

**PROCEEDINGS BEFORE THE
WASHINGTON STATE BOARD OF ACCOUNTANCY**

In the Matter of the Certified Public
Accountant (CPA) Certificate and/or
Licenses to Practice Public Accounting of:

David Richard Dance
License No. 05268

Respondent.

No. ACB-1360

**FINDINGS OF FACT, STIPULATED
CONCLUSIONS OF LAW, AND
AGREED ORDER**

For the purpose of resolving the claims asserted against David Richard Dance
(Respondent), the Washington State Board of Accountancy (Board) and Respondent enter into
the following Findings of Fact, Stipulated Conclusions of Law, and Agreed Order:

I. FINDINGS OF FACT

Section 1.1 Procedural Facts

- 1.1.1 David Richard Dance, Respondent herein, held a Certified Public Accountant (CPA) certificate and individual license (No. 05268) to practice as a CPA in the state of Washington.
- 1.1.2 On March 21, 2013, the Board issued a Statement of Charges, a Temporary Cease and Desist Order, and a Notice of Opportunity to Defend to Respondent alleging violations of Chapter 18.04 RCW and Chapter 19.310 RCW.
- 1.1.3 Respondent's CPA license expired on June 30, 2013. On January 6, 2013, Respondent submitted an application for renewal which the Board denied pending resolution of this

Findings of Fact, Stipulated Conclusions of Law, and Agreed Order

David Richard Dance

case. In a letter received by the Board on October 30, 2013, Respondent requested a brief adjudicate proceeding to review the denial of his application. The Board opted to hold a full hearing on the matter to address the case in its entirety. Respondent requested a stay of the hearing, which was approved by the presiding officer.

- 1.1.4 Respondent understands that he has the right to defend against the charges by demanding a hearing and presenting evidence on his own behalf and he voluntarily waives that right and all other rights which may be accorded by the Administrative Procedures Act, chapter 34.05 RCW, and the laws of Washington, including the right to petition the courts for judicial review.
- 1.1.5 Respondent wishes to expedite the resolution of this matter by means of this Findings of Fact, Stipulated Conclusions of Law, and Agreed Order .
- 1.1.6 Respondent understands that the terms of this Findings of Fact, Stipulated Conclusions of Law, and Agreed Order are not binding unless approved by the Board and fully executed.
- 1.1.7 Should this Findings of Fact, Stipulated Conclusions of Law, and Agreed Order be rejected by the Board and the case ultimately goes to hearing, Respondent waives any objection to the participation of any members of the Board at a hearing on this matter, other than the consulting Board member in this proceeding.

Section 1.2. Substantive Facts

- 1.2.1 Respondent's CPA license provides him with unique qualifications to operate a business as an "exchange facilitator" who facilitates exchanges of like-kind property under Internal Revenue Code (IRC) Section 1031 and RCW 19.310.090(1). At all times material hereto, Respondent operated "1031 ECI LLC" dba 1031 Exchange Coordinators ("ECI"), a Washington State limited liability company located in Bellevue, Washington. Respondent is the president and registered agent for ECI. ECI was formed March 1,

2005, and is registered through March 31, 2015, with the Washington Secretary of State under Unified Business Identifier (UBI) number 602-477-180.

1.2.2 Respondent does not admit the accuracy of the charges alleged by the Board. However, for the purpose of resolving these charges, Respondent acknowledges the Board would present evidence of the following allegations if this case were to go to a hearing.:

(a) Allegations Related to the Asmussen Complaint

- 1.2.3 In December 2010, Howard and Marilyn Asmussen ("Asmussen") entered into a real estate purchase and sale agreement for the sale of certain real property located in Douglas County, Washington. As part of the transaction, Asmussen sought to sell the Douglas County property and purchase other properties as part of a tax-deferred exchange under Internal Revenue Code Section 1031 Like-Kind Exchanges ("IRC§1031").
- 1.2.4 Asmussen retained the services of Respondent to act as an exchange facilitator as defined in RCW 19.310.010(4)(a)(i)(A) to facilitate their IRC 1031 Like-Kind Exchange of property. Asmussen was a "client" of Respondent as defined under the laws governing both Exchange Facilitators, RCW 19.310.010(2), and Board of Accountancy, WAC 4-30-010(10).
- 1.2.5 On or about March 3, 2011, Respondent entered into a 1031 Exchange Coordinator Facilitator Agreement ("Agreement") with Asmussen. A redacted copy of the Facilitator Agreement, omitting only social security and/or tax identification numbers, is incorporated by this reference.
- 1.2.6 On March 16, 2011, Respondent advised Asmussen that the official recording of the transfer of the relinquished Douglas County, Washington property was March 15, 2011.

