BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

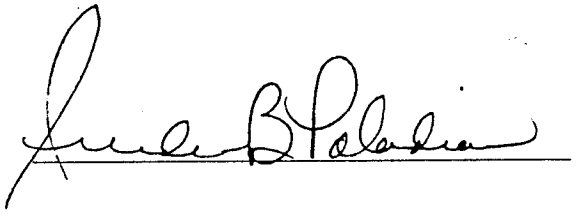
In the Matter of the Accusation Against: JILL KYLE 38429 Kerlin Street Fremont, CA 94536 Certified Public Accountant Certificate No. CPA 42518 Respondent.	Case No.: AC-94-21 OAH No.: N 9410189

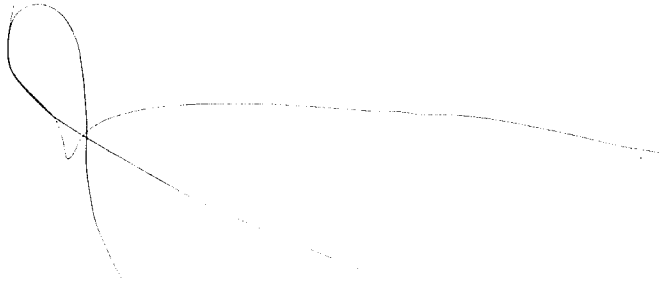
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its Decision in the above-entitled matter.

This Decision shall become effective on May 27, 1995.

IT IS SO ORDERED April 27, 1995.





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PROPOSED DECISION

This matter was heard before Jonathan Lew, Administrative Law Judge, State of California, Office of Administrative Hearings on January 25, 1995, in San Francisco, California.

The Board of Accountancy was represented by Jeanne C. Werner, Deputy Attorney General.

Respondent Jill Kyle was present and represented by Farley J. Neuman, Attorney at Law, Jenkins, Goodman & Neuman, Two Embarcadero Center, Suite 1780, San Francisco, California 94111. Submission of the matter was deferred until further documentation of cost certification and comments on same were received. Such documents were received on February 2, 1995, and included as part of Exhibit 3. The matter was thereafter submitted.

FINDINGS OF FACT

I

Carol Sigmann, Executive Officer of the California State Board of Accountancy (Board), made and filed the Accusation in her official capacity only, and not otherwise.

II

On May 10, 1985, Certified Public Accountant Certificate No. CPA 42518 was issued to Jill Kyle (Respondent) by the

Board, under the laws of the State of California. Said certificate was in full force and effect for the renewal period September 1, 1988 through August 31, 1990. Her certificate was renewed for the period September 1, 1990 through August 31, 1992, but was renewed on an inactive basis. This status does not permit the licensee to engage in the practice of public accounting in California in the absence of required continuing education.

The certificate was again renewed on an inactive basis on September 26, 1992, for the renewal period September 1, 1992 through August 31, 1994. On March 1, 1993, evidence of compliance with continuing education requirements was provided, and the certificate was placed in full force and effect (active status) and was renewed until September 1, 1994. Thereafter her certificate was renewed through August 31, 1996.

III

The essential factual matters set forth in the Accusation are not in dispute. Respondent, while employed from September 8, 1986 through August 26, 1992, as assistant controller and later as controller at the San Francisco office of D'Accord, Incorporated, embezzled from her employer an amount approximating $34,896.11. Respondent admitted her embezzlement in signed statements (8/27/92 and 11/11/92) provided to her employer, and also at the time of hearing. She agreed to reimburse all amounts embezzled to her employer, together with legal and audit fees, and interest. The total restitution equaled $49,393.13, and said amount was paid in full by Respondent in November 1992.

IV

Respondent embezzled monies through various means, and throughout most of the period of her employment until she was confronted by D'Accord's chief financial officer in August 1992. Between November 15, 1988 and April 5, 1991, she wrote seven checks to herself, but made the payees appear on carbon copies and company records to be legitimate business expenses. These checks totalled $7,455.69.

On May 8, 1990, she arranged for a payroll transfer totalling $19,153.84 to be deposited into her personal checking account. This transaction was completed after Security Pacific initially failed to transfer funds to D'Accord because of confusion during the 1989 earthquake, and Bank of California had issued a cashier's check to cover this balance. Security Pacific eventually transferred funds in this same amount. Respondent deposited the Bank of California cashier's check into her and her husband's joint checking account at Wells Fargo Bank.

Respondent made claims for expense reimbursements to D'Accord which had not actually been incurred by her. Three checks totalling $625.00 were submitted between December 15, 1988

and September 14, 1990. The checks submitted by her had actually been voided so that she had not incurred any initial expenses.

