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BEFORE THE ARIZONA STATE BOARD OF ACCOUNTANCY

In the Matter of Certified Public Accounting) Certificate No. 4669-R issued to: JAY STEVEN OZER, Respondent

Docket No. 00A-98230B-ACY

DECISION AND ORDER (By Consent)

I. INTRODUCTION AND JURISDICTION

1. The Arizona State Board of Accountancy ("Board") is the state agency authorized pursuant to A.R.S. § 32-701 et seq. to regulate the profession of Certified Public Accountants in the State of Arizona.

2. On December 4, 2000, the Board filed a Notice of Hearing and Public Complaint ("Notice") against Arthur Andersen, LLP ("Andersen"), Certified Public Accountant Jay Steven Ozer ("Respondent"), and others regarding services they provided to the Baptist Foundation of Arizona ("BFA"). The Notice was issued pursuant to A.R.S. § 32-701 et seq. and A.R.S. § 41-1061 et seq. The Board and Respondent have agreed to a full and final settlement of the matters alleged in the December 4, 2000 Notice as reflected in this Decision and Order By Consent ("Consent Order"). Separate consent orders have been entered with the other named respondents under Docket Nos. 00A-98230-ACY; 00A-98230C-ACY and 00A-98230D-ACY.

3. Respondent disputes that the Factual Findings set forth below are complete and accurate, denies any wrongdoing with regard to the matters set forth herein, and denies that any violations of professional standards have occurred. The Consent Order represents a compromise of disputed matters and is the result of good faith settlement negotiations regarding issues that are disputed by the parties. The Findings of Fact and Conclusions of Law set forth herein are only for purposes of settlement of this disputed matter, and shall have no application or effect outside any proceedings initiated by the Board, including as evidence from which any liability or wrongdoing
could be inferred. The Board has not made a determination on the merits contained herein. This Consent Order is based upon the following Findings of Fact and Conclusions of Law and entered in lieu of an administrative hearing.

II. FINDINGS OF FACT

4. Respondent is a Certified Public Accountant ("CPA") who holds Arizona Certificate No. 4669-R. This Certificate was issued on June 3, 1985, and was in full force and effect at all material times.

5. BFA was an Arizona religious non-profit 501(c)(3) organization that was incorporated in 1948 for the purpose of providing financial support for Southern Baptist causes. BFA was an institution of the Arizona Southern Baptist Convention ("Convention") which elected BFA's Board of Directors. BFA's senior management consisted of William Crotts, President; Thomas Grabinski, Vice President and Legal Counsel; and Donald Deardoff, CPA, Treasurer and Controller. In this Consent Order, "BFA Senior Management" will refer to these three individuals who primarily directed the operations of BFA.

6. Since 1984\(^1\), BFA engaged Andersen as its independent auditor. From 1984 to 1997\(^2\), Andersen issued unqualified audit opinions on BFA's combined financial statements. Also, during these years, Andersen was engaged by BFA or BFA's attorneys to perform other accounting and auditing, management consulting and tax services. The engagements that are the subject of this Consent Order include: (1) the audits of BFA's 1992-1997 combined financial statements and (2) a special risk assessment review in 1997 and 1998 ("Tax Risk Assessment").

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\(^1\)When years are used in this Consent Order, the reference is to the calendar year ending December 31 and the audit performed on that year by Respondent.

\(^2\)Andersen was engaged to conduct the 1998 audit, but did not issue an opinion on BFA's combined financial statements. Andersen issued, but later withdrew, unqualified opinions on the separate 1998 financial statements of certain entities within the BFA combined group. Respondent was the partner in charge of these 1998 engagements.
7. For the 1992-1997 audit engagements, Respondent was the Andersen partner with the ultimate responsibility for the conduct of the audits, including reviewing all work performed, resolving all accounting issues, evaluating the results of the audits and forming an opinion in issuing final reports. As the audit partner, Respondent was required to know, understand and consider any other information about BFA gathered in connection with Andersen’s Tax Risk Assessment and to determine if such information should be included in or had a material affect on BFA’s financial statements.

8. BFA’s structure included a complex maze of for-profit subsidiary corporations and controlled non-profit affiliates through which it engaged in investment activities and the sale of securities. BFA operated a trust department and was authorized to serve as a non-bank passive trustee for individual retirement accounts ("IRAs"). BFA also managed affiliates and their subsidiaries including Arizona Southern Baptist New Church Ventures, Inc. ("New Church Ventures"), and A.L.O., Inc. ("ALO"). BFA employees sold investment products on behalf of New Church Ventures which included IRAs.

9. BFA invested directly in real estate. BFA also raised funds through the sale of securities such as investment agreements ("IAs") and mortgage backed notes ("MBNs") and invested those funds in real estate loans, real property, and operating businesses. BFA’s 501(c)(3) tax-exempt status supported the availability of such an exemption. In 1997, the IAs and MBNs were sold through offering circulars and supplements thereto which included BFA’s “unaudited” financial statements which were similar to the 1997 financial statements, upon which Andersen opined. Andersen’s name did not appear in these offering circulars, but investors may have had access to Andersen’s audit reports. BFA claimed to be exempt from Arizona statutes requiring registration of securities.