- On March 16, 2011, the sale proceeds totaling \$2,079,272.44 were transferred into an ECI account at a Bancorp Bank in Wilmington, Delaware.
- 1.2.7 Respondent identified replacement properties located in Washington, Utah, and Arizona that would qualify for Asmussen as an exchange under IRC§1031. On April 29, 2011, Asmussen indicated his intent to purchase three of the seven replacement properties identified by Respondent. Asmussen rejected four of the replacement properties Respondent identified and suggested.
- 1.2.8 In March 2011 and May 2011, Respondent acquired, closed, and transferred replacement properties that Asmussen had previously identified with \$1,242,366.32 of the \$2,079,272.44 transferred to ECI in March 2011.
- 1.2.9 At some point thereafter, Respondent removed the remaining exchange \$836,906.12 from ECI's account at the Bancorp Bank in Wilmington, Delaware and invested or deposited the proceeds into various accounts.
- 1.2.10 A fee of ten percent (10%) was associated with Respondent and Key Title and Escrow ("Key Title"), a Virginia title company. Respondent utilized some portion of the remaining \$836,906.12 in an investment with Key Title.
- 1.2.11 On or about June 14, 2011, Asmussen advised Respondent that he did not want to make anymore 1031 like-kind exchange purchases and made a demand for the \$836,906.12 plus interest. On June 15, 2011, Respondent advised Asmussen that under Treas. Reg. §1.1031(k)-1(f) the excess funds could not be returned to Asmussen until the end of the exchange period. Respondent advised Asmussen that the funds would be available to him on September 12, 2011.
- 1.2.12 On September 12, 2011, Asmussen personally met with Respondent at ECI's office in Bellevue, Washington in order to obtain the \$836,906.12 balance. Respondent advised

Asmussen that the funds were not available and was unable to disburse the funds to Asmussen. Respondent never returned the \$836,906.12.

1.2.13 Respondent explained that an imposter falsified and altered wire instruction to Key Title such that the funds were routed to an incorrect account. Respondent alleges that he had been the victim of a fraud perpetrated by Brett A. Amendola and Jerry McKerac, whereby Amendola diverted funds transferred by Respondent to his own use by posing as an escrow attorney thereby leading Respondent to wire funds to an account controlled by Amendola when Respondent thought he was wiring funds to an escrow account. Respondent also represented to Asmussen that the funds were being used as part of a loan transaction in Las Vegas, Nevada. The loan transaction was set to close during the period September 19 through September 29, 2011. Respondent stated the funds were being held by a lender in Las Vegas, Nevada, as a prequalified deposit with other funds, and if loan closing occurred as planned, all of the funds would be returned, plus "reimbursements." Neither the funds nor the reimbursements were ever provided to Asmussen.

(b) Allegations Related to the Van Peursems Complaint

1.2.14 In February 2011, Dean and Gladys Van Peurseum ("Van Peursems") engaged ECI, owned and operated by Respondent.

1.2.15 On March 31, 2011, the Van Peursems transferred \$354,527.78 to ECI, which were the proceeds from a farmland sale that closed in February 2011. \$200,000 of the funds were to be invested in KBR Block 1949 LLC (KBR), which was a real estate investment

1.2.16 On May 25, 2011, Respondent acknowledged that ECI had received the \$354,527.78, and utilized \$200,000 in real estate investments as authorized by Gladys Van Peurseum. Respondent described in an email an agreement to pay five percent (5%) on the

remaining \$154,527.78. The stated payments were \$643.87 per month, amounting to \$7,736.30 annually.

- 1.2.17 Between June 2011 through December 2011, Respondent made the agreed upon payments, with some delays. No payments were made after December 2011.
- 1.2.18 On March 21, 2012, the Van Peursems retained a lawyer to reclaim the remaining \$154,527.78 held by ECI. Respondent stated the funds were lost in the fraudulent wire transfer described in paragraph 1.2.13.
- 1.2.19 On September 12, 2013, Respondent informed the Van Peursems that the investment in KBR was a non-performing asset, and the original investment was unrecoverable.