Respondent also received $6,186.29 in petty cash between August 1987 and July 16, 1992; and $1,475.29 reimbursement for Christmas gifts for herself and her staff in December 1990 and 1991. These monies were received without proper authorization or prior approval. Respondent was aware that she was required to have such disbursements approved in advance by the chief financial officer. And she believes that perhaps half of the amounts taken from petty cash/gifts would not have been authorized in any case.

D'Accord conducted its own internal investigation, and then retained Arthur Anderson to conduct an independent audit. In addition to its own staff time, D'Accord expended $3,340.00 in audit fees and $1,154.00 in legal fees to investigate this matter.

V

Respondent was aware that D'Accord had weak internal controls to control its assets. For example, two party counter checks were not initially required on most checks, and Respondent's actions were not subject to any regular scrutiny or internal audit review. She took advantage of her position as controller for purely personal gain, and over a rather significant period of time. This continued until she was confronted by upper management. Her stealing monies was not out of desperation or financial pressure. She admits to being selfish at the time and not being able to see the total ramifications of her actions. For example, she purchased a home in 1988, and she and her husband were in the midst of remodeling it in 1990. The $19,000 check was deposited into their account on May 9, 1990.

In May 1991, Respondent had her first child and began to have a different perspective on what she had been doing. She avers that she did not want to raise a child with the type of morals and beliefs that she had been acting out, and resolved not to embezzle further items from D'Accord. Although she ceased embezzling check items, she continued to receive unauthorized petty cash after May 1991. And rather than disclose the fact of her past misdeeds, she chose to bury them deeper in her memory and hoped that her past actions would remain hidden.

VI

Respondent appears genuinely remorseful. She offers no justification for her actions, noting that at the time she just looked at things differently and was not very responsible. She currently maintains a small accounting business, mostly consulting and tax work. Her husband is also an accountant. In mitigation Respondent notes that she has made full restitution, a fact

that the Board normally considers in determining whether or not to place a licensee on probation. Respondent submits no other character references, evidence of counseling or other evidence demonstrating rehabilitation on her part.

Respondent's restitution was not pursuant to self disclosure of her misdeeds. She was caught at a time that she was still continuing her pattern of embezzlement of company funds. Her agreement to pay restitution was made in the face of an independent audit and potential criminal investigation of her actions. Unlike most of the cases submitted for review (Exhibit A), Respondent engaged in a repeated and continuing pattern of theft of D'Accord's assets from her trusted position as D'Accord's controller. It was not a single incident that could be explained as an isolated aberrant act on her part. Rather, her actions were intentional, premeditated, continuing and damaging to the company.

Honesty and integrity in the management of monies goes to the very heart of one's licensure as a certified public accountant. Respondent has now come clean and this is a very positive start. However, given the very serious nature of her offenses, Respondent needs more time to demonstrate to the Board that her rehabilitation is complete. It would therefore be contrary to the public interest to issue her a probationary license at this time.

VII

The Board certifies the following as its costs and fees incurred in connection with the investigation and prosecution of this case:

1.	Investigation Services by Board - Investigative CPA: 30.5 hours at $55.84/hour; and 10.00 hours at $58.62/hour	$2,289.32
2.	Attorney General Investigation - 50.50 hours at $90/hour - 12.25 hours at $95/hour	5,708.75
		$7,998.07

It is apparent from documents and argument submitted that substantial Attorney General time was billed for work performed by a Deputy who was on temporary assignment to the Licensing Section. Because of his relative inexperience he was required to spend additional research and preparation time during the investigation and drafting stages of the Accusation. It would not be unusual to spend additional time under these circumstances, and this time was appropriately spent and billed to the Board of Accountancy. However, the extra hours attributable to his training should not

be charged to Respondent as an item of the Board's cost recovery. Given the above, it would not be unreasonable to subtract 35 hours from the amount of time billed for Attorney General Investigation, at $90.00/hour or $3,150.00. Accordingly, the reasonable amount to be charged Respondent is adjusted downward to $4,848.07.

DETERMINATION OF ISSUES

I

Cause for disciplinary action exists under Business and Professions Code sections 5100(f) and (j), and Title 16 California Code of Regulations section 60; by reason of the matters set forth in Findings III and IV. Respondent engaged in embezzlement, theft, misappropriation of funds or property by fraudulent means or false pretenses. She further engaged in conduct which constitutes fiscal dishonesty or breach of her fiduciary responsibility. The above constitutes unprofessional conduct as defined under section 5100.

II

Business and Professions Code section 5107 provides for the recovery by the Board of certain costs of investigation and prosecution of the case in specified disciplinary actions, including violations of section 5100(j). A certified copy of the actual costs, or a good faith estimate of costs signed by the Board's Executive Officer, constitutes prima facie evidence of the costs.

