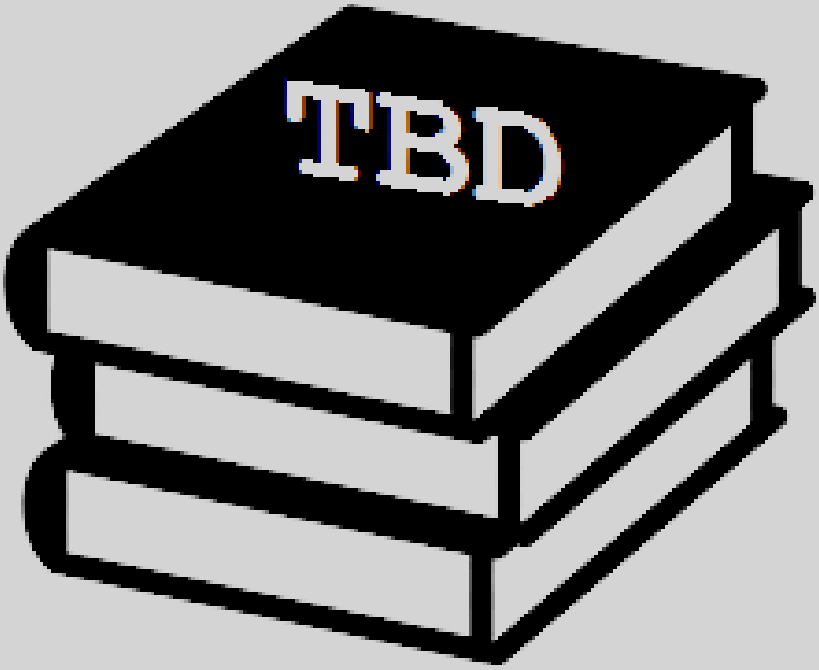
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DIVISION OF ADMINISTRATIVE HEARINGS

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT
301 Martin Luther King, Jr., Blvd.
Tallahassee, Florida 32399-1850
(850) 488-6151

RALPH A. BUCHMAN,

Petitioner,

vs.

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,
BOARD OF ACCOUNTANCY,

Mr. Buchman
_____/

DCA CASE No._____

Related to:
DOAH Case Nos.
01-2329PL
01-2507PL
DBPR Case No.
97-01770

SBK

PETITION FOR WRIT OF CERTIORARI AND/OR
PETITION FOR REVIEW OF NON-FINAL AGENCY ACTION

ORDER ON MOTION TO COMPEL CONSENT
TO RELEASE RECORDS FROM THIRD PARTY
RENDERED SEPTEMBER 27, 2001 BY HONORABLE SUSAN B.
KIRKLAND, DIVISION OF ADMINISTRATIVE HEARINGS

APPENDIX

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY, Petitioner, vs. RALPH A. BUCHMAN, Respondent.	)	Case Nos. 01-2329PL 01-2507PL

ORDER ON MOTION TO COMPEL
CONSENT TO RELEASE RECORDS FROM THIRD PARTY

Petitioner filed Petitioner's Motion to Compel Consent to Release Records from Third Party, seeking an order compelling Respondent to sign a Consent Directive and complete IRS form 8821, Tax Information Authorization. Respondent has filed a response to the motion. The motion was heard by telephonic conference. The parties were requested to file memoranda on the issue of whether Respondent had waived his Fifth Amendment privilege when he provided Petitioner with documents concerning his tax returns during Petitioner's investigation of the consent order, between Respondent and the Internal Revenue Service (IRS) concerning tax deficiencies for the taxable years 1988, 1989, and 1990. The parties filed memoranda.

On December 26, 1996, Petitioner received a copy of a Decision of the United States Tax Court involving Respondent and his wife. The Decision had been sent by the IRS. Respondent was advised by letter dated February 26, 1997, that a copy of the Decision had been received by Petitioner and that Petitioner was required to conduct an investigation. Respondent was given an opportunity to file a written response. Respondent's attorney filed a written response dated February 20, 1997, and an additional response dated February 27, 1997.

The Probable Cause Panel (PCP) met on November 10, 1997, to review the case. An attorney representing Respondent attended

the meeting. During the meeting, Respondent's attorney stated the following:

> The real issue is whether or not the underlying facts evidence any kind of a fraudulent activity or other procedures or processes in the preparing of his own return and his wife's return at the time that would warrant disciplinary action.
>
> My suggestion to you [PCP] is this, that it would be best to have this reviewed by a consultant to the Board who could look through the materials to determine if in fact the underlying situation evidences a violation or not. What our position is is (sic) that this was an plea of convenience for economic issues and not an admission of any fraudulent or wrongdoing act or conduct. Unfortunately the matters that are material to that issue are not before you at this time.
>
> Mr. Buchman indicated that he would cooperate rightfully with an investigator who might look through those materials and be better able to advise you as to whether or not there would be a basis for entering some kind of a disciplinary action.

An appointment was made through Respondent's attorney for Respondent to meet with Petitioner's investigating officer concerning the issues in the consent order. Thomas E. Reilly, the investigating officer, met with Respondent who provided Mr. Reilly with the documents in his possession concerning the tax years at issue, which included tax information pertaining his wife. Mr. Reilly requested copies of the general ledger and/or trial balance for each of the tax years in question. Respondent advised that he had supplied those documents to the IRS. He had experienced a hard-disk failure on his computer, which contained the general ledger and trial balance information, and he had lost the information. Thus, now the information concerning the general ledger and trial balance is to be found only in the files of the IRS.

Mr. Reilly advised the PCP at its meeting on December 13, 1999, that without the general ledger and trial balance, it was difficult to come to any conclusion. Mr. Reilly had attempted to obtain information from the IRS, but without success.

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The PCP agreed to find probable cause, and an Administrative Complaint was filed against Respondent on January 18, 2000, alleging that Respondent violated Section 473.323(1)(k), Florida Statutes.