II. STIPULATED CONCLUSIONS OF LAW

- 2.1 The Board has jurisdiction over Respondent and the subject matter of this proceeding.
- 2.2 The failure of Respondent to return Asumussen's funds as described herein constitutes evidence which if proven at a hearing would amount to violations of WAC 4-30-040, and RCW 19.310.100(9) and (10); and is grounds for discipline under RCW 18.04.295(2) and (4). Respondent neither admits nor denies these violations.
- 2.3 Respondent's acts in paragraphs 1.2.1 through 1.2.13 constitute evidence which if proven at a hearing would amount to violations of WAC 4-30-048, WAC 4-30-052, and WAC 4-30-142. WAC 4-30-048 requires CPAs to exercise due care and professional judgment in order to comply with the rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken, including the Professional Code of Conduct issued by the AICPA. WAC 4-30-052 prohibits CPAs from committing acts reflecting adversely on their fitness to represent themselves as CPAs. WAC 4-30-142 identifies dishonesty, fraud, or negligence while representing oneself as a CPA and

violation of one or more of the rules of professional conduct as bases for the Board to impose discipline. Respondent neither admits nor denies these violations.

- 2.4 Respondent's acts in paragraphs 1.2.14 through 1.2.19 constitute evidence which if proven at hearing would amount to violations of WAC 4-30-040 that requires CPAs to remain independent. Self-dealing as a custodian constitutes a conflict of interest, as provided for by WAC 4-30-142(9).
- 2.5 Respondent neither admits nor denies these violations.

III. AGREED ORDER

Based on the preceding Findings of Fact and Stipulated Conclusions of Law, the Board and

Respondent agree to the terms of this Agreed Order as follows:

- 3.1 Respondent consents to the entry of this Agreed Order and has waived any right to a hearing on either the statement of charges or the denial of license renewal.
- 3.2 Respondent shall not hold funds in any fiduciary capacity for a period of ten (10) years from the effective date of this Order.
- 3.3 The Board hereby refuses to renew Respondent's CPA license which is currently lapsed, and Respondent voluntarily surrenders his right to renew his license for a period of ten (10) years.
- 3.4 After this 10 year period, Respondent is eligible to apply for a CPA license in accordance with the requirements of WAC 4-30-126. Prior to application, Respondent must also:
- 3.4.1 Pay a fine to the Board in the amount of fifteen thousand dollars (\$15,000) at the time of application.

In consideration for the delay in the payment of a fine (as applicable), Respondent stipulates that he is currently in a financially distressed status and has negligible and/or negative net worth.

- 3.4.2 Retake and pass the CPA examination.
- 3.5 Respondent agrees he will not apply for a license as a CPA in the State of Washington, or any other jurisdiction or within any other state, during the ongoing 10 year period described in paragraph 3.4.
- 3.6 Respondent agrees that all public records requests in any way connected to this case have been duly and timely satisfied.
- 3.7 At the execution of this Agreed Order by the Parties, the Executive Director will withdraw the Statement of Charges and the Cease and Desist Order against Respondent, and the Board will publish the terms of this Findings of Fact, Stipulated Conclusions of Law and Agreed Order.

I, David Richard Dance, certify that I have read this Findings of Fact, Stipulated Conclusions of Law and Agreed Order in its entirety. I fully understand and agree to all of it, and understand that it may be presented to the Board without my appearance. If the Board accepts the Findings of Fact, Stipulated Conclusions of Law, and Agreed Order, I understand that I will receive a signed copy.

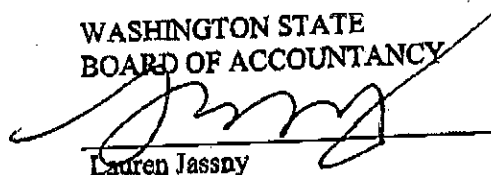
DATED this 2nd day of March, 2015.

David Richard Dance
David Richard Dance
Respondent

The Board accepts and enters this Findings of Fact, Stipulated Conclusions of Law and Agreed Order .

DATED this 11th day of March, 2015.

WASHINGTON STATE
BOARD OF ACCOUNTANCY



Lauren Jassny
Vice Chair