

**STATE OF MINNESOTA**  
**BOARD OF ACCOUNTANCY**

In the Matter of  
Kirby D. Johnson, C.P.A.  
Certificate No. 21252

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
FINAL ORDER**

The Minnesota Board of Accountancy ("Board"), having convened on May 14, 2010, to consider the above-referenced matter concerning Kirby D. Johnson ("Respondent"), and having reviewed the March 30, 2010 report of Administrative Law Judge Manuel J. Cervantes ("ALJ report") and the record in the above-referenced matter, hereby issues the following:

**FINDINGS OF FACT**

1. The Board adopts the findings in the ALJ report, which are attached and incorporated herein.
2. On February 12, 2010, the Board served a Notice of and Order for Prehearing Conference and Hearing upon Respondent at Respondent's last known address on file with the Board.
3. Respondent failed to appear at the prehearing conference and is in default in this proceeding.
4. Pursuant to Minnesota Rules 1400.6000 (2009), the allegations in the Notice of and Order for Prehearing Conference and Hearing are taken as true.
5. Any Conclusions of Law which should properly be termed Findings of Fact are hereby adopted as such.

Based on the foregoing Findings of Fact, the Board makes the following:

**CONCLUSIONS**

1. The Board adopts the Conclusions in the ALJ report, which are attached and incorporated herein.

2. The Board has jurisdiction in this matter under Minn. Stat. §§ 14.50 and 326A.01-326A.14 (2008).

3. The Board gave Respondent proper notice in this matter and has met all relevant substantive and procedural requirements of laws and rules.

4. Respondent violated Minn. Stat. §§ 326A.04 and 326A.08, subd. 5(a)(1) (2008), and Minn. R. 1105.3000, 1105.3100, and 1105.3200 (2009).

5. Any Findings herein which should properly be termed Conclusions of Law are hereby adopted as such.

6. The following Order is in the public interest.

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following:

### **ORDER**

1. IT IS ORDERED that Respondent's certificate to practice public accounting in the State of Minnesota is revoked effective immediately.

2. IT IS FURTHER ORDERED that Respondent shall cease and desist from practicing public accounting in any manner in the State of Minnesota and from holding Respondent out to the public as a certified public accountant and shall neither offer nor provide any public accounting services of any nature within the State of Minnesota.

3. IT IS FURTHER ORDERED that if Respondent petitions for reinstatement of Respondent's certificate, Respondent shall meet with a Board Complaint Committee and comply with the following conditions:

a. Pay to the Board all fees Respondent would have had to pay to the Board had Respondent maintained an active certified public accountant certificate, as required by Minn. Stat. § 326A.05 and Minn. R. 1105.0600 and 1105.4000, upon petition for reinstatement of Respondent's certified public accountant certificate; and

b. Report to the Board all past due continuing education credits, pursuant to Minn. R. 1105.2500(C) and 1105.3000, upon petitioning for reinstatement of Respondent's certified public accountant certificate.

4. IT IS FURTHER ORDERED that if Respondent petitions for reinstatement of Respondent's public accountant certificate, Respondent must pay the Board the total cost of the proceedings which resulted in the revocation of Respondent's certificate, including the costs paid by the Board to the Office of Administrative Hearings and to the Attorney General for legal services, Board staff time, cost of the Board Complaint Committee, costs of reproduction of the hearing record, and Board members costs of per diem, travel, parking and expenses. The procedure for payment shall be as follows:

a. Within three months of the execution of this order by the Board, the Executive Secretary of the Board shall forward to Respondent copies of statements, receipts, or other indicia of authenticity of all the costs resulting in the revocation of Respondent's certificate. Respondent shall have 30 calendar days to submit a written response as to the accuracy of such costs. Respondent may accept or contest the Board's determination of the costs. If the Board does not receive a written response from Respondent within the 30-day time period, Respondent will be deemed to have accepted the accuracy of the costs and to have waived the opportunity to contest the accuracy of those costs.

b. If Respondent submits a timely written challenge to the Board contesting the accuracy of these costs, Respondent shall specify the costs challenged and state the grounds for the challenge. The Board Complaint Committee may submit a response. If a cost is supported by a statement, receipt, or another indicator of authenticity, Respondent shall present written evidence that the disputed costs are inaccurate. At the next regularly scheduled Board meeting following review of the written materials submitted by Respondent and the Board Complaint Committee, the Board shall issue an order identifying the costs to be paid. The Board's order assessing costs shall be consistent with the requirements of this order.

c. Within ten days of the Board meeting at which the challenged costs are assessed, Board staff shall keep a record of all staff and Board member time involved with Respondent's challenge and shall advise Respondent in writing of the costs associated with that meeting. If Respondent wishes to contest the costs attributed to this challenge, Respondent shall follow the procedure outlined in paragraph 4.b above. If Respondent does not contest those costs, Respondent shall submit payment of those costs at the time Respondent applies for licensure.

5. IT IS FURTHER ORDERED that Respondent's violation of this order shall constitute unfitness by reason of negligence, habits, or other causes and provide grounds for further disciplinary action.

6. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of Respondent's certificate and Respondent's meeting with a Board Complaint Committee, take any of the following action:

- a. Reissue a certificate to Respondent;
- b. Reissue a certificate to Respondent conditional upon further reports to the Board and limitations placed upon the scope of Respondent's practice; or
- c. Continue the revocation of Respondent's certificate upon Respondent's failure to meet the burden of proof.

Dated: May 14, 2010

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

By: 

Its: 