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7
8 **BEFORE THE**
BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
10

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|------------------------------------|---|----------------------------------|
| 11 In the Matter of the Accusation |) | Case No. AC-97-1 |
| Against: |) | |
| 12 J. BALLARD CHEATHAM |) | |
| 13 1551 4th Avenue, Suite 502 |) | STIPULATION, ORDER AND |
| San Diego, CA 92101 |) | DECISION FOR SURRENDER OF |
| |) | LICENSE |
| 14 |) | |
| 15 Certificate No. 13081, |) | |
| |) | |
| 16 Respondent. |) | |
| |) | |

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18 In the interest of a prompt and speedy settlement of this
19 matter, consistent with the public interest and the
20 responsibility of the Board of Accountancy, Department of
21 Consumer Affairs ("Board") the parties submit this Stipulation,
22 Order and Decision to the Board for approval and adoption as the
23 final disposition of the Accusation.

24 **STIPULATION**

25 The parties stipulate the following is true:

26 1. Accusation, No. AC-97-1 ("Accusation"), is
27 currently pending against J. Ballard Cheatham, ("Respondent"),

1 before the Board. The Accusation, together with all other
2 statutorily required documents, was duly served on the Respondent
3 and Respondent filed a timely Notice of Defense. A copy of the
4 Accusation is attached as Attachment "A" and incorporated by
5 reference as if fully set forth.

6 2. Carol B. Sigman, Executive Officer of the Board, is
7 the Complainant in the Accusation, which was filed and prosecuted
8 solely in her official capacity.

9 3. At all times relevant herein, Respondent has been
10 licensed by the Board under Certified Public Accountant
11 Certificate No. 13081.

12 4. Respondent is not represented by legal counsel in
13 this matter. Respondent understands and acknowledges that he has
14 a right to be represented by legal counsel at his own expense,
15 but chooses not to be so represented.

16 5. Respondent understands the nature of the charges
17 alleged in the Accusation and that the charges and allegations
18 constitute cause for imposing discipline upon his certificate to
19 practice accounting. Respondent is fully aware of his right to a
20 hearing on the charges and allegations contained in said
21 Accusation, his right to reconsideration, appeal and all other
22 rights accorded to him pursuant to the California Business and
23 Professions Code and Government Code and he freely and
24 voluntarily waives such rights.

25 6. Respondent admits each and all of the allegations
26 contained in the Accusation. Respondent hereby agrees that he
27 has subjected his license to discipline. Respondent agrees to

1 the Board's acceptance of the surrender of his certificate and
2 placing certain requirements, restrictions and limitations on his
3 future right to licensure as set out in the Order below.

4 7. Respondent hereby surrenders Certificate 13081
5 subject to the Board's formal acceptance of said surrender. Upon
6 acceptance of the surrender by the Board, Respondent agrees to
7 cause to be delivered to the Board both his license and his
8 wallet certificate. Respondent further understands that when the
9 Board accepts the surrender of his license, he will no longer be
10 permitted to practice as a Certified Public Accountant in
11 California.

12 8. Respondent agrees that he shall not apply for re-
13 instatement, relicensure or for any license issued by the Board
14 for a period of five (5) years from the effective date of the
15 Board's Order adopting this stipulated agreement.

16 9. Respondent agrees that, as a condition precedent to
17 any future reinstatement of his license or any relicensure by the
18 Board, Respondent must submit proof to the Board that full and
19 complete payment in the amount of \$11,030.12 has been made to the
20 Board for its reasonable costs of investigation and prosecution.
21 Failure to submit proof of payment for the reasonable costs of
22 investigation and prosecution shall be sufficient grounds to deny
23 reinstatement of Respondent's license or any other licensure by
24 the Board.

25 10. The parties agree that the Stipulation recited
26 herein shall be null and void and not binding upon the parties
27 unless approved by the Board, except for this paragraph, which

1 shall remain in effect. The Respondent understands and agrees
2 that in deciding whether or not to adopt this Stipulation the
3 Board may receive oral and written communications from its staff
4 and the Attorney General's office. Communications pursuant to
5 this paragraph shall not disqualify the Complainant or other
6 persons from future participation in this or any other matter
7 affecting Respondent. In the event the Board in its discretion
8 does not approve this settlement, this Stipulation, with the
9 exception of this paragraph, is withdrawn and shall be of no
10 evidentiary value and shall not be relied upon or introduced in
11 any disciplinary action by either party hereto. Respondent
12 agrees that should the Board reject this Stipulation and if this
13 case proceeds to hearing, Respondent will assert no claim that
14 the Board was prejudiced by its review and discussion of this
15 Stipulation or of any records related hereto.