The parties attempted to reach a settlement. The case was again presented to the PCP on October 27, 2000, for reconsideration. The PCP voted not to close the case until further efforts had been made to get the information from the IRS, which Mr. Buchman no longer had in his possession.

The parties again attempted to reach a settlement. The Settlement Stipulation was presented to the Board of Accountancy (Board) on January 29, 2001. The Board did not approve the Settlement Stipulation and agreed to table the case until the next meeting of the board.

The Settlement Stipulation was not approved, and the parties moved forward with the administrative hearing process. Petitioner filed a request to produce, requesting Respondent to produce the documents in the IRS' files. Respondent objected to the request to produce.

Petitioner attempted to subpoena records from the IRS, but the IRS declined to provide the records pursuant to a subpoena. The IRS indicated that documents could be obtained if there was an executed consent form from the taxpayer.

Petitioner now seeks an order requiring Respondent to sign a consent form, which would authorize the IRS to release the tax records of Respondent for the tax years 1988, 1989, and 1990. Petitioner argues that the signing of the consent form would not be a waiver of Respondent's Fifth Amendment right to remain silent.

Respondent argues that requiring him to execute a consent form violates his Fifth Amendment right to remain silent, his privilege of confidentiality, and the privacy rights of a non-party, Marie C. Buchman.

In Vining v. Real Estate Commission, 281 So. 2d 487 (Fla. 1973) and Koezerowitz v. Florida Real Estate Commission, 289 So. 2d 391 (Fla. 1974), the Florida Supreme Court held that for proceedings "penal in nature", a licensee can not be compelled to respond to the charges brought against him and has a constitutional right to remain silent. The instant

administrative proceeding is "penal in nature." Thus, Respondent's Fifth Amendment right to remain silent is applicable.

The Fifth Amendment right to remain silent can be waived "by the giving of voluntary testimony, the failing to assert the privilege or the taking of the witness stand by a defendant in his own behalf." Hargis v. Florida Real Estate Commission, 174 So. 2d 419 (Fla. 2d DCA 1965). Respondent, through his attorney, at the November 10, 1997, meeting of the PPC waived his right to assert the Fifth Amendment privilege against producing his income tax records for the years 1988, 1989, and 1990 by agreeing to produce the records for Petitioner's consultant. At the time that he agreed to produce the records, Respondent was aware that Petitioner was investigating whether he had committed fraud in the preparation of the joint income tax of Respondent and his wife. Respondent actually produced the records that he had in his possession to Petitioner. He had other records applicable to the tax returns which had been destroyed by a computer failure. However, copies of the records had been furnished to the IRS prior to the computer malfunction. Based on Respondent's attorney's statement at the PPC meeting on November 10, 1997, it appears that but for the loss of the records by the computer failure, those records would have been given to Petitioner's investigator.

The records that the IRS has concerning Respondent's tax returns for 1988, 1989, and 1990, are deemed confidential by Title 26 United States Code, Section 6103(a). The IRS will release the information upon a signed authorization from the taxpayer. 26 U.S.C. Section 6103(c). Petitioner is requesting that Respondent be ordered to execute a consent form, authorizing the IRS to release tax returns and information concerning Respondent for the years 1988, 1989, and 1990.

As to Respondent's argument the records that should not be produced because they are confidential, Respondent has waived the confidentiality of the records by disclosing the tax records in his possession to Petitioner. However, the IRS will not release the documents without an executed consent authorization from Respondent.

Rule 28-106.206, Florida Administrative Code, provides that parties in an administrative proceeding may obtain discovery pursuant to Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Rule 1.350, Florida Rules of Civil Procedure, provides that a party may request any other party to produce

documents that are in the "possession, custody, or control, of the party to whom the request is directed." Obviously Respondent has control over the release of his tax records from the IRS, because without the consent authorization from Respondent, the IRS had indicated that it will not release the documents pursuant to a subpoena.

In Johnston v. Donnelly, 581 So. 2d 909, 910 (Fla. 2d DCA 1991), the court held that compelling a patient to sign a written authorization to obtain medical records from Canadian physicians is not "one of the methods of discovery recognized in the civil rules." The court stated that the party seeking the medical records should have made a request to produce pursuant to Rule 1.350, Florida Rules of Civil Procedure, requesting that the party produce his medical records. Since the tax records are within control of Respondent, he should be required to produce the records pursuant to a request to produce.

In its Motion to Compel Consent to Release Records from Third Party, Petitioner states that it served Respondent with Petitioner's First Request for Production of Documents on June 6, 2001. In its third request, Petitioner asked Respondent to provide the following:

> A copy of any and all documents in the possession of the Internal Revenue Service regarding your income tax returns and investigation of said returns for the tax years, 1988, 1989, and/or 1990, including, but not limited to, the penalty file and the examination file relative to the investigation.

Respondent filed a response on July 6, 2001. In its response to the third request, Respondent stated that he objected to producing the documents on the basis of the Fifth Amendment right to remain silent and an invasion of the privacy of a non-party, Marie Buchman. Respondent also stated:

> In addition to the above; objection seeks documents in the possession of a third person who is not a party to this action and who is not an employee or agent of the Respondent. Additionally, under Federal law the documents sought are confidential and privileged and relate to information concerning a third party, Marie Buchman, who

is not a party to his action and for whom there is an independent right of privacy with respect to the requested documents.

Petitioner has sought the tax records at issue pursuant to Rule 1.350, Florida Rules of Civil Procedure.

Title 26 U.S.C. Section 6103(e)(1)(B) provides that in the case of a jointly filed income tax return either taxpayer with respect to whom the return is filed may consent to the inspection or disclosure of the tax records and information. Respondent and his wife filed joint returns. Thus, Respondent may have the IRS release the tax records and information pertaining to the jointly filed return without the consent of his now ex-wife.