The Board's total costs incurred through January 8, 1995 are $7,998.07 per Finding VII. However, by reason of the matters set forth in above, said amount is adjusted downward to $4,848.07.

III

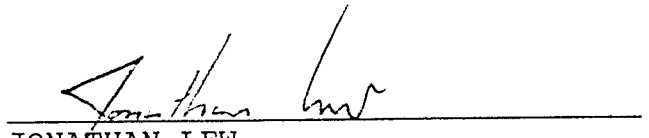
The matters set forth in Findings V and VI were considered in making the following order. It would not be in the public interest to issue Respondent a probationary license at this time.

ORDER

Certified Public Accountant Certificate Number CPA 42518 issued by the Board to Jill Kyle is revoked.

Respondent is further ordered to pay to the Board $4,848.07 as its costs in connection with the investigation and prosecution of this case.

DATED: February 6, 1995



JONATHAN LEW
Administrative Law Judge

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BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JILL KYLE 38429 Kerlin Street Fremont, CA 94536 Certified Public Accountant Certificate No. CPA 42518 Respondent.	No. AC-94-21 ACCUSATION

CAROL SIGMANN charges and alleges:

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

LICENSE INFORMATION

2. On or about May 10, 1985, Certified Public Accountant Certificate No. CPA 42518 was issued to respondent Jill Kyle (hereinafter "respondent"), by the Board, under the laws of the State of California. Said certificate was in full force and effect for the renewal period September 1, 1988, through August 31, 1990. Said certificate was renewed for the renewal period September 1, 1990, through August 31, 1992, but

was renewed on an "inactive" basis, a status which does not permit the licensee to engage in the practice of public accounting in California in the absence of required continuing education.

The certificate was again renewed on an "inactive" basis on September 26, 1992, for the renewal period September 1, 1992, through August 31, 1994. On March 1, 1993, evidence of compliance with continuing education requirements was provided, and the certificate was placed in full force and effect ("active" status) and is renewed until September 1, 1994.

STATUTES, REGULATION, AND PROFESSIONAL STANDARDS

3. At all times material herein, section 5100 of the California Business and Professions Code (hereinafter the "Code") provided in pertinent part that "(a)fter notice and hearing, the Board may revoke, suspend or refuse to renew any permit or certificate" issued by the Board, for unprofessional conduct which includes, but is not limited to, the grounds set forth in said section of the Accountancy Act.

4. Section 5100, subdivision (j) of the Code provides, in pertinent part, that embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses constitutes unprofessional conduct.

5. Section 5100, subdivision (f) of the Code provides, in pertinent part, that willful violation of any provision of the Accountancy Act or any rule or regulation promulgated by the Board under the authority granted under the

Act constitutes unprofessional conduct.

6. Section 60 of Title 16 of the California Code of Regulations (Board Rule 60) states that a licensee shall not engage in conduct which constitutes fiscal dishonesty or breach of fiduciary responsibility of any kind.

7. Section 5107 of the Code provides, in pertinent part, for recovery by the Board of certain costs of investigation and prosecution of the case in specified disciplinary actions, including violations of section 5100(j). A certified copy of the actual costs, or a good faith estimate of costs signed by the Board's Executive Officer, constitute prima facie evidence of the costs.

CAUSES FOR DISCIPLINE

8. Respondent Kyle's certificate is subject to disciplinary action pursuant to Code section 5100(j) for embezzlement, theft, misappropriation of funds . . . or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses in that, while employed from September 8, 1986, through August 26, 1992, as assistant controller, and, later, controller at the San Francisco office of D'Accord, Incorporated ("D'Accord"), she embezzled from her employer an amount in excess of $40,000.00. Respondent admitted her embezzlement in a signed statement on August 27, 1992. On November 11, 1992, respondent supplemented her previous admission and confirmed her agreement to reimburse D'Accord $40,795.14 plus interest and expenses.

9. Incorporating by reference the facts alleged in

paragraph 8 above, respondent's certificate is subject to disciplinary action pursuant to Board Rule 60 in conjunction with Code section 5100(f) in that respondent wilfully engaged in misconduct which constitutes fiscal dishonesty or breach of fiduciary responsibility.

OTHER MATTERS

10. Pursuant to section 5107 of the Code, it is requested that the administrative law judge, as part of the proposed decision in this proceeding, direct respondent to pay to the Board all reasonable costs of investigation and prosecution in this case, including, but not limited to attorneys' fees.

PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that, following said hearing, a decision be issued:

1. Revoking or suspending Certified Public Accountant Certificate Number CPA 42518E heretofore issued to respondent;

2. Awarding the Board costs as provided by Business and Professions Code section 5107; and

3. Taking such other and further action as the Board deems proper.

DATED: July 6, 1994

Carol Sigmann

CAROL SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant