

THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

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

11 In the Matter of the Accusation Against:

Case No. AC-2015-58

12 **JAMES MILTON COMSTOCK**
13 **2755 Jefferson Street, #102**
14 **Carlsbad, CA 92008**

A C C U S A T I O N

15 **Certified Public Accountant**
16 **Certificate No. 63952**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about May 13, 1993, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number 63952 to James Milton Comstock (Respondent). The
24 Certified Public Accountant Certificate expires on December 31, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the California Board of Accountancy (CBA),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 5063 of the Code states:

2 (a) A licensee shall report to the board in writing of the occurrence of any of the
3 following events occurring on or after January 1, 1997, within 30 days of the date the
licensee has knowledge of these events:

4 (1) The conviction of the licensee of any of the following:

5 (A) A felony.

6 (B) Any crime related to the qualifications, functions, or duties of a public
7 accountant or certified public accountant, or to acts or activities in the course and
scope of the practice of public accountancy.

8 (C) Any crime involving theft, embezzlement, misappropriation of funds or
9 property, breach of a fiduciary responsibility, or the preparation, publication, or
dissemination of false, fraudulent, or materially misleading financial statements,
10 reports, or information.

11 As used in this section, a conviction includes the initial plea, verdict, or
12 finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court
even though that conviction may not be final or sentence actually imposed until
appeals are exhausted.

13

14 (d) The report required by subdivisions (a), (b), and (c) shall be signed by the
15 licensee and set forth the facts which constitute the reportable event. If the reportable
event involves the action of an administrative agency or court, then the report shall
16 set forth the title of the matter, court or agency name, docket number, and dates of
occurrence of the reportable event.

17 (e) A licensee shall promptly respond to oral or written inquiries from the board
18 concerning the reportable events, including inquiries made by the board in
conjunction with license renewal.

19

20 5. Section 5100 states, in pertinent part:

21 After notice and hearing the board may revoke, suspend, or refuse to renew any
22 permit or certificate granted under Article 4 (commencing with Section 5070) and
Article 5 (commencing with Section 5080), or may censure the holder of that permit
23 or certificate for unprofessional conduct that includes, but is not limited to, one or any
combination of the following causes:

24 (a) Conviction of any crime substantially related to the qualifications, functions and
25 duties of a certified public accountant or a public accountant.

26

27 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the
28 same or different engagements, for the same or different clients, or any combination
of engagements or clients, each resulting in a violation of applicable professional
standards that indicate a lack of competency in the practice of public accountancy or
in the performance of the bookkeeping operations described in Section 5052.

.....
1 (i) Fiscal dishonesty or breach of fiduciary responsibility of any
2 kind.
3

4 (k) Embezzlement, theft, misappropriation of funds or property, or
5 obtaining money, property, or other valuable consideration by
6 fraudulent means or false pretenses.

6. Section 5109 states:

7 The expiration, cancellation, forfeiture, or suspension of a license, practice privilege,
8 or other authority to practice public accountancy by operation of law or by order or
9 decision of the board or a court of law, the placement of a license on a retired status,
10 or the voluntary surrender of a license by a licensee shall not deprive the board of
11 jurisdiction to commence or proceed with any investigation of or action or
12 disciplinary proceeding against the licensee, or to render a decision suspending or
13 revoking the license.

7. Section 5106 states:

11 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
12 deemed to be a conviction within the meaning of this article. The record of the
13 conviction shall be conclusive evidence thereof. The board may order the certificate
14 or permit suspended or revoked, or may decline to issue a certificate or permit, when
15 the time for appeal has elapsed, or the judgment of conviction has been affirmed on
16 appeal or when an order granting probation is made, suspending the imposition of
17 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
18 the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
19 of not guilty, or setting aside the verdict of guilty or dismissing the accusation,
20 information or indictment.

8. Code section 490 states:

18 (a) In addition to any other action that a board is permitted to take against a licensee,
19 a board may suspend or revoke a license on the ground that the licensee has been
20 convicted of a crime, if the crime is substantially related to the qualifications,
21 functions, or duties of the business or profession for which the license was issued.

21 (b) Notwithstanding any other provision of law, a board may exercise any authority to
22 discipline a licensee for conviction of a crime that is independent of the authority
23 granted under subdivision (a) only if the crime is substantially related to the
24 qualifications, functions, or duties of the business or profession for which the
25 licensee's license was issued.

24 (c) A conviction within the meaning of this section means a plea or verdict of guilty
25 or a conviction following a plea of nolo contendere. An action that a board is
26 permitted to take following the establishment of a conviction may be taken when the
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on
28 appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has
been made unclear by the holding in Petropoulos v. Department of Real Estate (2006)

1 142 Cal.App.4th 554, and that the holding in that case has placed a significant
2 number of statutes and regulations in question, resulting in potential harm to the
3 consumers of California from licensees who have been convicted of crimes.
4 Therefore, the Legislature finds and declares that this section establishes an
5 independent basis for a board to impose discipline upon a licensee, and that the
6 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
7 constitute a change to, but rather are declaratory of, existing law.