Respondent argues that requiring the production of the income tax records from the IRS is prohibited by the privacy rights of Marie Buchman, Respondent's ex-wife with whom he filed joint tax returns in 1988, 1989, and 1990. In determining whether it is appropriate to require the release of financial records of a non-party, the privacy interests of the non-party must be weighed against the interests to be served by granting or denying the request to produce the financial documents. "Thus, the party seeking the discovery of confidential information must make a showing of necessity which outweighs the countervailing interest in maintaining the confidentiality of such information." Higgs v. Kampground of America, 526 So. 2d 980, 981 (Fla. 3rd DCA 1988).

Petitioner has shown an exceptional necessity for requiring the tax information and records of the joint returns of Respondent and his ex-wife. The materials which Petitioner seeks are relevant and necessary to the issues in this proceeding. Because of Respondent's computer malfunction some of the materials which are in the possession of the IRS can no longer be obtained from another source. Petitioner has a responsibility to protect the public from dishonest and unqualified accountants and to discipline accountants for violations of Chapter 473, Florida Statutes.

The Division of Administrative Hearings (Division) does not have the authority to compel Respondent to execute a consent form for the IRS to disclose the tax records and information at issue; however, the Division does have the authority pursuant to Rule 28-106.206, Florida Administrative Code, to "issue appropriate orders to effectuate the purposes of discovery and

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to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt." It is

ORDERED that Respondent shall produce the documents requested in the third request of Petitioner's First Request for Production of Documents on or before October 19, 2001.

DONE AND ORDERED this 27th day of September, 2001, in Tallahassee, Leon County, Florida.

Susan B. Kirkland

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of September, 2001.

COPIES FURNISHED:

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and Professional Regulation
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201 East Kennedy Boulevard
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Tampa, Florida 33602

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

RESPONDENT'S MOTION FOR STAY OF ORDER ON MOTION TO COMPEL CONSENT TO RELEASE RECORDS FROM THIRD PARTY

COMES NOW, the Respondent, RALPH BUCHMAN, C.P.A., by and through undersigned counsel and pursuant to Rule 9.190, Florida Rules of Appellate Procedure, requests that this Administrative Law Judge Stay the Order on Petitioner's Motion to Compel Consent to Release Records from Third Party pending appeal. As grounds for his request, Respondent would state:

1. On September 27, 2001, this Administrative Law Judge issued an Order requiring the Respondent to produce to Petitioner the documents requested in paragraph 3 of Petitioner's First Request for Production of Documents by on or before October 19, 2001.

2. Respondent intends to file an appeal of the September 27, 2001 Order and shall do so prior to the date set for compliance or on or before October 19, 2001.

3. Requiring production of the documents sought to be produced under the Order, in the absence of a stay, would unfairly prejudice the Respondent and would amount to a "cat-out-of-the bag" situation where privileged and/or confidential documents are furnished to the other party

before the appeal could be accomplished. There would be no prejudice to the Petitioner by granting Respondent's request.

4. The documents required to be produced, if in fact they exist, are in the hands of a Third Party, the Internal Revenue Service. There is no information known to the parties that the Internal Revenue Service is about to destroy documents encompassed by this Order or would otherwise render them inaccessible during the pendency of any appeal.

5. A formal hearing has not been re-scheduled and this action has been pending with the Petitioner since on or before January 24, 2000 or as early as December 1996 when the investigation first began.

6. A stay of the Order is necessary to prevent undue harm from inuring to the Respondent during the pendency of the appeal.

7. Respondent contacted counsel for the Petitioner regarding this Motion who indicated that he was opposed to the Motion.

WHEREFORE, Respondent requests that a Stay of the Order be granted and with such other such reasonable conditions imposed as deemed necessary by this Administrative Law Judge.

Respectfully submitted,

JON M. PELLETT
Florida Bar Id # 0050679
BARR, MURMAN, TONELLI,
SLOTHER, & SLEET
201 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 209-0214
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. mail, postage prepaid, and facsimile to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and in lieu of original filing, one copy has been furnished to the Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 by telephone facsimile at (850) 921-6847, this October 1, 2001.

Jon M. Pellett

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

RALPH BUCHMAN,

Respondent.
_____/

DOAH CASE NOS. 01-2507PL
01-2329PL
DBPR CASE NO. 97-01770

NOTICE OF LATE FILING OF AFFIDAVIT FOR CONSIDERATION WITH PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL CONSENT TO RELEASE RECORDS

COMES NOW, Petitioner, Department of Business and Professional Regulation, by and through the undersigned attorney of record, and files the attached Affidavit of Thomas F. Reilly in support of its Motion to Compel Consent to Release Records.

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF FILING, has been sent via facsimile and U.S. Mail to JON M. PELLETT, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, this 22nd day of August 2001.

Respectfully submitted,

Michael D. Kooi
Assistant General Counsel
Florida Bar No. 909289
Attorney for Petitioner
Department of Business and
Professional Regulation
1940 N. Monroe Street
Tallahassee, Florida 32399-2202

RECEIVED

AFFIDAVIT

BEFORE ME, this day personally appeared Thomas F. Reilly, who being duly sworn, deposes and says that the following information is true and correct according to his best knowledge and belief:

1. That I am Thomas Reilly, a Department of Business and Professional Regulation Consultant and Expert. I make the following statements based upon my own personal knowledge:

2. That on December 9, 1998, I visited the office of Ralph A. Buchman to investigate the complaint which had been lodged against him regarding the settlement with the Internal Revenue Service.

3. When I arrived at Mr. Buchman's office, I was provided with a packet of documents with 20 indexed exhibits.

4. I was told by Mr. Buchman that the documentation and information which had been stored on his computers had been lost. I did not feel I had sufficient time to review the 20 exhibits provided by Mr. Buchman in a way that would allow me to request the invoices and receipts that would support the returns.