10. BFA and its attorneys claimed that BFA was exempt from Arizona banking regulations. As Andersen acknowledged in the audit work papers, BFA operated in a manner similar to a financial institution in some respects. Respondent planned the audit to consider these similarities.
11. Because of its bank-like operations and products, BFA faced several risk factors that affect banks and savings institutions such as liquidity and asset quality. Because of the lack of regulatory oversight of BFA’s operations and sales of securities, BFA’s offerings were not subject to the same scrutiny as a financial institution’s products.


13. BFA’s Senior Management was responsible for the preparation of BFA’s financial statements in conformity with Generally Accepted Accounting Principles (“GAAP”). GAAP are the conventions, rules and procedures necessary to define accepted accounting practices at a certain time.

14. Respondent, on behalf of Andersen, was required to conduct the audits in accordance with Generally Accepted Auditing Standards (“GAAS”) and to report compliance with GAAS. GAAS required Respondent to state whether BFA’s financial statements were presented in conformity with GAAP and to identify those circumstances in which GAAP had not been observed in BFA’s preparation of its financial statements.

III. CONCLUSIONS OF LAW

15. The Board has personal and subject matter jurisdiction over Respondent pursuant to A.R.S. § 32-701 et seq. and A.A.C. R4-1-101 et seq. The Board has the authority to discipline Respondent pursuant to A.R.S. §§ 32-741(A)(4); (A)(6) and (A)(9), and 32-742.

16. Pursuant to A.R.S. § 32-741, after notice and opportunity for hearing, the Board may revoke or suspend Respondent’s certificate to practice public accountancy and take other disciplinary action concerning Respondent for engaging in dishonesty, fraud or gross or continuing negligence in the practice of accounting (A.R.S. § 32-741(A)(4)) and for violating any provisions of Title 32,
Chapter 6, Arizona Revised Statutes (A.R.S. § 32-741(A)(6)). This Consent Order is in lieu of an administrative hearing set for August 19, 2002.

17. While Respondent denies that any violations of professional standards have occurred in connection with the engagements in issue, and disputes that the Findings of Fact are accurate and complete, if this matter proceeded to hearing, the State would introduce evidence it contends would show that Respondent’s conduct, in connection with the audits and services described in the Findings of Facts, constitutes a failure to comply with applicable professional standards as set forth in A.A.C. R4-1-455.01 and the A.A.C. R4-1-455.03, and violates A.R.S. § 32-746.

18. With respect to BFA’s disclosure of related parties, BFA’s conduct as a non-bank passive trustee of IRAs and noncompliance with Treasury regulations, the State contends that BFA’s 1992-1994 financial statements were not prepared in conformity with GAAP and Respondent’s conduct was not in accordance with GAAS.

19. With respect to the following issues, the State contends that BFA’s 1995-1997 financial statements were not prepared in conformity with GAAP and Respondent’s conduct was not in accordance with GAAS:

a) Disclosures regarding related parties and in particular, ALO and New Church Ventures;

b) Recognition of losses on BFA’s notes receivable due from ALO and New Church Ventures;

c) Overstated gains on year-end transactions with related parties;

d) Overstated assets of the Trusts;

e) Disclosure of contingency issues regarding BFA’s tax exempt status and lack of compliance with state and federal securities laws;

f) Disclosure of contingency issues regarding BFA’s noncompliance with Treasury regulations pertaining to non-bank passive trustees.
20. With respect to BFA's 1997 financial statements, the State contends that, Respondent's SAS No. 82 analysis and subsequent discovery of facts that existed on the date of Andersen's report; was not in accordance with GAAS.

IV. ORDER

Based upon the aforementioned Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

21. Respondent's Certificate No. 4669-R, is relinquished pursuant to A.R.S. § 32-741.01. Respondent shall authorize Andersen to deliver his certificate to practice as a public accountant to the Board within 10 days of the effective date of this Order.

22. Contemporaneous with Respondent's execution of the Consent to Order, Respondent shall sign a written Declaration of Relinquishment as set forth in A.R.S. § 32-741.01(C) which is attached and incorporated herein by reference as Exhibit "A".

23. The effective date of this Order is the date it is signed by the Board President. Based upon Respondent's avowal in the Consent to this Order, that Respondent has no clients, the Board's notice requirement to current clients shall be deemed satisfied.

24. Within 10 days of the effective date of this Order, Respondent shall destroy all stationary, cards, signage and any other business paraphernalia indicating he is a CPA.

25. This Decision and Order (By Consent) is a full and final settlement of the disputed matters alleged in the December 4, 2000 Notice.

26. Except for the proceedings entitled In the Matter of Certified Public Accounting Certificate No. 4669-R issued to JAY STEVEN OZER, Respondent, in Docket No. 2002.056-ACY, no other proceedings will be initiated by or before the Arizona State Board of Accountancy against Respondent as a result of his professional activities as a Certified Public Accountant through the date of this Order.
27. Except for the Decision and Order (By Consent) entered in the proceedings entitled
In the Matter of Certified Public Accounting Certificate No. 4669-R issued to JAY STEVEN OZER,
Respondent, in Docket No. 2002.056-ACY, no other relief will be ordered by the Arizona
State Board of Accountancy against Respondent as a result of his professional activities as a Certified
Public Accountant through the date of this Order.

DATED this 31st day of July 2002.

ARIZONA STATE BOARD OF ACCOUNTANCY

By: ____________________________
Florentino J. Gonzales, CPA, President

CONCURRING:
William D. Baker, Esq.
Richard M. Gardner, CPA
Loretta Peto, CPA
Lehman William Williams

CONSENT TO BOARD DECISION AND ORDER

I, Jay Steven Ozer, being duly sworn, state under oath the following:

I have read and understand everything contained in the foregoing Findings of Fact, Conclusions of Law and Order. If this Consent Order is approved by the Board, without admitting the allegations contained therein, I agree to its immediate issuance and to be bound by its terms.

I am aware of my right to an administrative hearing in this matter and hereby waive the same.

I waive all my rights to challenge the foregoing Consent Order on appeal, or otherwise, to the Board or any other court or tribunal. However, nothing in this Consent Order shall preclude me from giving evidence and testimony, if called upon to do so, in any proceeding.

I understand that a violation of the Consent Order will constitute grounds for further action. I understand that the Consent Order may be considered in any future disciplinary action against me. I understand that the Consent Order may be considered by the Board in the event I apply for a new certificate to practice in Arizona as a CPA.
I consent to this Consent Order for the sole purpose of entering into a full and complete settlement of the disputed matters alleged in the December 4, 2002 Notice. In addition, I deny any wrongdoing with regard to the matters set forth herein and deny that any violations of professional standards have occurred, and believe that BFA management deceived the Andersen auditors.

I understand that this Consent Order and the related investigation is a matter of public record. I retired from Andersen in August 2000. Since my retirement, I have not engaged in auditing or tax preparation services for which I require my CPA license. I have not engaged in any business consulting services for over one year from today’s date. I have no clients to notify of the relinquishment of my certificate.

By my signature, I verify that I have read and understand everything contained in the foregoing Consent Order.

Dated this 9\textsuperscript{th} day of August 2002.

\begin{flushright}
Jay Steven Ozer
\end{flushright}

SWORN AND SUBSCRIBED BEFORE ME, this 4\textsuperscript{th} day of August 2002, to certify

\begin{flushright}
Yvonne Mullis  
Notary Public-Arizona  
Maricopa County  
My Commission Expires 3/32006
\end{flushright}

Copy of the foregoing mailed September 16\textsuperscript{th} day of August 2002, to:

Richard E. Drooyan, Esq.
Brad D. Brian, Esq.
Marc A. Becker, Esq.
Tung Yin, Esq.
Munger, Tolles & Olson
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071

Attorneys for Jay Steven Ozer

\begin{flushright}
7000 1670 0006 4388 6701
\end{flushright}
Copy of the foregoing mailed
this 16th day of August 2002 to:

Felecia A. Rotellini, Chief Counsel
Joel P. Nordquist, Assistant Attorney General
Accountancy Enforcement Unit, LEO/Civil Division
Arizona Attorney General Office
1275 W. Washington
Phoenix, Arizona 85007
Attorneys for Arizona State Board of Accountancy

ORIGINAL filed this 16th day of September 2002 with:

Arizona State Board of Accountancy
100 N. 15th Avenue, Suite 165
Phoenix, AZ 85007

Copy of the foregoing mailed
this 16th day of September 2002 to:

Cliff Varnell, Director
Office of Administrative Hearings
1400 W. Washington, Suite 101
Phoenix, AZ 85007
BEFORE THE ARIZONA STATE BOARD OF ACCOUNTANCY

In The Matter of Certified Public Accountant Certificate No. 4669-R, No. 00A-98230B-ACY
Issued To:
JAY STEVEN OZER,
Respondent

RELINQUISHMENT OF CERTIFICATE

Pursuant to paragraph 22 of the Decision and Order by Consent in 00A-98230B-ACY and paragraph 19 of the Decision and Order By Consent in No. 2002.056-ACY, I, Jay Steven Ozer, acknowledge that disciplinary proceedings have been initiated against me pursuant to Title 32, Chapter 6, Article 3, Arizona Revised Statutes, and I relinquish my right to practice accounting as a certified public accountant in the State of Arizona. I understand that if I choose to apply for a new certificate, I must meet all requirements for initial certification pursuant to Section 32-721, Arizona Revised Statutes. I further understand that, in deciding whether to issue a new certificate to me, the board will consider all disciplinary actions currently pending against me including Board File No. 2001.138 and any other matters it determines to be appropriate.

DATED this 4th day of August 2002.

[Signature]
Jay Steven Ozer

EXHIBIT "A" TO DECISION AND ORDER

369741.1 (OZER/BFA&STC)