

**STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY**

**In the Matter of  
DuWayne L. Schibilla, CPA  
CPA Certificate No. 05035  
CPA Firm Permit No. 05035**

**STIPULATION AND  
CONSENT ORDER  
Board File 2015-104**

The Minnesota Board of Accountancy ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2014); Minnesota Statutes section 326A.02, subdivisions 4 and 6 (2014); and Minnesota Statutes section 326A.08 (2014) to review complaints against Certified Public Accountants and Certified Public Accountant firms and to take disciplinary action whenever appropriate.

The Board received information concerning the firm DuWayne L. Schibilla, CPA, Post Office Box 97, Minnetonka Beach, Minnesota 55361 ("Respondent Firm") and concerning DuWayne L. Schibilla, CPA ("Respondent CPA"). The Board's Complaint Committee ("Committee") reviewed that information. For purposes of this Stipulation and Consent Order, Respondent Firm and Respondent CPA are collectively referred to herein as "Respondents").

It is hereby stipulated and agreed by Respondents and the Committee 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, Respondents waive all procedures and proceedings before the Board to which Respondents 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 Respondents and to dispute the appropriateness of discipline in a contested case hearing pursuant to Minnesota Statutes Chapter 14 (2014), and to dispute any civil penalty imposed by this Stipulation. Respondents agree that upon the *ex parte* application of the Committee, without notice to or appearance by Respondents, the Board may order the remedy specified in paragraph 7 below.

Respondents waive 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 (2014). 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 herein, 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 Minnesota Statutes Chapter 14 (2014), Respondents agree 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 its review and consideration of this Stipulation or of any records relating hereto.

#### **FACTS**

4. This Stipulation is based upon the following facts. Respondents admit the facts referred to below and grant that the Board may, for the purpose of reviewing the record in paragraph 2 above, consider the following as true without prejudice to the Respondents in any current or future proceeding of the Board with regard to these or other allegations:

a. The Board issued a Certified Public Accountant Firm Permit ("CPA Firm Permit") to Respondent Firm on December 31, 1998. Respondent Firm currently holds an active sole proprietor CPA Firm Permit from the Board. Respondent Firm is

subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation.

b. The Board issued a Certified Public Accountant Certificate ("CPA Certificate") to Respondent CPA on October 9, 1979. Respondent CPA currently holds an active CPA Certificate from the Board. Respondent CPA is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation.

c. Respondent Firm performed employee benefit plan audits pursuant to the Employee Retirement Income Security Act of 1974 (ERISA) of the Graphic Communications Local 1B Educational Trust Fund ("the Plan") for the years 2009 through 2013.

d. As part of the above-referenced employee benefit plan audits, Respondent Firm included Independent Auditor's Reports, signed by Respondent CPA, stating that he performed the audits for the Plan, with the 2009 through 2013 forms 5500 that were filed with the United States Department of Labor.

e. Respondent CPA Firm made representations under oath on Respondent Firm's 2009 through 2014 sole proprietor CPA firm permit annual renewal forms, which were submitted to the Board, that the Respondent Firm did not perform audits, reviews, or compilations of financial statement or examinations of prospective financial information during the years 2009 through 2014. Respondent CPA signed all these sole proprietor CPA firm permit annual renewal forms on behalf of Respondent Firm. Based on the employee benefit plan audit documents referenced in section 4.d. above, these representations were false.

f. Respondent Firm failed to provide written notification to the Board that Respondent Firm had issued attest or compilation reports, as required by Minnesota Rule 1105.4100 A.(8) (2013).

g. Respondent Firm became subject to the Board's quality review rules when it performed the first of the audits referenced in section 4.c. above, but Respondent Firm failed to complete a peer review as required by Minnesota Rule 1105.5100 A.(1) (2013).

h. The Board sent Respondent Firm a Notice of Conference concerning these matters by U.S. Mail on July 29, 2015, requesting that Respondent Firm appear at a conference with the Committee on September 10, 2015. No one appeared at the conference on behalf of Respondent Firm.

5. Respondent admits that the facts and conduct specified in paragraph 4 above constitute violations of Minnesota Statutes Chapter 326A (2014) and Minnesota Rules Chapter 1105 (2013), specifically Minnesota Statutes sections 326A.08, subdivision 5 (a)(1), 5(a)(2), 5 (a)(8), and 5(a)(10) (2014) and Minnesota Rules 1105.1300, 1105.4000.G, 1105.4100 A.(8), 1105.4800 A., 1105.4900, 1105.5100 A., and 1105.5600, subpart 1C. (7) (2013), 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 Firm's CPA Firm Permit and Respondent CPA's CPA Certificate.

6. This Stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Respondents by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondents 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 paragraphs 2 and 4 above, and without any further notice of proceedings, the Committee and Respondents agree that the Board may, in its discretion, issue an order to Respondents requiring compliance with the following:

- a. Respondent Firm's CPA Firm Permit is **REVOKED**.
- b. Respondent CPA's CPA Certificate is **REVOKED**.

c. Respondents shall be jointly and severally responsible to pay to the Board a **CIVIL PENALTY** of Five Thousand Dollars (\$5,000.00). Respondents shall submit a Civil Penalty of Five Thousand Dollars (\$5,000.00) by check to the Board within sixty (60) days of the Board's approval of this Stipulation and Order.

d. Respondents shall not violate any statute, rule or order that the Board has issued or is empowered to enforce.

8. The undersigned Respondent CPA and authorized representative of Respondent Firm whose signatures appear below hereby acknowledge that they have read, understand, and agree to this Stipulation and Consent Order and are freely and voluntarily signing the Stipulation on behalf of Respondent CPA and Respondent Firm without threat or promise by the Board or any of its members, employees, or agents. When signing the Stipulation, Respondents acknowledge that they are 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 Respondents or the Board rejects the Stipulation, it will be of no effect except as specified herein.

9. Under the Minnesota Government Data Practices Act, this Stipulation is classified as public data upon its issuance by the Board. (Minnesota Statutes Section 13.41, subdivision 5 (2014)). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2014). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of public accounting.

10. This Stipulation contains the entire agreement between the parties. Respondents are not relying on any other agreement or representation of any kind, verbal or otherwise.

11. Respondents are aware that Respondents may choose to be represented by legal counsel in this matter. Respondents knowingly waived legal representation.

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

13. Pursuant to Minnesota Statutes section 16D.17 (2014), after ninety (90) days of the Board's approval of this Stipulation and Order, the Board may file and enforce any unpaid portion of the civil penalty imposed by this Order as a judgment against the Respondents in District Court without further notice or additional proceedings.

**CONSENT:**

**RESPONDENT FIRM**

DUWAYNE L. SCHIBILLA, CPA

By: *Duwayne Schibilla*

Its: *Duwayne*

Dated: *11-12*, 2015

SUBSCRIBED and sworn to before me on  
this the *12* day of *November*, 2015.

*Lynn Baldy*  
(Notary Public)



My Commission Expires: *1-31-17*

**RESPONDENT CPA**

DUWAYNE L. SCHIBILLA, CPA

Dated: *11-12-15*, 2015

SUBSCRIBED and sworn to before me on  
this the *12* day of *November*, 2015.

*Lynn Baldy*  
(Notary Public)



My Commission Expires: *1-31-17*

**COMPLAINT COMMITTEE**

*Michael M. Vekich*  
MICHAEL M. VEKICH, CPA

Chair

Dated: *12/30*, 2015

**ORDER:**

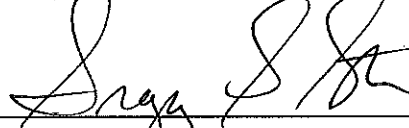
Upon consideration of the foregoing Stipulation and based upon all the files, records and proceedings, herein,

1. **IT IS HEREBY ORDERED** that the **CPA CERTIFICATE OF DUWAYNE L. SCHIBILLA IS HEREBY REVOKED** and that the **CPA FIRM PERMIT OF DUWAYNE L. SCHIBILLA, CPA IS HEREBY REVOKED.**

2. **IT IS FURTHER ORDERED** that **RESPONDENTS SHALL PAY A CIVIL PENALTY OF \$5,000.00** to the Board within sixty (60) days of the date appearing below.

3. **IT IS FURTHER ORDERED** that all other terms of this Stipulation and Consent Order are adopted and implemented this 30<sup>th</sup> day of December, 2015.

**STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY**



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GREGORY S. STEINER, CPA  
Chair



### AFFIDAVIT OF SERVICE BY MAIL

RE: DuWayne L. Schibilla; Certificate No. 05035

STATE OF MINNESOTA )  
 ) ss.  
 COUNTY OF RAMSEY )

Sara Datko, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on this the 4<sup>th</sup> day of January, 2016, she served the attached Stipulation and Consent Order, by depositing in the United States mail at said city and state, a true and correct copy thereof, properly enveloped, with prepaid first class postage, and addressed to:

DuWayne L. Schibilla  
 Post Office Box 97  
 Minnetonka Beach, Minnesota 55361

*Sara Datko*  
 \_\_\_\_\_  
 Sara Datko

Subscribed and sworn to before me on this the 4<sup>th</sup> day of January, 2016.

*Victoria E Oehrlein*  
 \_\_\_\_\_  
 (Notary Public)

