100**

It is hereby stipulated and agreed by BAKER TILLY VIRCHOW KRAUSE, LLP ("Respondent") and the Complaint Committee ("Committee") of the Board of Accountancy ("Board") that without trial or adjudication of any issue of fact or law and without any evidence or admission by any party with respect to any such issue:

1. A Notice of Conference with the Board of Accountancy's Complaint Committee was duly served upon Respondent, receipt of which is hereby acknowledged by Respondent.
2. On November 9, 2009, Respondent appeared before the Board's Complaint Committee, to discuss allegations made in the notice referenced above. Executive Director, Doreen Frost was also present. Respondent was represented by Thomas J. Shroyer, Attorney at Law, Moss & Barnett, P.A., 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402.
3. For the purpose of this stipulation only, Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the United States and Minnesota constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent and to dispute the appropriateness of discipline in a contested case hearing pursuant to Minn. Stat. Ch. 14 (2008). Respondent waives the right to any judicial review of this order by appeal, by writ of certiorari, or otherwise.
4. This Stipulation shall constitute the entire record of the proceedings herein upon which the Consent Order is based. All documents in the Board's files shall maintain the data

classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (2008). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

5. In the event the Board in its discretion does not approve this Stipulation or a lesser remedy than specified in this Consent Order, this Stipulation and Consent Order shall be null and void and shall not be used for any purpose by either party. If this Stipulation is not approved and a contested case hearing is initiated by the Committee pursuant to Minn. Stat. Ch. 14 (2008), Respondent agrees not to object to the Board's initiation of the hearing and its hearing the case on the basis that the Board has become disqualified because of to its review and consideration of this Stipulation or of any records relating hereto.

FACTS

6. The Respondent previously applied to the Board for approval of a name change from Virchow, Krause & Company, LLP to Baker Tilly Virchow-Krause, LLP.

7. "Baker Tilly" as defined by the Agreement for Licensure refers to Baker Tilly International Limited, a Company incorporated in England and Wales and an association comprising independent Respondents, to which the Respondent belongs, and is not the name of a present or former partner, officer, member, manager or shareholder of the Respondent. Virchow and Krause are the names of former partners of Virchow, Krause & Company LLP. Baker Tilly has no ownership interest in the Respondent and is not responsible or liable for the acts or omissions of the Respondent.

8. In connection with the application for approval of the name change, the complaint committee took the position that the proposed name, Baker Tilly Virchow Krause, LLP, was a "fictitious name" as defined in Minn. Rule 1105.6400, which states: "A fictitious CPA

Respondent name, that is, one not consisting of the names or initials of one or more present or former partners, members, or shareholders, may not be used by a CPA Respondent unless the name has been registered with and approved by the board as not being false or misleading.”

9. In light of the complaint committee’s concerns, Respondent and the Board entered into an Agreement for Licensure, a copy of which is attached hereto and hereby incorporated by reference.

10. The complaint committee has become aware of Respondent’s having called itself “Baker Tilly” instead of “Baker Tilly Virchow Krause, LLP” in violation of the terms and conditions of the Agreement for Licensure, including without limitation, using the name “Baker Tilly” instead of “Baker Tilly Virchow Krause, LLP” on the sign of the building where it maintains its offices in Minnesota, advertisements, including the advertisement attached to the complaint giving rise to this stipulation, and business cards.

11. Respondent also failed to report to the Board the above violations or failures to abide by the conditions of the Agreement for Licensure, as required by the terms of the Agreement for Licensure.

GROUNDS FOR DISCIPLINARY ACTION

12. Respondent admits that the facts specified in paragraphs 6 through 11 above constitute sufficient grounds for the remedy specified in paragraph 14 below, and that proof at hearing of any one or more of the allegations set forth in paragraphs 10 and 11 above would empower the Board to take disciplinary action against Respondent’s permit.