8 9. Code section 493 states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a board
10 within the department pursuant to law to deny an application for a license or to
11 suspend or revoke a license or otherwise take disciplinary action against a person who
12 holds a license, upon the ground that the applicant or the licensee has been convicted
13 of a crime substantially related to the qualifications, functions, and duties of the
14 licensee in question, the record of conviction of the crime shall be conclusive
15 evidence of the fact that the conviction occurred, but only of that fact, and the board
16 may inquire into the circumstances surrounding the commission of the crime in order
17 to fix the degree of discipline or to determine if the conviction is substantially related
18 to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, "license" includes "certificate," "permit," "authority," and
20 registration."

21 10. Code section 5116 provides that the CBA may order any licensee to pay an
22 administrative penalty as part of any disciplinary proceeding.

23 REGULATIONS

24 11. California Code of Regulations, title 16, section 99 states:

25 For the purposes of denial, suspension, or revocation of a certificate or permit
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and
27 Professions Code, a crime or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a certified public accountant or public accountant
if to a substantial degree it evidences present or potential unfitness of a certified
public accountant or public accountant to perform the functions authorized by his or
her certificate or permit in a manner consistent with the public health, safety, or
welfare. Such crimes or acts shall include but not be limited to those involving the
following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

(b) Fraud or deceit in obtaining a certified public accountant's certificate or a public
accountant's permit under Chapter 1, Division III of the Business and Professions
Code;

(c) Gross negligence in the practice of public accountancy or in the performance of
the bookkeeping operations described in Section 5052 of the code;

(d) Violation of any of the provisions of Chapter 1, Division III of the Business and
Professions Code or willful violation of any rule or regulation of the board.

1 **COST RECOVERY**

2 12. Section 5107(a) of the Code states:

3 The executive officer of the board may request the administrative law judge, as part
4 of the proposed decision in a disciplinary proceeding, to direct any holder of a permit
5 or certificate found to have committed a violation or violations of this chapter to pay
6 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.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Criminal Conviction)**

9 13. Respondent is subject to disciplinary action under sections 490 and 5100, subdivision
10 (a), in that he was convicted of a crime substantially related to the qualifications, functions and
11 duties of a certified public accountant or a public accountant. The circumstances are as follows:

12 a. On or about April 17, 2014, in the case of *People v. James Milton Comstock*
13 (Superior Court of California, County of San Diego, North County Division, Case No.
14 CN326721), the court convicted Respondent on his plea of guilty to two counts of violating Penal
15 Code section 506 (fraudulent appropriation by an administrator, executor or trustee), with an
16 enhancement charge under Penal Code section 12022.6(a)(2) for causing aggregate losses
17 exceeding \$200,000, which are felonies and crimes that are substantially related to the
18 qualifications, functions, or duties of a certified public accountant. Two other felony counts for
19 grand theft were dismissed pursuant to a plea bargain.

20 b. As a result of the conviction, Respondent was sentenced on July 18, 2014, to a total
21 term of three (3) years formal probation, 180 days of commitment stayed pending successful
22 completion of probation, as well as to comply with other terms, fees and fines. Respondent was
23 credited for 61 days of incarceration. At the time of Respondent's sentencing, Respondent had
24 made full restitution of all losses to the victim.

25 c. The facts and circumstances that led to the conviction are that on or about and
26 between June 17, 2009 and October 19, 2010, and, again, on or about and between November 2,
27 2010 and January 8, 2013, Respondent did take and steal money, and fraudulently appropriate
28 and secrete with the intent to appropriate the property of Artsplash, a non-profit corporation, in an

1 amount in excess of \$200,000. At the time of the theft, Respondent was the treasurer of the
2 Artsplash.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud)**

5 14. Respondent is subject to disciplinary action under section 5100, subdivision (c), in
6 that he engaged in conduct constituting fraud and dishonesty towards his client and employer, as
7 set forth in paragraph 13, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Fiscal Dishonesty)**

10 15. Respondent is subject to disciplinary action under section 5100, subdivision (i), in
11 that he engaged in conduct constituting fiscal dishonesty or breach of fiduciary responsibility
12 towards his client and employer, as set forth in paragraph 13, above.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Embezzlement; Theft)**

15 16. Respondent is subject to disciplinary action under section 5100, subdivision (k), in
16 that he engaged in conduct constituting embezzlement, theft, misappropriation of funds or
17 property, or obtaining money, property, or other valuable consideration by fraudulent means or
18 false pretenses, as set forth in paragraph 13, above.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Failure to Report Conviction)**

21 17. Respondent has subjected his license to disciplinary action under section 5100,
22 subdivision (g) of the Code when he failed to report his conviction, as set forth in paragraph 13,
23 within 30 days of its occurrence, as required by section 5063.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the California Board of Accountancy issue a decision:

27 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
28 Accountant Certificate Number 63952, issued to James Milton Comstock;

- 1 2. Ordering James Milton Comstock to pay the California Board of Accountancy the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 5107;
4 3. Ordering James Milton Comstock to pay the California Board of Accountancy an
5 administrative penalty pursuant to Business and Professions Code section 5116; and
6 4. Taking such other and further action as deemed necessary and proper.
7

8
9 DATED:

8/26/2015

Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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