16 11. The parties agree that facsimile copies of this
17 Stipulation, including facsimile signatures of the parties, may
18 be used in lieu of original documents and signatures. The
19 facsimile copies will have the same force and effect as
20 originals.

21 12. In consideration of the foregoing agreements and
22 findings, the parties further agree that the Board may, without
23 further legal process, issue and enter an Order as follows:

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1 ORDER

2 A. IT IS HEREBY ORDERED that the surrender of
3 Certificate number 13081, issued to J. Ballard Cheatham is
4 accepted.

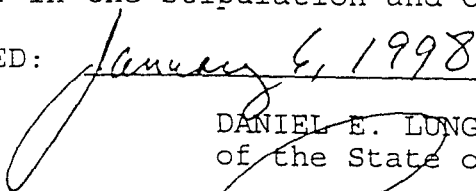
5 B. Reasonable costs to the Board for investigation and
6 prosecution of the Accusation are determined to be \$11,030.12.

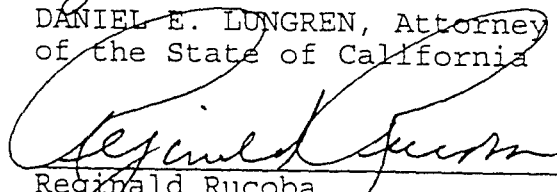
7 C. Respondent is prohibited from applying to the Board
8 for reinstatement, relicensure or licensure in any capacity for a
9 period of five (5) years from the effective date of this order.

10 D. As a condition precedent to any future
11 reinstatement of his license or any future licensure by the
12 Board, Respondent must pay \$11,030.12 to the Board for reasonable
13 costs of investigation and prosecution.

14 We concur in the Stipulation and Order.

15 DATED: January 6, 1998

16 
17 DANIEL E. LUNGREN, Attorney General
of the State of California

18 
19 Reginald Rucoba
Deputy Attorney General

20 Attorneys for Complainant
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ACKNOWLEDGEMENT

I have carefully read and fully understand the Stipulation and Order set forth above. I understand that in signing this Stipulation I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I further understand that in signing this Stipulation, I am surrendering my certificate to the Board and that the Board may enter the foregoing order accepting the surrender of my certificate and placing certain requirements, restrictions and limitations on my future right to be licensed by the Board. I agree that a facsimile copy of this Stipulation, including a facsimile copy of my signature may be used with the same force and effect as the originals.

DATED: 12/16/97

J. Ballard Cheatham
Respondent

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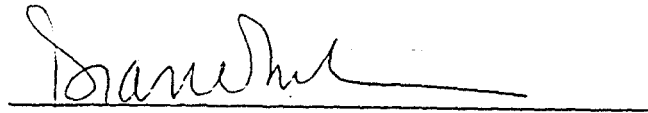
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DECISION

The surrender of Certificate 13081, by respondent, J. Ballard Cheatham, is accepted by the Board of Accountancy of the State of California, on the terms set forth in the foregoing Stipulation and Order No. AC-97-1.

An effective date of March 12th, 1998, has been assigned to this Decision and Order.

Made this 10th day of February, 1998.



FOR THE BOARD

03541110-SD96AD0440

1 DANIEL E. LUNGREN, Attorney General
of the State of California
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11 In the Matter of the Accusation) NO. AC-97-1
Against:)
12 J. BALLARD CHEATHAM)
13 1551 4th Avenue, Suite 502) ACCUSATION
San Diego, CA 92101)
14 Certificate No. 13081)
15 Respondent.)
16

17 Complainant Carol B. Sigmann, as cause for disciplinary
18 action, alleges:

19 PARTIES

20 1. Complainant is the Executive Officer of the
21 California State Board of Accountancy ("Board") and makes and
22 files this accusation solely in her official capacity.

23 License Status

24 2. On or about June 17, 1967, the Board issued
25 Certificate No. 13081 (Certified Public Accountant) to J. Ballard
26 Cheatham ("Respondent"). The Certificate will expire on December
27 1, 1997, unless renewed.