13. This Stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying

disciplinary action which occurred before or after the date of this stipulation and that is not directly related to the specific facts and circumstances set forth herein, or on the basis of facts and circumstances unknown to the Board before or on the date of this stipulation; provided however, that this stipulation shall resolve all matters concerning the use of the name "Baker Tilly" by Baker Tilly Virchow Krause, LLP on or before the date of this Stipulation and Order. The Respondent acknowledges its ongoing responsibility under the Agreement of Licensure to report all violations of the Agreement of Licensure to the Board.

REMEDY

14. Upon this Stipulation and record, as set forth in paragraph 4 above, and without any further notice of proceedings, the Committee and Respondent agree that the Board may, in its discretion, issue an order to Respondent as follows:

a) Respondent's firm permit is CENSURED and REPRIMANDED.

b) Respondent shall pay to the Board a CIVIL PENALTY of \$10,000.00 within one business day following the receipt of notice of Board approval of this Stipulation & Consent Order, which may be by telephone call, to Respondent's counsel. Counsel for Respondent shall certify to the Board in writing, at the time of his submission of this Stipulation & Consent Order to the Board for its approval, signed by Respondent, that he has physical custody of a check payable to the Board in satisfaction of this obligation, in the amount of \$10,000.00, and that he will have the check delivered to the board within one business day following board approval.

c) Respondent shall fully comply with the Agreement for Licensure attached to this document as soon possible and by no later than February 28, 2010. The Committee will

work with the Respondent to facilitate its compliance. No additional action shall be taken by the Board with respect to any violation of the Agreement for Licensure which has been cured by February 28, 2010.

15. Violation of this Stipulation and Consent Order, including the terms and conditions of the Agreement for Licensure, shall be considered a violation of Minn. Stat. 326A.08, subd 5 (a)(1) and the Agreement for Licensure. If Respondent hereinafter violates this Stipulation and Consent Order or the Agreement for Licensure attached to this document the Board may impose additional discipline pursuant to the following procedure:

a. The Complaint Committee shall schedule a hearing before the Board. At least fourteen days prior to the hearing, the Committee shall serve Respondent by facsimile and email with a notice of the violation alleged by the Committee and of the time and place of the hearing, together with any affidavits it will submit to the Board. Service of notice on Respondent is complete upon the transmittal of the facsimile and email of the notice to Respondent's last known address. By no later than seven (7) days in advance of the hearing, Respondent shall submit a response to the allegations including any affidavits it will submit to the Board.

b. At the hearing before the Board the evidentiary record shall be limited to such affidavits and this Stipulation and Consent Order. All affidavits shall be based upon the affiant's personal knowledge and good faith belief.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, consistent with Minnesota Law. The members of the Complaint Committee shall not meet or deliberate with the Board *ex parte* or vote on its decision.

d. The Respondent shall have the right to appeal from the decision of the Board to the Minnesota Court of Appeals and to seek further review by the Minnesota Supreme Court. Both parties agree that in any appeal of the Board's decision, they shall not raise the failure to hold an evidentiary hearing before an administrative law judge, or the presentation of affidavits or argument to the Board, or their consideration by the Board, as grounds for seeking to overturn, reverse or modify the decision of the Board.

e. The Committee shall have the right to attempt to resolve any alleged violation of the Stipulation and Consent Order through the procedures of Minn. Stat. § 214.10 (2008). Nothing herein shall limit (a) the Committee's right to initiate a proceeding against Respondent pursuant to Minn. Stat. Ch. 14 (2008), or (b) the Committee's and the Board's right to temporarily suspend Respondent's firm permit to the extent authorized by Minn. Stat. § 326A.08, subd 6 (2008), based on a violation of this Stipulation and Consent Order or based on conduct of Respondent before or after the date of this stipulation concerning the use of the name "Baker Tilly" by Baker Tilly Virchow Krause, LLP on or before the date of the Order adopting this Stipulation as provided by paragraph 13, above.