FURTHER AFFIANT SAYETH NOT.

Thomas F. Reilly

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 21st day of August 2001, by Thomas F. Reilly, who is personally known to me or who has produced FDL R440-826-44-089-0 as identification, and who did take an oath.

NOTARY PUBLIC

My Commission Expires: 12/9/01

PAMELA L. CORNELL
MY COMMISSION # CC 701365
EXPIRES: December 9, 2001
Bonded Thru Notary Public Underwriters

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

RESPONDENT'S NOTICE OF SCRIVENER'S ERROR IN RESPONDENT'S MEMORANDUM OF LAW

COMES NOW, the Respondent, RALPH BUCHMAN, C.P.A., by and through undersigned counsel and gives Notice of a Scrivener's Error in the Memorandum of Law in Opposition to the Motion to Compel Consent to Release of Records from the Internal Revenue Service as follows: By error, Respondent omitted the full case citation for Stuart v. United States in his Memorandum of Law. The full citation for the case is:

Stuart v. United States, 416 F.2d 459 (5th Cir. 1969)

For the convenience of this Administrative Law Judge and Petitioner, a copy of the case is attached with this Notice of Scrivener's Error.

Respectfully submitted,

JON M. PELLETT
Florida Bar Id # 0050679
BARR, MURMAN, TONELLI,
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201 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 209-0214
ATTORNEYS FOR RESPONDENT

00013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing with attachment has been furnished by U. S. mail, postage prepaid, and facsimile to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and in lieu of original filing, one copy has been furnished to the Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 by telephone facsimile at (850) 921-6847, this August 22, 2001.

Jon M. Pellett

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416 F.2d 459
24 A.F.T.R.2d 69-5570, 69-2 USTC P 9630
(Cite as: 416 F.2d 459)

United States Court of Appeals Fifth Circuit.

Louis STUART, Vivian Stuart and Rechel Stuart, Appellants,
v.
UNITED STATES of America and Alson E. Lancaster, Special Agent, Etc., Appellees.

No. 27093.

Sept. 17, 1969, Rehearing Denied Oct. 28, 1969.

Proceeding on petition of Internal Revenue Service to enforce summons against taxpayers' accountant, in which taxpayers were granted leave to intervene. The United States District Court for the Middle District of Florida, William A. McRae, J., ordered enforcement of summons, and taxpayers appealed. The Court of Appeals, Davis, Judge of Court of Claims, held that summons was not enforceable as to records in hands of taxpayers' accountant, where taxpayers could have resisted summons on ground that it violated their privilege against self-incrimination had records been in their possession, accountant's possession was mere naked possession and not his work product, and records were not to be used by him, but were originally placed in his possession for convenience of Internal Revenue agent conducting civil investigation.

Reversed.

West Headnotes

[1] **Witnesses ⇐298**
410k298

If taxpayers, who delivered their records to their accountant for convenience of Internal Revenue agent in connection with civil investigation, had been informed that criminal investigation was in progress, they could have rightfully withheld records. U.S.C.A.Const. Amend. 5.

[2] **Witnesses ⇐305(1)**
410k305(1)

Taxpayers did not waive their privilege against self-incrimination in connection with criminal investigation, by voluntarily handing over records to Internal Revenue agent conducting civil investigation. U.S.C.A.Const. Amend. 5.

[3] **Witnesses ⇐298**
410k298

Internal Revenue summons for production of taxpayers' records was not enforceable as to records in hands of taxpayers' accountant, where taxpayers could have resisted summons on ground that it violated their privilege against self-incrimination had records been in their possession, accountant's possession was mere naked possession and not his work product, and records were not to be used by him but were placed in his possession for convenience of agent conducting civil investigation. U.S.C.A.Const. Amend. 5.

***460** Adam G. Adams, II, William R. Frazier, Jacksonville, Fla., for appellants; Adams & Adams, Jacksonville, Fla., of counsel.

Edward F. Boardman, U.S. Atty., Tampa, Fla., Allan P. Clark, Asst. U.S. Atty., Jacksonville, Fla., Richard M. Roberts, Mitchell Rogovin, Johnnie M. Walters, Asst. Attys. Gen., Joseph H. Howard, John P. Burke, Lee A. Jackson, Attys., Tax Division, Dept. of Justice, Washington, D.C., for appellees; Virginia Q. Beverly, Asst. U.S. Atty., of counsel.

Before WISDOM and MORGAN, Circuit Judges, and DAVIS, [FNa1] Judge of the U.S. Court of Claims.

FNa1. Sitting by designation.

DAVIS, Judge:

A summons, comparable to a subpoena duces tecum, was issued by the Internal Revenue Service, compelling appellant-taxpayers' accountant, John B. Blois, to produce certain of their records in his possession. Blois resisted and the Service petitioned the court below for enforcement. Appellants were granted leave to intervene, under Rule 24(a) of the Federal Rules of Civil Procedure ('Intervention of Right'). From the order of the District Court enforcing the summons, they appeal.

In February 1968, Revenue Agent Alma Vaughn was assigned by the Service to conduct a civil

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investigation of taxpayers' returns for 1966, and, eventually, 1964-1967. Upon beginning her study, she asked their attorney to make available their tax records for those years. Since taxpayer Vivian Stuart, who kept the records at a place of business known as the Georgia Package Store, worked nights and slept days, the records were placed, for Agent Vaughn's convenience, with Mr. Blois, the accountant at whose office she could more feasibly conduct her investigation. Mrs. Vaughn spent some nine days, over a *461 period of four months, at Blois' office and at the home of his mother, where the records were sometimes transferred. Agent Vaughn's request for an extension of the time for examination was granted by the appellants.

