

BEFORE THE ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

IN THE MATTER OF THE  
COMPLAINT AGAINST:  
JIMMY C KUBINA, CPA  
CERTIFICATE NO. 1979

)  
)  
)  
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)

CASE NO. 17-1

RESPONDENT.

**FINAL ORDER**

THIS CAUSE came to be heard before the Alabama State Board of Public Accountancy ("the Board"), on November 15, 2017, in Tuscaloosa, Alabama. Mr. Jimmy C. Kubina offered a signed Consent Agreement and Waiver. The Consent Agreement was amended, to omit censure, and ACCEPTED by the Board and is incorporated herein by reference.

It is therefore ORDERED, ADJUDGED and DECREED by the Board that the provisions set forth in the aforesaid Consent Agreement are hereby approved, without censure, and that the terms and conditions thereof shall become effective immediately.

DONE this 15th day of November 2017.

ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

CONCUR:

MS. SHEPPARD-HARRIS, MESSRS.,  
COMER, BARRANCO, GRICE, MADISON,  
AND SCHAFFERS

RECUSED:

MR. BLACKMON

ATTEST:



\_\_\_\_\_  
D. Boyd Busby, CPA  
Executive Director  
December 5, 2017

BEFORE THE ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

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THE COMPLAINT AGAINST: )  
JIMMY C. KUBINA, CPA ) CASE NO. 17-1  
CERTIFICATE NO. 1979 )  
RESPONDENT. )

**CONSENT AGREEMENT**

The Alabama State Board of Public Accountancy, ("Board"), having evidence that Jimmy C. Kubina (Respondent) is in violation of the Board's Rule 30-X-6-.05(1) (*Conduct Discreditable to the Public Accounting Profession*), and Respondent, desiring to avoid the necessity of a formal hearing, does hereby enter into this Consent Agreement. By waiver dated October 9/28, 2017 (attached), Respondent acknowledged his understanding that he had a right to a formal hearing in this matter, and by his signature, knowingly waived such right.

**ALLEGATIONS**

The investigative committee of the Board hereby proffers the following charges and factual allegations in support of this Consent Agreement.

1. Respondent, Jimmy C. Kubina, is a Certified Public Accountant in the State of Alabama, and was so registered at all times relevant to this complaint.
2. Respondent is the Resident Manager of Kubina Hayles & Associates, PC.
3. Respondent undertook to prepare an audit report for the year ending December 31, 2014, for submission to the United States Department of Labor in compliance with the Employment Retirement Income Security Act. Respondent subsequently prepared and submitted to the Department of Labor documents comprising an audit report intended to be considered as compliance with this act.

4. The Board made an inquiry to the Respondent on September 15, 2016 requesting that he supply the Board with his latest System Review Report as the Board had been informed that the Respondent's firm had completed an employee benefit plan audit.

5. Respondent supplied a written response on October 14, 2016 offering an explanation that the employee benefit plan audit was issued in October 2015 which was outside of their peer review period that ended June 30, 2015.

6. The Board responded on October 24, 2016 explaining that the employee benefit plan audit which had a year end of December 31, 2014 did fall within the peer review period which was June 30, 2014 through June 30, 2015 and this audit should have been selected for review.

7. Respondent responded in writing on November 22, 2016. In this letter the Respondent verified that the employee benefit plan audit with a year end of December 31, 2014 should have been selected for review and the Respondent omitted informing the peer reviewer that an employee benefit plan engagement was in process during their peer review. The Respondent also stated that the Peer Review Acceptance letter was recalled and a replacement review would be performed that included the employee benefit plan audit.

8. Respondent supplied a replacement Report on a Firm's System of Quality Control, dated May 2, 2017, that included a review of an employee benefit plan with a rating of pass. Respondent also included a peer review acceptance letter dated September 21, 2017.

9. The Respondent, in the original peer review process, failed to report to the peer reviewer that the firm had engaged and was in the process of completing an audit of an employee benefit plan. The omission is conduct discreditable to the public accounting profession.

