

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
Kottke & Associates, LLC
Certificate No. 01680

STIPULATION AND
CONSENT ORDER
Board File 2009-155

It is hereby stipulated and agreed by Kottke & Associates, LLC ("Respondent"), 3440 Golfview Drive, #311, Eagan, Minnesota 55123, and the Complaint Committee ("Committee") of the Minnesota 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. For the purpose of this stipulation, 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 (2010). Respondent agrees that upon the *ex parte* application of the Committee, the Board may order the remedy specified in paragraph 7 below. Respondent waives the right to any judicial review of the order by appeal, by writ of certiorari, petition for review, or otherwise.

2. 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, Minnesota Statutes Chapter 13 (2010). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

3. 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 (2010), Respondent agrees not to object to the Board's initiation of the hearing and it 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

4. Respondent admits the facts referred to below and grants that the Board may, for the purpose of reviewing the record in paragraph 2 above, consider the following as true without prejudice to the Respondent in any current or future proceeding of the Board with regard to these or other allegations:

a. Respondent engaged in conduct or acts that are in violation of standards established by Board rule and such conduct or acts relate to the providing of professional services.

b. Respondent engaged in substandard tax work.

c. Respondent violated Minnesota Statutes §§ 326A.08 Subp 5 (a) (3) (2010) and Minnesota Rules 1105.7800 (2009).

STATUTES

5. Respondent admits that the facts and conduct specified in paragraph 2 above constitute violations of Minn. Stat. ch. 326A (2010) and Minn. Rule 1105 (2009) and are sufficient grounds for the remedy specified in paragraph 7 below, and that proof at hearing of any one or more of the allegations set forth would empower the Board to take disciplinary action against Respondent's permit.

6. 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.

REMEDY

7. 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 requiring compliance with the following:

- a. Respondent's Permit is **CENSURED** and **REPRIMANDED**.
- b. Concurrent with the submission of this Stipulation and Consent Order to the Board for its approval Respondent shall pay a **\$250.00 CIVIL PENALTY**.
- c. Respondent agrees that the Respondent will not violate in the future any statute, rule or order that the Board has issued or is empowered to enforce.

8. In accordance with Minn. Stat. § 16D.17 (2010), in the event this order becomes final and Respondent does not comply with the condition in paragraph 7(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment with out further notice or additional proceedings.

9. Violations of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 326A.08, subd. 5 (a)(1) and (2) (2010). If Respondent violates this Stipulation and Consent Order, Minn. Stat. §§ 326A.01-.14 (2010) or Minn. R. Ch. 1105 (2009), the Board may impose additional discipline pursuant to the following procedure:

- a. The Complaint Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Service of notice on Respondent is complete upon mailing the notice to Respondent's last known address. Within seven days after the notice is mailed, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

- b. At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's permit. The Committee shall have the right to attempt to resolve an alleged violation of the Stipulation and Consent Order through the procedures of Minn. Stat. § 214.10 (2010). Nothing herein shall limit (a) the Committee's right to initiate a proceeding against Respondent pursuant to Minn. Stat. ch. 14 (2010), or (b) the Committee's and the Board's right to temporarily suspend Respondent's permit pursuant to Minn. Stat. § 326A.08, subd. 6 (2010), based on a violation of this Stipulation and Consent Order or based on conduct of Respondent before or after the date of this stipulation which is not specifically referred to in paragraph 6 above.

10. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board.

11. Respondent hereby acknowledges that he 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 he is fully aware that the Stipulation and Consent Order must be approved by the Board. The Board may 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.

12. This Stipulation and Consent Order is public data pursuant to Minn. Stat. § 13.41, subd. 5 (2010).

13. This Stipulation contains the entire agreement between the parties. Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

14. 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 chair or designee.

CONSENT:

Jon R Kottke for
Kottke & Associates, LLC
KOTTKE & ASSOCIATES, LLC
Respondent

Dated: 2-24, 2011

Counsel for Respondent

BOARD OF ACCOUNTANCY
COMPLAINT COMMITTEE

Neil N. Lapidus
NEIL N. LAPIDUS, CPA
Chair

Dated: 3-22, 2011

Michele M. Huwe
for GREGORY P. HUWE
Assistant Attorney General

Dated: March 22, 2011

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 certified public accountant permit is CENSURED AND REPRIMANDED, and

2. IT IS FURTHER ORDERED that concurrent with the submission of this Stipulation and Consent Order to the Board for its approval Respondent paid a CIVIL PENALTY of \$250.00.

3. IT IS FURTHER ORDERED that all other terms of this Stipulation and Consent Order are adopted and implemented this 19th day of April, 2011.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

Michael M. Vekich
MICHAEL M. VEKICH, CPA
Chair