During her inquiry, this agent discovered possible indications of fraud, and so notified the Service. No mention of these findings was made to appellants. On June 10, 1968, Special Agent Lancaster was assigned to carry on the investigation of the tax records. On June 14th, he presented himself to Vivian Stuart, told her he was an 'intelligence officer' of the IRS, and that he was conducting an investigation of her tax records. He then gave her the following warning:

'It is my duty to advise you of your constitutional rights. You have a right to remain silent. Anything you say can be used against you in a court, or other proceedings. You have the right to consult with an attorney before making any statement, or answering any question, and you may have him present with you during the questioning. You may have an attorney appointed by the U.S. Commissioner or a court to represent you if you cannot afford it, or otherwise obtain one.

'If you decide to answer any question now, with or without a lawyer, you have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

'However, you may waive the right to the advice of counsel, and you have a right to remain silent; and you may answer questions, or make a statement without consulting a lawyer if you so desire.' [FN1]

FN1. The warning was given under the directive of IRS News Release IR-949, 11/26/68, 1968, CCH P6946.

A similar caution was given to Louis Stuart the same day and to Rachel Stuart on June 17th. On June 14th, Agent Lancaster served a summons upon Blois, ordering production of the taxpayers' records, under Section 7602 of the Internal Revenue Code ('Examination of books and witnesses'). Blois was notified that a criminal investigation was being undertaken against the appellants. He appeared on the return date, but refused to comply, alleging he had returned the records to the taxpayers, conditionally, and that they refused to hand them back to him.

The District Court issued a show cause order against Blois, who had regained physical possession of the records pending the order of the District Court. In his answer to the complaint, he admitted possession, but disclaimed any interest, right, or title in or to the records, saying that they were the sole property of the taxpayers, and asking the court to substitute the latter as the real parties in interest.

The Stuarts then sought and received permission to intervene, alleging that they were the sole owners of the records and had placed them with accountant Blois solely at the request and for the convenience of Revenue Agent Vaughn. They also asserted that upon the institution of a criminal investigation they acquired the right to withhold the records from the IRS under the privilege against self-incrimination of the Fifth Amendment, and that they invoked that right.

The District Court ordered enforcement of the summons (under 26 U.S.C. §§ 7402 and 7604). holding that any constitutional rights claimed by the taxpayers should be raised as objections, at trial, to the admission of evidence gained from the production of the records. The court observed:

'As the case stands, it remains a civil investigation against which Fourth and Fifth Amendment objections may not be raised. * * * Respondents-Intervenors may raise their constitutional objections to admission of evidence at trial should a criminal prosecution eventuate.'

A stay was granted, pending taxpayers' appeal.

*462 The case before us has been narrowed by the Government's concession, in oral argument, that, had the papers been in the hands of the taxpayers

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upon service of the summons, they could have successfully asserted their privilege against self-incrimination, and refused production. This concession accords with the statements of courts (United States v. Cohen, 388 F.2d 464, 472 (C.A.9 1967); United States v. Judson, 322 F.2d 460 (C.A.9 1963); United States v. Kleckner, 273 F.Supp. 251 (S.D.Ohio) appeal dismissed 382 F.2d 1022 (C.A.6 1967); see Boyd v. United States, 116 U.S. 616, 631-632, 6 S.Ct. 524, 29 L.Ed. 746 (1886)), as well as with what appears to be the current position of the Department of Justice. See Glotzbach v. Klavans, 62-2 U.S.T.C. P15,452 (C.A.4 1962); United States v. Kleckner, supra. [FN2]

FN2. The Government's brief cites Falsone v. United States, 205 F.2d 734 (C.A. 5), cert. denied, 346 U.S. 864, 74 S.Ct. 103, 98 L.Ed. 375 (1953), for the proposition that a taxpayer is not protected from production of his own records, since he is required to keep such papers (see Shapiro v. United States, 335 U.S. 1, 32, 68 S.Ct. 1375, 92 L.Ed. 1787 (1948)– and then adds that 'the Department of Justice has, however, refrained from making that argument in recent years.' In any event, Falsone was a wholly civil proceeding in which there was no indication, as there is here, that a criminal investigation had begun.

It is plain, too, that the inquiry into taxpayers' records was no longer solely a civil investigation, but had reached the stage of an investigation into possible criminal violations. Revenue Agent Vaughn had notified the Internal Revenue Service of possible indications of fraud. A special agent, primarily concerned with the criminal aspects, was then assigned. This special agent (Lancaster) succinctly warned taxpayers of their constitutional rights, and informed accountant Blois of the criminal nature of the investigation. This adds up, unmistakably, to an inquiry with dominant criminal overtones.

The only issue, then, is whether the accountant's possession of the taxpayers' materials makes the summons enforceable. [FN3] In that connection the critical fact, in our view, is that the records were put in the accountant's custody primarily for the convenience of Revenue Agent Vaughn, so that she could work on them during her regular working day and in comfortable quarters. Blois, the accountant, was not to process or use them in any way; he was simply their custodial bailee while Mrs. Vaughn went through them for her own purposes. Unlike Deck v. United States, supra, 119 U.S.App.D.C. 240, 339 F.2d 739 (1964), cert. denied, 379 U.S. 967, 85 S.Ct. 660, 13 L.Ed.2d 560, (1966) and Bouschor v. United States, 316 F.2d 451 (C.A.8 *463 1963), these records were neither the work-product of the accountant, nor papers to be used by him. He had no professional concern with them at the time, while the revenue agent did. It was her work and her convenience which were served by the transfer to Blois's office. He was a mere 'naked possessor.' See Schwimmer v. United States, 232 F.2d 855, 860-861 (C.A.8), cert. denied, 352 U.S. 833, 77 S.Ct. 48, 1 L.Ed.2d 52 (1956).