## STIPULATIONS

10. The Board has acquired and maintains jurisdiction over Respondent by virtue of the licensing and disciplinary provisions governing the Public Accounting Profession, *Code of Alabama 1975, § 34-1-1 et seq.*

11. Respondent has been fully advised of his rights in this matter, including the right to a fair hearing pursuant to the Alabama Administrative Procedure Act, *Code of Alabama 1975, § 41-22-20, et seq.* and *Code of Alabama 1975, § 34-1-1 et seq.*

12. Respondent understands that by submitting to this Consent Agreement he is waiving his rights as set forth herein, thus enabling the Board to adopt and enter this Consent Agreement without further process.

13. Respondent understands that the terms of this Consent Agreement are subject to adoption or rejection by the Board. It is understood that, in deciding whether to enter into the Consent Agreement, the Board may receive oral and/or written communications from its staff, experts, attorney, or others regarding the allegations set forth above. Such communications shall not disqualify the Board, staff, experts, attorney, or others from participating in this or other matters affecting Respondent, including a hearing, if necessary, on the underlying charges, which provide the basis for this Consent Order.

14. If it is determined by the Board or its staff that Respondent has not fully complied with the terms and conditions of this Consent Agreement, Respondent understands that the Board may file a formal complaint and hold a disciplinary hearing against Respondent on the charges or factual allegations recited herein.

## ORDER

Based upon the above referenced Allegations and Stipulations and Waiver attached hereto, Respondent stipulates that the Board may enter the following disciplinary

WAIVER

I have read the Consent Agreement set forth above and understand and agree to the terms and conditions set forth therein. I understand that I am waiving certain rights accorded to me by the Alabama Administrative Procedure Act, *Code of Alabama* 1975, § 41-22-1 et seq., and the Public Accountancy Act of 1973, *Code of Alabama* 1975, § 34-1-1 et seq., including the right to a hearing in this matter, the right to confront and cross examine witnesses who would testify against me, the right to testify and contest the charges and allegations which could be brought against me, the right to petition for reconsideration of the Board's decision and the right to seek review of that decision by the Courts of this State. I understand that by entering into this Consent Agreement I am enabling the Board to issue an order imposing upon me the conditions recited herein without further process or proceedings. I knowingly and intelligently waive all of the above rights and any other rights which may be accorded to me by the Alabama Administrative Procedure Act, *Code of Alabama* 1975, § 41-22-1 et seq., the Public Accountancy Act of 1973, *Code of Alabama* 1975, § 34-1-1 et seq., or other laws. I further understand that, if it is determined by the Board or its staff that I have not fully complied with the terms and conditions of the above Consent Agreement, the Board may file a formal complaint and hold a disciplinary hearing against me based upon the allegations recited in the Consent Agreement.

9-28-17  
DATE  
9-28-17  
DATE

Jimmy C. Kubina  
JIMMY C. KUBINA  
Deze A. Hay  
WITNESS

State of Alabama  
County of Baldwin

Subscribed and sworn to before me, a Notary Public on this 28 day of Sept., 2016.

Hannah B. Ray  
Notary Public  
My Commission Expires: January 7, 2020



order. The Board hereby censures the Respondent. In addition, Respondent agrees to pay within 30 days of the execution of this agreement an administrative fine to the Board by cashier's check or money order in the amount of \$1,000.

**FOR THE BOARD**

10-11-17  
DATE

Billington M. Garrett

BILLINGTON M. GARRETT, Esq.  
Assistant Attorney General, Office of the  
Attorney General

**FOR THE RESPONDENT**

9-28-17  
DATE

Jimmy C. Kubina  
JIMMY C. KUBINA

XXXXXXXXXXXX  
Attorney for the Respondent

State of Alabama

County of Baldwin

Subscribed and sworn to before me, a Notary Public on this 28 day of September 2016.

Hannah B. Ray  
Notary Public

My Commission Expires: January 7, 2020

