

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY

In the Matter of
Kays, St Germain & Co, PLLC
CPA Firm Permit No. F2045

STIPULATION AND
CONSENT ORDER
Board File 2019-374

The Minnesota Board of Accountancy is authorized pursuant to Minn. Stat. §§ 214.10, 326A.02, subds. 4, 6, and 326A.08, subd. 1 (2018) to review complaints against certified public accountants and to take disciplinary action whenever appropriate.

The Board received information concerning Kays, St Germain & Co, PLLC, 216 Pennington Avenue, Post Office Box 407, Thief River Falls, Minnesota 56701 ("Respondent"). The Board's Complaint Committee reviewed that information.

It is hereby stipulated and agreed by Respondent and the Committee that without trial or adjudication:

1. For the purpose of this stipulation and consent order, 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 (2018), and to dispute any civil penalty imposed by this Stipulation. Respondent agrees that upon the *ex parte* application of the Committee, without notice to or appearance by Respondent, 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.

3. In the event the Board in its discretion does not approve this stipulation and consent order or propose 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 and consent order is not approved and the Committee initiates a contested case hearing pursuant to Minn. Stat. ch. 14 (2018), Respondent agrees not to object to the Board hearing the case on the basis that the Board has become disqualified because of its review and consideration of this stipulation and consent order or of any records relating hereto.

FACTS

4. This stipulation and consent order is based upon the following facts. 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:

- a. The Board issued a Certified Public Accountant Firm Permit ("CPA Firm Permit") to Respondent on December 5, 2014; Respondent currently holds a CPA Firm Permit from the Board. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Consent Order.
- b. Respondent was initially licensed under the name Kays, Lundgren, St. Germain & Co., PLLC, and submitted its 2019 firm permit renewal under this name on November 19, 2019. In April of 2019, The Board was notified that the firm was using the name Kays, St. Germain & Co., PLLC, and was advertising on its website www.trfcpa.com that the firm performs reviews and compilations.
- c. In a letter to the Board on July 19, 2019, Respondent stated that the firm changed its name at the end of December 2018.

- d. Respondent did not submit a name change request to the Board until July 19, 2019, which was approved at the September 19, 2019 Board meeting.
- e. Respondent practiced as a CPA Firm with an invalid firm name from December 2018 to September 19, 2019.
- f. Respondent failed to notify the Board of the firm's name change as required by Minnesota Rule 1105.4100 A.(4) (2017).

5. Respondent admits that the facts and conduct specified in paragraph 4 above constitute violations of Minn. Stat. § 326A.05, subd. 1(a)(1), 326A.08, subds. 5 (a)(1) and 5(a)(8), and 326A.10 (d) and (e) (2018) and Minn. R. 1105.4100 A.(4), 1105.5600, subp.1 C. (1), 1105.6300 A., and 1105.7800 D. (2017), 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 pursuant to Minn. Stat. § 326A.08 (2018).

6. This stipulation and consent order shall not limit the authority of the Board to proceed against Respondent by appropriate means on the basis of any conduct justifying disciplinary action which occurred before or after the date of this stipulation and consent order 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 Respondent agree that the Board may, in its discretion, issue an order to Respondent requiring compliance with the following:

a. Respondent's CPA Firm Permit is **CENSURED** and **REPRIMANDED**.

b. Respondent shall pay to the Board a CIVIL PENALTY of Five Hundred Dollars (\$500.00). Respondent shall submit a Civil Penalty of Five Hundred Dollars (\$500.00) by check to the Board within sixty (60) days of the Board's approval of this Stipulation and Consent Order.

8. Respondent's representative hereby acknowledges that he or she has read, understands, and agrees to this stipulation and consent order and is freely and voluntarily signing the stipulation on behalf of Respondent without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Respondent acknowledges that he or she 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 proposed changes are unacceptable to Respondent 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. Minn. Stat. § 13.41, subd. 5 (2018). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (2018). 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. Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

11. Respondent is aware that they may choose to be represented by legal counsel in this matter. Respondent 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 Respondent. The order shall be effective and deemed issued when it is signed by the Board Chair or designee of the Chair.

13. Pursuant to Minn. Stat. § 16D.17 (2018), ninety days after the Board's approval of this stipulation and consent order, the Board may file and enforce any unpaid portion of the civil penalty imposed by this order as a judgment against the Respondent in district court without further notice or additional proceedings.

CONSENT:

RESPONDENT

Thomas P. Kays
KAYS, ST GERMAIN & CO, PLLC
By: THOMAS P. KAYS
Its: PTK.
Dated: 10-26-19, 2019

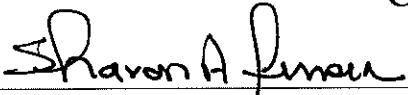
SUBSCRIBED and sworn to before me on this the 28th day of October, 2019.

Lisa Kolstoe
(Notary Public)



My Commission Expires: Jan 31, 2023

COMPLAINT COMMITTEE



SHARON A. JENSEN, CPA
Chair

Dated: December 5, 2019

ORDER:

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

1. **IT IS HEREBY ORDERED** that all other terms of this Stipulation and Consent Order are adopted and implemented this 5 day of December, 2019.

STATE OF MINNESOTA
BOARD OF ACCOUNTANCY



GREGORY S. STEINER, CPA
Chair