FN3. Since the substance of the warnings established for criminal cases by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), was given to taxpayers, it is academic in this case whether those cautionary statements were required. See, e.g., Mathis v. United States, 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 381 (1968) ; United States v. Wainwright, 284 F.Supp. 129 (D.Colo.1968); United States v. Jaskiewicz, 278 F.Supp. 525, 529-535 (E.D.Pa.1968);
United States v. Turzynski, 268 F.Supp. 847 (N.D.Ill.1967); United States v. Bachman, 267 F.Supp. 593 (W.D.Pa., 1966); also Kohatsu v. United States, 351 F.2d 898 (C.A.9 1965), cert. denied, 384 U.S. 1011, 86 S.Ct. 1915, 16 L.Ed.2d 1017 (1966).
There is also no question whether the papers involved are of such a nature as to be protected by a claim of privilege against self-incrimination. They were the appellants' own records, not the accountants' work-product; and they were not corporate documents. See, e.g., Sanford v. United States, 358 F.2d 685 (C.A.5 1966); Deck v. United States, 119 U.S.App.D.C. 240, 339 F.2d 739 (1964), cert. denied, 379 U.S. 967, 85 S.Ct. 660, 13 L.Ed.2d 560 (1965); In re Fahey, 300 F.2d 333 (C.A.6 1961); United States v. Boccuto, 175 F.Supp. 886 (D.N.J.) appeal dismissed, 274 F.2d 860 (C.A.3 1959); Application of House, 144 F.Supp. 95 (N.D.Cal.1956).
Likewise, it is clear from the record that taxpayers timely raised their claim of privilege against self-incrimination under the Fifth Amendment. The Government does not really contest this point.

[1][2] Had the appellants been informed originally that a criminal investigation was in progress, they could have rightfully withheld the records– as the Government admits. See United States v. Cohen, supra, 388 F.2d 464; United States v. Kleckner,

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supra, 273 F.Supp. 251. Or if they had retained custody of the documents and required Agent Vaughn (pursuing her civil inquiry) to do her work under adverse conditions at the Georgia Package Store (where the records were kept), they could have properly resisted production to Special Agent Lancaster when he began his criminal investigation. It should make no difference in this result that custody was changed in order to benefit the Government's employee (Agent Vaughn) and to facilitate her work. The Government should not gain an advantage because the taxpayers, acting reasonably as human beings and citizens, did it a favor and failed to insist that Mrs. Vaughn perform her inspection in uncomfortable circumstances and at off-hours. To penalize appellants for their good-will would not only be unjust; it would hurt the Government in the long-run by encouraging taxpayers to keep close personal custody of their records no matter what the burden on the inspecting revenue agent. [FN4]

FN4. For similar reasons, it cannot be said that appellants waived their privilege by 'voluntarily' handing over the papers to the agent conducting the civil investigation. Cf. Kohatsu v. United States, 351 F.2d 898 (C.A.9 1965), cert. denied, 384 U.S. 1011, 86 S.Ct. 1915, 16 L.Ed.2d 1017 (1966); United States v. Sclafani, 265 F.2d 408 (C.A.2), cert. denied, 360 U.S. 918, 79 S.Ct. 1436, 3 L.Ed.2d 1534 (1959); United States v. Turzynski, 268 F.Supp. 847, 850, 852 (N.D.Ill.1967).

[3] The Government errs in thinking that it is wholly irrelevant how the records came into the accountant's hands. That is not the rule of Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921), in which the Supreme Court held that a defendant could not employ the privilege against self-incrimination to prevent use of his private papers, stolen by a third party who voluntarily relinquished them to the Justice Department. In Burdeau, the Court based its decision on the factual conclusion by the trial court that the Government 'clearly * * * had (nothing) to do with the wrongful seizure of the petitioner's property * * *' 256 U.S. at 475, 41 S.Ct. at 576. Since the Government's possession of the documents resulted entirely from the voluntary acts of a third party, without participation by the Government, the Court concluded that the Fifth Amendment was unavailable to the non- possessing owners. In the present case, on the other hand, the taxpayers delivered the records to the third party for the convenience and benefit of the IRS. The Government thus had a significant role in the transfer and can be held to the consequences of its participation.

This circuit's decisions in Venn v. United States, 400 F.2d 207 (C.A.5 1968), and Sanford v. United States, 358 F.2d 685 (C.A.5 1966), do not require enforcement of the summons. Venn involved a self-incrimination claim by a third-party possessor who feared the taxpayer's papers would be used against him in an unrelated criminal suit. The Court determined that the Service was entitled to production of those specific items for which it could show a requisite need outweighing any possible burden on the taxpayer. 400 F.2d at 211. Here, the taxpayers seek protection of their own records in the course of a criminal tax investigation directed at them. In Sanford, the records were those of a corporation, for which the law does not recognize the privilege *464 against self-incrimination, even when raised by an officer who might be injured by the corporate books and records in his possession. Rogers v. United States, 340 U.S. 367, 71 S.Ct. 438, 95 L.Ed. 344 (1951); United States v. White, 322 U.S. 694, 64 S.Ct. 1248, 88 L.Ed. 1542 (1944) ; In re Grant, 198 F. 708 (S.D.N.Y.1912), aff'd 227 U.S. 74, 33 S.Ct. 190, 57 L.Ed. 423 (1913).

For these reasons, the order compelling enforcement of the summons is

Reversed.

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION TO COMPEL CONSENT TO RELEASE RECORDS FROM THE INTERNAL REVENUE SERVICE

COMES NOW, the Respondent, RALPH BUCHMAN, C.P.A., by and through undersigned counsel and submits this Memorandum of Law in Opposition to the Motion to Compel Consent to Release Records from the Internal Revenue Service, a non-party to this action, as follows:

BACKGROUND

1. On February 6, 1997, Petitioner notified the Respondent that he was the subject of an investigation premised upon an allegation that he violated Section 473.323(1)(g), Florida Statutes for having engaged in fraud, deceit, negligence, incompetency, or misconduct in the practice of public accounting. See Exhibit "A" attached to Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party incorporated herein by reference.

