ORIGINAL

DANIEL E. LUNGREN, Attorney General
of the State of California
JEANNE COLLETTE WERNER
Deputy Attorney General, State Bar No. 93170
Department of Justice
2101 Webster Street, 12th Floor
Oakland, California 94612-3049
Telephone: (510) 286-3787

Attorneys for Complainant

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

In the Matter of the Accusation Against: JOHN JOSEPH MOHALLEY P. O. Box 1095 Fintas 51011 Fintas, KUWAIT Certified Public Accountant Certificate No. 20213 Respondent.	NO. AC-95-3 DEFAULT DECISION AND ORDER OF THE BOARD [Gov. Code §11520]

STATUTES

1. California Government Code section 11506 provides, in pertinent part:

"(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a

hearing, but the agency in its discretion may nevertheless grant a hearing. ..."

2. California Government Code section 11520 provides, in pertinent part:

"(a) If the respondent fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; ..."

3. The Board of Accountancy, Department of Consumer Affairs, is authorized to revoke respondent's Certified Public Accountant Certificate pursuant to the following provisions of the California Business and Professions Code:

Section 5100 provides that 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:

(g) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

The Board's regulations, codified in Title 16 of the California Code of Regulations, provide, in Section 65, that a

licensee or a firm of which the licensee is a partner or shareholder shall not express an opinion on or issue a report on review services with respect to financial statements of an enterprise unless the licensee and the licensee's firm are independent with respect to such enterprise.

4. Recovery of Costs: Code Section 5107 provides, in part, that 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 in violation of, *inter alia*, section 5100(i), to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

5. California Business and Professions Code section 118 provides, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an

order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

FINDINGS OF FACT

6. On April 26, 1974, the Board of Accountancy issued Certified Public Accountant Certificate No. 20213 to respondent. Said Certified Public Accountant Certificate was in full force and effect until its expiration on August 1, 1992.

7. In October of 1992, respondent requested that the Board accept his "voluntary resignation" and indicated that he did not intend to return to California in the "foreseeable future." The Board has not acted upon this request.

8. On or about January 10, 1995, Complainant Carol Sigmann, in her official capacity as Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California ("Board"), filed Accusation No. AC-95-3 against John Joseph Mohalley ("respondent"). A copy of the Accusation is attached hereto as Exhibit A and incorporated herein. The Accusation charges respondent with violations of Board Rule 65 in conjunction with Section 5100(f); Section 5100(i); and 5100(g). Paragraph 12 of the Accusation contains matters alleged in aggravation of penalty.

9. On or about January 18, 1995, Victoria Rivera, an employee of the Office of the Attorney General, sent by registered mail a copy of Accusation No. AC-95-3, Statement to Respondent, Government Code sections 11507.5, 11507.6, and

11507.7, the Notice of Defense form, and a Request for Discovery, to respondent's address of record with the Board which was and is P. O. Box 1095 Fintas, 51011 Fintas, KUWAIT. The package was returned to the Office of the Attorney General by the USPS on March 27, 1995, with a notation on the package in what appears to be Arabic script. The USPS employee who delivered the package to the Office of the Attorney General was unable to elaborate on the meaning of the notation. The above-described service was effective as a matter of law pursuant to the provisions of California Government Code section 11505, subdivision (c).

10. Respondent failed to file a Notice of Defense after service upon him of the Accusation and therefore waived his right to a hearing on the merits of Accusation No. AC-95-3.

11. Pursuant to its authority under Government Code section 11520, and based on the evidence before it, the Board finds that the factual allegations contained in the Accusation No. AC-95-3 are true, to wit:

> Respondent John Joseph Mohalley was suspended indefinitely from practice before the Securities and Exchange Commission on September 30, 1993, for improper conduct. The circumstances are that respondent served as Chief Financial Officer of Vintage Group, Inc., from February 1986 through March 1989, and as director from February 1986 until January 1988. Respondent owned 3,367 shares of Vintage's common stock from February 1986 through April 1990, and options to purchase additional shares, which options respondent exercised shortly after auditing Vintage's financial

statements for the fiscal year ended April 30, 1989, and re-auditing Vintage's financial statements for the fiscal years ended April 30, 1988 and April 30, 1987.

While Coopers & Lybrand had performed the audits of Vintage for the 1987 and 1988 fiscal years and had issued qualified opinions, the replacement audit reports for 1987 and 1988 and the 1989 audit report prepared by respondent, intended to supersede those performed by Coopers & Lybrand, contained unqualified opinions. Respondent was unable to produce work papers for the re-audits and the audit.