JURISDICTION

3. This accusation is made in reference to the following statutes of the California Business and Professions Code ("Code"):

a. Section 5100 provides, in part, that the Board may revoke, suspend or refuse to renew any permit or certificate issued by the Board, or may censure the holder of any such permit or certificate for unprofessional conduct.

b. Section 5107 provides, in part, that the Executive Officer of the Board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of section 5100(c) to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The Board shall not recover costs incurred at the administrative hearing.

c. Section 5100(c) provides, in part, that unprofessional conduct includes, but is not limited to, dishonesty, fraud or gross negligence in the practice of public accountancy.

d. Section 5100(f) provides that unprofessional conduct includes, but is not limited to: "Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

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1 e. Section 5150 provides, in part, that an
2 accountancy corporation which is registered with the board
3 and has a currently effective certificate of registration is
4 entitled to practice public accountancy.

5 f. Section 5062 provides that: "A licensee shall
6 issue a report which conforms to professional standards upon
7 completion of a compilation, review or audit of financial
8 statements."

9 g. Section 5050 provides, in part, that no person
10 shall practice public accountancy in this state unless the
11 person is the holder of a valid permit to practice public
12 accountancy issued by the Board.

13 h. Section 5035 provides, in part, that for purposes
14 of the Accountancy Act, the word "person" includes an
15 individual, partnership, firm or corporation.

16 4. This accusation is made in reference to the
17 following regulations of the California Code of Regulations
18 ("CCR"), title 16:

19 a. Section 58 provides that: "Licensees engaged in
20 the practice of public accountancy shall comply with all
21 applicable professional standards, including but not limited
22 to generally accepted accounting principles and generally
23 accepted auditing standards."

24 b. Section 67 provides that: "No permit holder shall
25 practice as a principal under a name other than his or her
26 own name until such name has been registered with the Board
27 and approved by the Board as not being false or misleading."

1 c. Section 87 provides, in part, that a licensee
2 whose license is in active status is required to complete 80
3 hours of qualifying continuing education in the two-year
4 period immediately preceding license renewal and to submit
5 the statement required by CCR section 89.

6 d. Section 89 provides, in part, that upon renewal, a
7 licensee is required to provide a written statement, signed
8 under penalty of perjury, certifying that the requisite
9 hours of continuing education have been obtained. To
10 receive continuing education credit for attending a
11 continuing education course, the licensee is required to
12 obtain and retain for four years after renewal a certificate
13 of completion or its equivalent signed by the course
14 provider, disclosing information relating to the course.

15 e. Section 94 provides that: "Failure to comply with
16 these continuing education rules by a licensee engaged in
17 public practice, as defined in Business and Professions Code
18 Section 5051, constitutes cause for disciplinary action
19 under Section 5100."

20 CHARGES AND ALLEGATIONS

21 5. Respondent is subject to disciplinary action
22 pursuant to Code section 5100 based on the following:

23 San Diego Floor Coverers Joint Insurance Trust

24 6. In or about August, 1995 Respondent audited the
25 financial statements of the San Diego Floor Coverers Joint
26 Insurance Trust for the years ended June 30, 1994 and June 30,
27 1995 and prepared an auditor's report.

1 7. Respondent's audit report was defective in the
2 following respects:

3 a. The report omitted required language and used
4 language that was incorrect.

5 b. The report did not properly disclose that the
6 financial statements were not presented in accordance with
7 generally accepted accounting principles and failed to
8 contain the appropriate qualified or adverse opinion.

9 c. The report failed to include language indicating
10 that the note disclosures were inadequate.

11 8. Respondent's work papers for the audit were
12 deficient in that they failed to include:

13 a. Documentation showing Respondent's understanding of
14 the entity's internal control structure and his
15 consideration of audit risk and materiality while planning
16 the audit.

17 b. Adequate substantive tests, including independent
18 verification of cash balances, review of subsequent events,
19 and tests of payroll, obligations and plan administrative
20 expenses.

21 c. Sufficient evidential matter to support Respondent's
22 opinion, including written representations of management.

23 d. A written audit program.

24 e. Documentation showing Respondent's application of
25 analytical review procedures in the planning and conclusion
26 phases of the audit.

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1 9. Respondent's conduct, as more particularly set forth
2 in paragraphs 6 through 8 above, constituted gross negligence in
3 violation of Code section 5100(c) in that his insufficient audit
4 work papers and report constituted an extreme departure from the
5 standards of practice.

6 10. Respondent's conduct, as more particularly set
7 forth in paragraphs 6 through 8 above, violated Code sections
8 5062, 5100(f) and CCR section 58 in that Respondent failed to
9 comply with professional standards when conducting his audit and
10 writing his report.

11 11. Respondent's conduct, as more particularly set
12 forth in paragraphs 6 through 8 above, constituted unprofessional
13 conduct pursuant to Code section 5100.

14 O.P. & C.M.I. Plasterers Local #346

15 12. In or about January, 1991, Respondent performed an
16 audit of the financial statements of O.P. & C.M.I. Plasterers
17 Local #346 ("Union") for the year ended December 31, 1990 and
18 prepared an auditor's report. In or about January, 1992,
19 Respondent performed an audit of the financial statements of the
20 Union for the year ended December 31, 1991 and prepared an
21 auditor's report. Respondent also audited the financial
22 statements of the Union for the years between 1979 and 1990.

23 13. Respondent's ex-wife served as secretary/
24 bookkeeper for the Union for most or all of these same years and
25 was embezzling money from the Union. Had Respondent performed
26 proper audits, the ex-wife's misconduct might have been detected
27 sooner than it was.

1 14. Respondent's audit reports for his audits of the
2 financial statements of the Union for the years ended December
3 31, 1990 and 1991 were defective in that:

4 a. The reports omitted required language and used
5 language that was incorrect.

6 b. The reports did not properly disclose that the
7 financial statements were not presented in accordance with
8 generally accepted accounting principles and failed to
9 contain the appropriate qualified or adverse opinions.

10 c. The reports failed to include language stating that
11 the financial statement disclosures were inadequate.

12 15. Respondent's work papers for the two audits were
13 deficient in that they failed to include:

14 a. Documentation showing Respondent's understanding of
15 the entity's internal control structure and his
16 consideration of audit risk and materiality while planning
17 the audit.

18 b. Sufficient evidential matter to support Respondent's
19 opinions, including written representations of management
20 and inquiry of the Union's attorney regarding litigation,
21 claims and assessments.

22 16. Respondent's conduct, as more particularly set
23 forth in paragraphs 12 through 15 above, constituted gross
24 negligence in violation of Code section 5100(c) in that his
25 insufficient audit work papers and reports constituted an extreme
26 departure from the standards of practice.

27 ///

1 17. Respondent's conduct, as more particularly set
2 forth in paragraphs 12 through 15 above, violated Code sections
3 5062, 5100(f) and CCR section 58 in that Respondent failed to
4 comply with professional standards when conducting his audits and
5 writing his reports.

6 18. Respondent's conduct, as more particularly set
7 forth in paragraphs 12 through 15 above, constituted
8 unprofessional conduct pursuant to Code section 5100.

9 Other

10 19. Between at least January 1991 and August 1995,
11 Respondent practiced under the name J. Ballard Cheatham, an
12 Accountancy Corporation. Respondent had not registered as an
13 accountancy corporation with the Board.

14 20. Respondent's conduct, as more particularly set
15 forth in paragraph 19 above, violated Code sections 5100(f), 5050
16 and CCR section 67 in that Respondent practiced under a corporate
17 name without registration of the name with the Board and without
18 obtaining a permit to practice as an accountancy corporation.

19 21. In or about January 1994, Respondent renewed his
20 license. As part of that renewal, he was required to have taken
21 80 hours of continuing education during the previous two years.
22 In or about 1995, a member of the Board's staff requested that
23 Respondent provide verification of the continuing education hours
24 he had taken. Respondent failed to provide certificates to
25 support most of the hours he claimed to have taken.

26 22. Respondent's conduct, as more particularly alleged
27 in paragraph 21 above, violated Code section 5100 and CCR

1 sections 87, 89 and 94, in that Respondent failed to comply with
2 continuing education requirements either by failing to take the
3 required number of hours or failing to retain the certificates
4 for the classes he had taken.

5 PRAYER

6 WHEREFORE, complainant requests that the Board hold a
7 hearing on the matters alleged herein, and that following said
8 hearing, the Board issue a decision:

- 9 1. Revoking or suspending Certificate Number 13081,
10 heretofore issued to Respondent;
11 2. Directing Respondent to pay to the Board a
12 reasonable sum for its investigative and
13 enforcement costs of this action; and
14 3. Taking such other and further action as the Board
15 deems appropriate to protect the public health,
16 safety and welfare.

17
18 DATED: April 10, 1997
19

20
21 Carol B. Sigmann
22 Carol B. Sigmann
23 Executive Officer
24 Board of Accountancy
25 Department of Consumer Affairs
26 State of California

27 Complainant

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