2. Petitioner's investigation was premised upon its receipt of a notice from the United States Tax Court that Respondent had entered into a Consent Decree with the Internal Revenue

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Service requiring the payment of deficiencies in income tax for years 1988, 1989, and 1990 and requiring the payment of additional penalties under Title 26, Sections 6653(b)(1), 6661, and 6663 of the United States Code. See Exhibit "A," decision of the U.S. Tax Court attached to Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party.

3. On May 30, 1997, Petitioner gave notice that it had completed its investigation of the Respondent and was submitting the case to the Probable Cause Panel for a determination of whether Respondent violated Section 473.323(1)(g), Florida Statutes. See Respondent's Exhibit "1," a copy of the Petitioner's Memorandum directed to the Panel.

4. In accordance with Section 455.225(10), Florida Statutes, Respondent was furnished with a complete copy of the Petitioner's file and invited to submit a written response for the Panel's consideration. Additionally, under the procedure utilized by the Panel, the Respondent was invited to appear at the confidential Panel meeting with counsel.

5. Responding to the Notice of Investigation, on October 30, 1997, Respondent's counsel submitted a written response and argument to the Petitioner on whether Respondent engaged in fraud, deceit, negligence, incompetency, or misconduct in the practice of public accounting. See Exhibit "2," a copy of Respondent's written response with attachments.

6. Respondent with counsel attended the Probable Cause Panel Meeting held on November 10, 1997 for a determination of whether probable cause existed to believe that Respondent violated Section 473.323(1)(g), Florida Statutes. During the course of the deliberations, Respondent through his counsel offered to make available to the Panel's investigator/consultant documents in Respondent's possession relative to the deficiencies raised by the Internal Revenue Service so that the Panel could determine whether Respondent's decision to enter into a Consent

Decree with the Internal Revenue Service was done as a matter of convenience. See Respondent's Exhibit "3," a copy of the transcript of the November 10, 1997 Panel Meeting. Neither the Probable Cause Panel nor Petitioner advised the Respondent that by furnishing access to the records, Respondent would be waiving any rights he might have under the Fifth Amendment to later use of the documents in disciplinary proceedings.

7. On December 9, 1998, Petitioner's investigator/consultant, Thomas Reilly, C.P.A., conducted an in-office inspection of the Respondent's Office and selected a small portion of the documents that were in Respondent's possession for review relative to the deficiencies claimed by the Internal Revenue Service. In particular, Petitioner's consultant reviewed the documents contained in one notebook that was indexed by category. See Exhibit "4," a copy of the index of documents reviewed by Petitioner's consultant. Petitioner's consultant did not advise the Respondent that he did not have to produce the documents or answer any questions concerning the documents.

8. Petitioner's consultant took a copy of the small portion of records he selected for his review and prepared a written report of his findings on February 10, 1999. See Respondent's Exhibit "B" attached to Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party incorporated herein by reference.

9. The matter was subsequently forwarded to the Probable Cause Panel for consideration of the written report and a determination of whether probable cause existed to believe Respondent violated Sections 473.323(1)(d), 473.323(1)(e); 473.323(1)(g); 473.323(1)(h) through Rule 61H1-21.002, Florida Administrative Code, and 473.323(1)(k), Florida Statutes. See Respondent's Exhibit "5," Petitioner's memorandum of June 14, 1999 directed to the Probable

Cause Panel. As before, Respondent was invited to appear at the Probable Cause Panel and participate in the discussion.

10. Petitioner did not advise the Respondent that in addition to Section 473.323(1)(g), Florida Statutes, Respondent was the subject of an investigation for possible violations of Sections 473.323(1)(d), 473.323(1)(e); 473.323(1)(h) through Rule 61H1-21.002, Florida Administrative Code, and 473.323(1)(k), Florida Statutes. Petitioner did not provide the Respondent with Notice of those matters it was considering in connection with the investigation as required under Section 455.225, Florida Statutes.

11. On December 9, 1999, Respondent through counsel notified Petitioner that he would decline the invitation to appear before the Probable Cause Panel based on the lack of any findings by Petitioner's consultant as to whether the Respondent improperly completed his tax returns for 1988, 1989, and 1990. See Respondent's Exhibit "6," a copy of Respondent's letter to Petitioner.

12. On December 13, 1999, the Probable Cause Panel met to consider the report of Petitioner's investigator/consultant and to make a determination of probable cause. See Transcript of the Panel Meeting attached as Exhibit "C" to Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party.

13. Although the Panel was advised that no conclusions could be drawn from the documents selected by its consultant, the Panel determined that Probable Cause existed to believe Respondent violated Section 473.323(1)(k), Florida Statutes and directed that an Administrative Complaint be filed against the Respondent's license. See Exhibit "D" attached to Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party.

14. Subsequent to the filing of the Administrative Complaint, Petitioner determined that an error had been made in the determination of probable cause. As a result of the error, it requested that the case be reconsidered and dismissed by the Panel. See Respondent's Exhibit "7," a copy Petitioner's Memorandum to Panel dated May 12, 2000 and Exhibit "8" Petitioner's Memorandum to the Panel dated July 13, 2000 with attachments. To facilitate dismissal of the case, Petitioner and Respondent entered into a Stipulation for Dismissal of the case in which Petitioner bound itself to advocate for dismissal of the Administrative Complaint. See Respondent's Exhibit 7.

15. The Probable Cause Panel met on October 27, 2000 to consider Petitioner's recommendation for dismissal of the Administrative Complaint. Contrary to the agreement reached between the parties, Petitioner's counsel did not advocate for dismissal of the complaint and instead informed the Panel that it felt that the charge could be successfully prosecuted. Based on the representations of the Petitioner, the Panel determined that it would not dismiss the case. Instead, it directed the Petitioner to seek additional information from the Internal Revenue Service. See Respondent's Exhibit "9," a copy of the transcript of the Probable Cause Panel meeting.