In preparing the audits in question, respondent falsely represented himself and his accounting firm as "independent" auditors of Vintage Group, Inc.'s financial statements for the fiscal years ended April 30, 1987, 1988 and 1989, notwithstanding the fact that respondent compiled the financial statements that were the subject of the audit, that respondent was an officer of the entity during the relevant financial period, and that respondent was a shareholder of the company during the relevant financial period. Respondent had reason to know that the financial statements and audit report would be included in Vintage's required periodic filings with the SEC and would be disseminated to the public in connection with the company's public offer and sale of securities. Respondent consented to the use of the financial statements and audit report in this manner.

12. In SEC Administrative Proceeding File No. 3-8296,

respondent was barred, effective February 18, 1994, from association with any broker, dealer, municipal securities dealer, investment advisor, or investment company, based upon respondent's violations of federal securities laws, including his willful aiding and abetting of Vintage's failure to comply with Regulation E and resulting violation of Section 5 of the Securities Act of 1933; his willful aiding and abetting of Vintage's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-01 and 13a-13 thereunder, and his willful aiding and abetting of Vintage's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

Further, respondent consented, in Civil Action No. C933540VRW, in United States District Court for the Northern District of California, to the issuance of an order of permanent injunction and to the entry of final judgment thereon by the SEC, enjoining him from future violations of securities laws and barring him from acting as an officer or director of any issuer having a class of securities registered pursuant to Section 12 of the 1934 Act or required to file reports pursuant to Section 15(d) of the 1934 Act.

DETERMINATION OF ISSUES

1. Respondent is subject to discipline in a default proceeding pursuant to section 11520 of the California Government Code by reason of the Findings of Fact 5 through 9 above.

2. Respondent is subject to disciplinary action pursuant to section 5100(i) of the California Business and Professions Code by reason of the fact that respondent falsely represented himself and his accounting firm as independent auditors in the audit report when that was not, in fact, the case, as set forth in Findings of Fact number 10.

3. Respondent is subject to disciplinary action pursuant to section 5100(f) of the California Business and Professions Code on the grounds that he violated Board Rule 65, by reason of the fact that he was not independent in the audit, as set forth in Findings of Fact number 10 above,

4. Respondent is subject to disciplinary action pursuant to section 5100(g) of the California Business and Professions Code by reason of the fact that his right to appear or practice before the SEC was revoked, as set forth in Findings of Fact number 10 above.

5. The Finding of Fact set forth in paragraph 11 is relevant to the penalty to be imposed in this matter.

6. Cause for revocation has been established, separately and severally, based upon Determinations 1, 2, and 3, above, and revocation is based upon each of them, and all of them, and the matters in Determination 4 further support the imposition of this penalty.

///

///

///

ORDER OF THE BOARD OF ACCOUNTANCY

Certified Public Accountant Certificate number 20213, heretofore issued to respondent John Joseph Mohalley, is hereby revoked. Respondent's request that the Board accept the surrender of his license is denied.

An effective date of August 6, 1995, has been assigned to this Order. Pursuant to California Government Code section 11520, subdivision (b), respondent is entitled to make any showing by way of mitigation; however, such showing must be made in writing to the Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, California 95815, prior to the effective date of this decision.

Made this 6th day of July, 1995.

President
Board of Accountancy
Department of Consumer Affairs

03541110-SF94AD1198

DANIEL E. LUNGREN, Attorney General
of the State of California
JEANNE COLLETTE WERNER
Deputy Attorney General, State Bar No. 93170
Department of Justice
2101 Webster Street, 12th Floor
Oakland, California 94612-3049
Telephone: (510) 286-3787

Attorneys for Complainant

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

In the Matter of the Accusation Against: JOHN JOSEPH MOHALLEY P. O. Box 1095 Fintas 51011 Fintas, KUWAIT Certified Public Accountant Certificate No. 20213 Respondent.	NO. AC-95-3 ACCUSATION

Complainant Carol Sigmann, as cause for disciplinary action, alleges:

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

LICENSE INFORMATION

2. On or about April 26, 1974, Certified Public Accountant Certificate No. 20213 was issued by the Board to John Joseph Mohalley ("respondent"), which certificate was in full force and effect until its expiration on August 1, 1992.

In October of 1992, Mr. Mohalley requested that the Board accept his "voluntary resignation" and indicated that he did not intend to return to California in the "foreseeable future." The Board has not acted upon this request.

STATUTES AND REGULATIONS

3. California Business and Professions Code ("Code") Section 5100 provides that 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, one or any combination of the following:

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(g) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.

4. Code Section 5107 provides, in part, that 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 in violation of specific provisions of section 5100 to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are

not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

5. The Board's regulations, codified in Title 16 of the California Code of Regulations, provide, in Section 65, that a licensee or a firm of which the licensee is a partner or shareholder shall not express an opinion on or issue a report on review services with respect to financial statements of an enterprise unless the licensee and the licensee's firm are independent with respect to such enterprise.

6. Under Business and Professions Code section 118(b), the expiration of a license shall not deprive the Board of Accountancy of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 5070.5 provides that an expired permit may be renewed at any time within five years after its expiration upon the fulfillment of the conditions set forth therein.

CAUSES FOR DISCIPLINE

7. Respondent John Joseph Mohalley was suspended indefinitely from practice before the Securities and Exchange Commission on September 30, 1993, for improper conduct. The circumstances are that respondent served as Chief Financial Officer of Vintage Group, Inc., from February 1986 through March 1989, and as director from February 1986 until January 1988. Respondent owned 3,367 shares of Vintage's common stock from

February 1986 through April 1990, and options to purchase additional shares, which options respondent exercised shortly after auditing Vintage's financial statements for the fiscal year ended April 30, 1989, and re-auditing Vintage's financial statements for the fiscal years ended April 30, 1988 and April 30, 1987.

While Coopers & Lybrand had performed the audits of Vintage for the 1987 and 1988 fiscal years and had issued qualified opinions, the replacement audit reports for 1987 and 1988 and the 1989 audit report prepared by respondent, intended to supersede those performed by Coopers & Lybrand, contained unqualified opinions. Respondent was unable to produce work papers for the re-audits and the audit.

8. In preparing the audits in question, respondent falsely represented himself and his accounting firm as "independent" auditors of Vintage Group, Inc.'s financial statements for the fiscal years ended April 30, 1987, 1988 and 1989, notwithstanding the fact that respondent compiled the financial statements that were the subject of the audit, that respondent was an officer of the entity during the relevant financial period, and that respondent was a shareholder of the company during the relevant financial period. Respondent had reason to know that the financial statements and audit report would be included in Vintage's required periodic filings with the SEC and would be disseminated to the public in connection with the company's public offer and sale of securities. Respondent consented to the use of the financial statements and audit report

in this manner.

9. Incorporating herein the allegations in paragraphs 7 and 8, respondent's certificate is subject to discipline under Section 5100(g) in that, in SEC Administrative Proceeding File No. 3-8192, respondent's right to appear or practice before the SEC was revoked, effective September 30, 1993.

The Commission's order was based on, *inter alia*, on the following:

a. Respondent compiled false and misleading quarterly and annual financial statements for Vintage Group, Inc. for the fiscal years 1989 and 1990 that were not prepared in accordance with generally accepted accounting principles and that overstated the net asset value of Vintage's investment portfolio;

b. Respondent falsely represented himself and his accounting firm as the "independent" auditors of Vintage's financial statements for the fiscal year ended April 30, 1989, notwithstanding the fact that he compiled the Vintage financial statements that were the subject of the audit and that he was an officer and shareholder of Vintage during the financial period encompassed by the audit;

c. Respondent failed to perform the audit of Vintage's financial statements for the fiscal year ended April 30, 1989, in accordance with generally accepted auditing standards as represented in his audit report;

d. Respondent knew when he compiled Vintage's financial statements for fiscal years 1989 and 1990 and when he issued his Vintage audit report for fiscal year 1989 that the financial

statements and the audit report would be included in Vintage's periodic filings with the SEC and disseminated to the public in connection with Vintage's public offer and sale of its securities; and

e. Respondent consented to the use of the financial statements and audit report in the manner set forth in d. above.

10. Incorporating herein the allegations in paragraphs 7, 8 and 9, respondent's certificate is subject to discipline under Section 5100(f) in conjunction with Board Rule 65 by reason of the fact that he was not independent in conducting the audit.

11. Incorporating herein the allegations in paragraphs 7, 8 and 9, respondent's certificate is subject to discipline under Section 5100(i) in that respondent falsely represented himself and his accounting firm as independent auditors in the audit report.

12. It is alleged, in aggravation of penalty, that, in SEC Administrative Proceeding File No. 3-8296, respondent was barred, effective February 18, 1994, from association with any broker, dealer, municipal securities dealer, investment advisor, or investment company, based upon respondent's violations of federal securities laws, including his willful aiding and abetting of Vintage's failure to comply with Regulation E and resulting violation of Section 5 of the Securities Act of 1933; his willful aiding and abetting of Vintage's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-01 and 13a-13 thereunder, and his willful aiding and abetting of Vintage's violations of Section 17(a) of the Securities Act,

Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

Further, respondent consented, in Civil Action No. C933540VRW, in United States District Court for the Northern District of California, to the issuance of an order of permanent injunction and to the entry of final judgment thereon by the SEC, enjoining him from future violations of securities laws and barring him from acting as an officer or director of any issuer having a class of securities registered pursuant to Section 12 of the 1934 Act or required to file reports pursuant to Section 15(d) of the 1934 Act.

PRAYER

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

1. Revoking or suspending Certified Public Accountant Certificate Number 20213, heretofore issued to respondent John Joseph Mohalley;
2. Awarding the Board costs as provided by statute; and
3. Taking such other and further action as the Board deems proper.

DATED: January 10, 1995

Carol Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

03541110-SF94AD1198