16. Any appropriate court of law may, upon application of the Board, enter its decree enforcing the order of the Board, in accord with Minnesota Law.

17. Respondent hereby acknowledges that Respondent has read, understands, and agrees to this Stipulation and Consent Order and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Respondent acknowledges that the Respondent is fully aware that the Stipulation and Consent Order must be approved by the Board. The Board may either approve the Stipulation and Consent Order as proposed, approve the order subject to specified change, or

reject it. If the changes are unacceptable to Respondent or the Board rejects the stipulation, it will be of no effect except as specified herein.

18. In accordance with Minn. Stat. § 16D.17 (2008), in the event this order becomes final and Respondent does not comply with the condition in paragraph 14(b) above by timely payment in full of the Civil Penalty imposed thereby, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a civil judgment in Ramsey County District Court or any other court of competent jurisdiction without further notice or additional proceedings.

19. This Stipulation and Consent Order is public data pursuant to Minn. Stat. § 13.41, subd 4 (2008).

20. This Stipulation, including the Agreement for Licensure, contains the entire agreement between the parties. Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

21. If approved by the Board, a copy of this Stipulation and Consent Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed by the Board.

CONSENT:

BOARD OF ACCOUNTANCY

COMPLAINT COMMITTEE



Baker Tilly Virchow Krause, LLP
Respondent

Michael M. Vekich, CPA
Committee Chair

By: Carla A. Ogden, Attorney
Dated: January 5, 2009

Dated: _____, 2010

Counsel for Respondent

Counsel for Board

Thomas J. Shroyer

Thomas J. Shroyer

Gregory P. Huwe

Gregory P. Huwe
Assistant Attorney General

Dated: January 6, 2010

Dated: January 8, 2010

ORDER:

Upon consideration of the foregoing stipulation and based upon all the files, records and proceedings, herein,

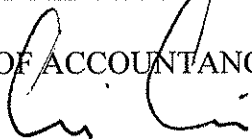
1. IT IS HEREBY ORDERED that Respondent's Firm Permit is CENSURED AND REPRIMANDED;

2. IT IS FURTHER ORDERED that Respondent shall pay to the Board a Civil Penalty of \$10,000 within one business day following Board approval of this Stipulation and Consent Order. Counsel for Respondent shall certify to the Board in writing, at the time of his submission of this Stipulation & Consent Order signed by Respondent, that he has physical

custody of a check payable to the Board in satisfaction of this obligation, for \$10,000 and that he will have the check delivered to the board within one day following board approval; and

3. IT IS FURTHER ORDERED that all other terms of this stipulation and consent Order are adopted and implemented this 11th day of January, 2010.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY



Neil Lapidus, CPA

Board Chair

AG: #2547068-v1

BEFORE THE MINNESOTA BOARD OF ACCOUNTANCY

In the Matter of the Application of Virchow,
Krause & Company, LLP,
Firm Permit Number: 01028, for Approval
of a Name Change to Baker Tilly Virchow
Krause, LLP

AGREEMENT FOR LICENSURE

This Agreement is entered into by and between Virchow, Krause & Company, LLP ("Firm"), and the Minnesota Board of Accountancy ("Board"). The Firm has been advised by Board representatives that the Firm may choose to be represented by legal counsel and the Firm has been represented in connection with this matter by Thomas J. Shroyer, Attorney at Law, Moss & Barnett P.A., 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402. The Board was represented by Assistant Attorneys General Gregory P. Huwe and Michele M. Owen, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101. The Firm and the Board hereby agree as follows:

FACTS

1. This agreement is based upon the following facts:
 - a. The Firm has applied to the Board for approval of a name change from Virchow, Krause & Company, LLP to Baker Tilly Virchow Krause, LLP and represents that no other changes of the types specified in Minn. Rule 1105.4100 have occurred.
 - b. "Baker Tilly" refers to Baker Tilly International Limited, a Company incorporated in England and Wales and an association comprising independent firms, to which the Firm belongs, and is not the name of a present or former partner, officer, member, manager or shareholder of the Firm. Virchow and Krause are the names of former partners of Virchow,

Krause & Company LLP. Baker Tilly has no ownership interest in the Firm and is not responsible or liable for the acts or omissions of the Firm.

c. Minn. Stat. § 326A.10 (h) provides: "No person holding a certificate or registration or firm holding a permit under this chapter shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. However, names of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor."

d. Minn. Rule 1105.6300 states in part: "A CPA firm name is misleading within the meaning of Minnesota Statutes, section 326A.10, paragraph (h), if, among other things, the CPA firm name: A. implies the existence of a legal entity when the firm does not exist in that form; B. includes the name of a person who is neither a present nor a past partner, member, or shareholder of the firm; or C. includes the name of a person who is not a CPA if the title "CPAs" is included as part of the firm name."

e. The proposed name, Baker Tilly Virchow Krause, LLP, is a "fictitious name" as defined in Minn. Rule 1105.6400, which states: "A fictitious CPA firm name, that is, one not consisting of the names or initials of one or more present or former partners, members, or shareholders, may not be used by a CPA firm unless the name has been registered with and approved by the board as not being false or misleading."

f. Minn. Rule 1105.6400 D. states that a fictitious name is false or misleading if the name is likely to mislead or deceive because it omits relevant facts, including, for example, that "the firm name includes a nonowner firm employee or the name or initials of

any other nonowners, except as permitted in Minnesota Statutes, section 326A.10, paragraph (h).”

g. As of the date of the Agreement, the Firm has not rendered professional services in the State of Minnesota under the name Baker Tilly Virchow Krause, LLP and has not used, or held itself out as, Baker Tilly Virchow Krause, LLP in the State of Minnesota.

h. In correspondence dated November 24, 2008 the Firm corresponded with the Board’s Firm Credential and Quality Review Committee (“Committee”) to address the information set forth in this paragraph 1. The Committee has considered the request of the Firm and has concluded that the proposed name change may be in violation of one or more of the above-referenced Statutes and Rules. Nevertheless, the Committee recognizes that the Firm has cooperated with the Board, made good-faith arguments to the contrary, and does not intend to adopt a name that is false or misleading under Minnesota law.

i. As of November 24, 2008, the Firm had obtained the approval of 3 U. S. licensing jurisdictions to change its name to Baker Tilly Virchow Krause, LLP. As of November 24, 2008 the Firm has been issued Firm permits in 4 U. S. licensing jurisdictions, including Minnesota and the 3 licensing jurisdictions which have approved the requested name change.

AGREEMENT AS TO LICENSURE

2. The Board’s approval of the name change and issuance of a permit with the new name, is conditioned upon, and the Firm agrees to address the Board’s concerns by:

a. Including the following language capitalized and in bold type, in all engagement letters issued to individual residents of Minnesota and to a client having its headquarters in Minnesota:

“BAKER TILLY VIRCHOW KRAUSE, LLP IS A MEMBER OF BAKER TILLY INTERNATIONAL LIMITED (BAKER TILLY). EACH MEMBER FIRM OF BAKER TILLY IS A SEPARATE AND INDEPENDENT LEGAL ENTITY. BAKER TILLY AND ITS OTHER MEMBERS ARE NOT RESPONSIBLE OR LIABLE FOR ANY ACTS OR OMISSIONS OF BAKER TILLY VIRCHOW KRAUSE, LLP. BAKER TILLY VIRCHOW KRAUSE, LLP AND ITS AFFILIATES ARE NOT RESPONSIBLE OR LIABLE FOR ANY ACTS OR OMISSIONS OF ANY OTHER MEMBER OF BAKER TILLY. BAKER TILLY DOES NOT RENDER ANY PROFESSIONAL SERVICES AND DOES NOT HAVE AN OWNERSHIP OR PARTNERSHIP INTEREST IN BAKER TILLY VIRCHOW KRAUSE, LLP.”

b. Stating on its letterhead, business cards and other significant literature that Respondent is a member firm of Baker Tilly International;

c. Placing the language contained in 2. a. above, without capitalization or bold type, on its website in the “About Us” or equivalent page within 30 days of the Board’s approval of this agreement.

d. Not including any actual nonowner person who is associated with the firm in its firm name.

e. Providing to the Board, prior to its approval of this agreement, the written agreement of the current member firms of Baker Tilly International that have the words "Baker Tilly" as part of their Firm name and who are practicing public accountancy in the United States and its territories and possessions that as long as Baker Tilly Virchow Krause, LLP has a firm permit issued under that name by the Minnesota Board of Accountancy, the member firms will not provide professional services in Minnesota for which a firm permit is required or engage in other activities requiring them to obtain a Minnesota firm permit while the name Baker Tilly is part of their firm name. The Firm shall also provide to the Board, prior to its approval of this agreement, the written agreements of Baker Tilly International Limited and Baker Tilly UK Group LLP that as long as Baker Tilly Virchow Krause, LLP has a permit issued by the Minnesota Board of Accountancy under the name Baker Tilly Virchow Krause, LLP, Baker Tilly International Limited and Baker Tilly UK Group LLP will not license the name "Baker Tilly" in the United States to any other firms which are not licensed by Baker Tilly International or Baker Tilly UK Group LLP to use the name Baker Tilly as of the effective date of this Agreement unless such firm agrees not to provide services in Minnesota for which a Minnesota firm permit is required.

f. Promptly providing the Board or Committee from time to time upon its written request copies of any literature or materials relevant to the obligations of this Agreement;

g. Promptly reporting to the Board any violation or failure to abide by any of the conditions stated above.

h. Providing to the Board, prior to its approval of this agreement, documentation from the Minnesota Secretary of State that "Baker Tilly Virchow Krause, LLP" is the lawful and registered name of the Firm.

3. This Agreement shall become effective upon execution by the Board and shall remain in effect and applicable to the Firm so long as the Firm uses the name Baker Tilly Virchow Krause, LLP. The Firm understands and agrees that notwithstanding this Agreement, if the law in Minnesota is changed with regard to the use of misleading or fictitious firm names to make it more restrictive, that the Board or Committee may, in their sole discretion, deny future usage of the name Baker Tilly Virchow Krause, LLP in Minnesota. Upon the Firm's signature and the Board's execution of this Agreement, the Board agrees to approve the Application to change the Firm's name to Baker Tilly Virchow Krause, LLP. The Firm understands and further agrees that if at any time, the Board or Committee receives information that the Firm is not in compliance with the requirements set forth in this Agreement, the Board or Committee may initiate further action. The Firm further understands that if the Board receives an application from a firm whose name includes the words "Baker Tilly" that such application would be considered noncompliance with this agreement.

4. If the Firm fails to satisfactorily initiate and maintain the actions set forth in this Agreement, the Committee may open an investigation or refer the matter to the Board or its Complaint Committee for proceedings according to Minnesota Statutes chs. 326A and 14. Failure to comply with all the conditions of this Agreement constitutes an act or practice which is grounds for disciplinary action under Minnesota Statutes Chapter 326A and Minnesota Rules Chapter 1105 including but not limited to revocation of the firm permit of Baker Tilly Virchow Krause, LLP.

5. The Board and the Firm agree that this Agreement does not constitute disciplinary action. The Firm further understands and acknowledges that this Agreement is classified as public data.

6. The Firm hereby acknowledges having read and understood this Agreement and having voluntarily entered into it. This Agreement contains the entire agreement between the Board and the Firm, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Agreement.

Dated: 2/2/09

Tim Christ, CEO
Virchow, Krause & Company, LLP
The Firm

Dated: 2/9/09

Chris
FOR THE BOARD -CHK

AG: #2376589-v1