

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

In the Matter of  
Jeffrey F. Fusek  
Certificate No. 13955

STIPULATION AND  
CONSENT ORDER  
Board File No. 2008-147

It is hereby stipulated and agreed by Jeffrey F. Fusek ("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 and Order for Hearing and Prehearing Conference before the Office of Administrative Hearings was duly served upon Respondent, receipt of which is hereby acknowledged by Respondent.

2. On August 17, 2009, Respondent appeared by telephone at a prehearing conference before Administrative Law Judge Manuel J. Cervantes to discuss allegations made in the notice referenced above. Gregory P. Huwe, Assistant Attorney General, represented the Board at the conference. Respondent agreed to consider resolving the matter by means of a Stipulation and Consent Order with terms to be proposed by the Committee.

3. 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 (2008). Respondent agrees that upon the ex parte application of the Committee, the Board may order the remedy specified in paragraph 9 below. Respondent waives the right to any judicial review of the order by appeal, by writ of certiorari, or otherwise. Although Respondent was reminded of the opportunity for counsel, Respondent voluntarily waived such right, stating that the Respondent understood that right and the waiver.

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 the contested case proceeding is resumed by the Committee pursuant to Minn. Stat. ch. 14 (2008), and the Notice and Order for Hearing dated July 7, 2009, Respondent agrees not to object to the Board's resumption of the hearing and its hearing the case on the basis that the Board has become disqualified because of its review and consideration of this Stipulation or of any records relating hereto.

## FACTS

6. Respondent admits the facts referred to below and grants that the Board may, for the purpose of reviewing the record in paragraph 4 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 failed to comply with the Board's Continuing Professional Education (CPE) rules by failing to complete 120 hours of mandatory CPE during the years ended June 30, 2004, June 30, 2005, and June 30, 2006.

b. Respondent thereby violated Minn. Stat. §§ 326A.04, subd. 2 (2008), 326A.08, subd 5(a)(8) (2008), and Minn. R. 1105.2500B, 1105.3000, and 1105.7800.

c. Respondent has now completed and reported to the Board his completion of 120 hours of CPE for the years ended June 30, 2004, June 30, 2005, and June 30, 2006, together with supporting documentation.

d. Respondent's active certificate expired on December 31, 2007, and Respondent failed to renew his CPA certificate in violation of Minn. Stat. § 326A.04 (2008).

e. On May 23, 2008, the Board served Respondent with a Notice of Conference with the Complaint Committee, scheduled for July 18, 2008. Respondent failed to appear at the conference.

e. Respondent failed to respond to communications from the Board, in violation of Minn. R. 1105.1200 and failed to cooperate with an investigation of the Board, in violation of Minn. R. 1105.1300.

## STATUTES

7. Respondent admits that the facts and conduct specified in paragraph 6 above constitute violations of Minn. Stat. ch. 326A (2008) and Minn. Rules ch. 1105 (2007) and are sufficient grounds for the remedy specified in paragraph 9 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.

8. 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

9. Upon this Stipulation and record, as set forth in paragraph 7 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 certificate is **SURRENDERED**.
- b. Concurrent with the submission of this Stipulation and Consent Order to the Board for its approval Respondent shall pay to the Board **CPE Noncompliance Fees** of \$1,000.00, and **license renewal and delinquency fees** of \$280.00 for a total payment of \$1,280.00.
- c. Respondent shall, concurrent with his submission of this Stipulation and Consent Order to the Board for its approval, **Surrender his CPA Certificate** by sending it to the Board office via U. S. Mail, or private delivery service.
- e. Should the requirements of paragraphs b. and c. above not be met, Respondent's certificate shall be revoked.
- f. Respondent agrees that the Respondent will not in the future violate any statute, rule or order that the board has issued or is empowered to enforce.

10. 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 9(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the CPE noncompliance fees and license fees as a judgment with out further notice or additional proceedings.

11. Violation of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 326A.08, subd 5(1) (2008). If Respondent violates this Stipulation and Consent Order, Minn. Stat. §§ 326A.01-14 (2008 or Minn. Rules ch. 1105 (2007), 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 ten 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, in its sole discretion, to attempt to resolve an 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 resume or 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 permit pursuant to 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 which is not specifically referred to in paragraph 6 above.

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


13. Respondent hereby acknowledges that the 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.

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

15. 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.

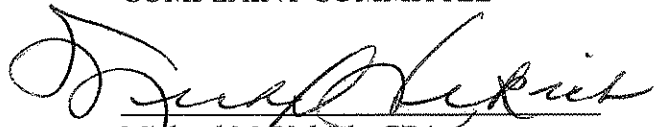
16. If approved by the Board, a copy of this Stipulation and Consent Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed.

CONSENT:

  
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Jeffrey F. Fusek  
Respondent

Dated: July 24<sup>th</sup>, 2010

BOARD OF ACCOUNTANCY  
COMPLAINT COMMITTEE

  
\_\_\_\_\_  
Michael M. Vekich, CPA  
Chair

Dated: 9/10, 2010

Gregory P. Huwe  
Gregory P. Huwe

Assistant Attorney General

Dated: 9/10/1, 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 certified public accountant certificate is SURRENDERED, and

2. **IT IS FURTHER ORDERED** that all other terms of this stipulation and consent Order are adopted and implemented this 10<sup>th</sup> day of September, 2010.

STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY

Neil Lapidus  
Neil Lapidus, CPA  
Chair