16. Subsequent to the Probable Cause Panel meeting, the case was referred to the Division of Administrative Hearings. It was assigned case number 00-4692PL and a formal hearing was scheduled for December 21, 2000. Upon referring the matter to the Division of Administrative Hearings, Petitioner forwarded discovery requests to the Respondent and Respondent entered timely objections to the requests on December 11, 2000 or just twelve days after the discovery was served.

17. On December 11, 2000, Petitioner moved for a continuance of the matter on the basis that it had contacted the Internal Revenue Service in order to obtain copies of the documents in its possession. It noted that the Internal Revenue Service had informed Petitioner that it could not

confirm nor deny the existence of any documents in its possession and that it would not release any information to Petitioner concerning the Respondent. The Internal Revenue Service discussed with the Petitioner the categories of documents that might exist and informed Petitioner of the proper names of the documents. The Internal Revenue Service opined that if such documents existed, they would be in the possession of the Respondent. See Exhibit "10," Petitioner's Motion for Continuance served December 11, 2000.

18. Petitioner's Motion for a continuance was granted and the parties were directed to file a status report by no later than December 29, 2000 indicating the dates upon which the formal hearing could be rescheduled.

19. Following the grant of the continuance, Petitioner determined that it would not pursue the matter any further. It requested that Respondent agree to waive his rights to seek attorneys' fees and costs and his right to pursue other actions in exchange for dismissal of the charges. The parties' discussions were reduced to a written agreement "Settlement Stipulation" for presentation to the Board of Accountancy for approval. See Exhibit "11," the parties' Settlement Stipulation.

20. The Settlement Stipulation was presented to the Board of Accountancy at their meeting held January 29, 2001 and the Board adopted it. Following its decision to adopt the Settlement Stipulation as a Final Order of the Board, it determined to reconsider its decision and rather than vote down the Stipulation, the Board tabled the discussion until it could determine whether the Internal Revenue Service had pursued an action against Respondent's tax preparer status. See Exhibit "12," the transcript of the January 29, 2001 Board Meeting.

21. After Petitioner determined that the Internal Revenue Service did not pursue an action against the Respondent's tax preparer status, it re-scheduled the case for consideration by the Board. The matter is still pending before the Board.

22. Prior to the Board meeting, Petitioner felt that the case could be prosecuted and that it could seek compelled authorization for the release of records from the Internal Revenue Service. This represented a significant change in position. Nonetheless, Petitioner committed to forwarding the case to the Board in accordance with its prior agreement and the Board's directives at the January 29, 2001 Board meeting.

23. Finding that the Board lacked a quorum to do business, Respondent's case was not presented for consideration at the next available Board meeting. Rather, Petitioner determined that it would seek prosecution of this matter. It breached the agreement for dismissal of the charges and despite the fact that the matter was still pending before the Board of Accountancy, Petitioner forwarded this matter to the Division of Administrative Hearings for formal hearing. See Respondent's Composite Exhibit "13," copies of correspondence exchanged between the Petitioner and Respondent concerning the issues raised in paragraphs 19 - 23.

24. Following referral of this matter back to DOAH, Petitioner sought production of various documents from the Respondent including documents that were in the possession of the Internal Revenue Service, a non-party to this proceeding. See Exhibit "14," Petitioner's Request for Production and Respondent's Response.

25. Additionally, without following the requirements of Rule 1.351, Florida Rules of Civil Procedure and without giving Notice to the Respondent of its activities, Petitioner served a subpoena on the Internal Revenue Service for production of documents. The subpoena was

defective and sought to have the Internal Revenue Service appear with documents for a non-existent formal hearing to be held on July 30, 2001 at Petitioner's offices.

26. Upon learning of the Petitioner's efforts and non-compliance with the requirements of Rule 1.351, Florida Rules of Civil Procedure, Respondent filed a timely objection to the subpoena. See Notices of Objection served July 11 and July 17, 2001, as Exhibit "15."

27. The Internal Revenue Service provided a written response to the subpoena, which is incorporated by reference as Exhibit "16." In their response, the Internal Revenue Service advises Petitioner that the documents it sought to have produced are confidential under Federal law and cannot be disclosed absent written authorization of the Respondent. It further advises that to secure a deposition of an employee or agent of the Internal Revenue Service or production of the records, Petitioner must comply with the requirements of 26 Code of Federal Regulations, Section 301.9000-1. To Respondent's knowledge, Petitioner has not sought to comply with the requirements of 26 Code of Federal Regulations, Section 301.9000-1.

28. Petitioner has not exhausted the discovery tools available to it in order to determine whether the Internal Revenue Service has information relevant to this proceeding.

29. Respondent timely objected to Petitioner's second attempt at discovery.

REQUEST FOR COMPELLED AUTHORIZATION

Pertinent to the instant controversy and pursuant to Rule 1.350, Florida Rules of Civil Procedure, Petitioner sought to have Respondent produce the following:

> A copy of any and all documents **in the possession of the Internal Revenue Service** regarding your income tax returns and investigation of said returns for the tax years 1988, 1989, and/or 1990, including, but not limited to, the penalty file and the examination file relative to the investigation. (Exhibit 14, emphasis added) .

Respondent timely objected to Petitioner's request for documents in the possession of the Internal Revenue Service, a non-party. (See Exhibit 14 and Respondent's Response to the Motion for Order Compelling Consent to Release of Records From Third Party).

Petitioner's request seeks information that is not relevant to this proceeding and it seeks to impose an obligation upon Respondent that is not found in Rule 1.350, Florida Rules of Civil Procedure. Furthermore, by requesting compelled authorization for the release of confidential tax information, Petitioner is seeking to exceed the delegated grant of authority to the Division of Administrative Hearings. Additionally, Petitioner is seeking to invade the privacy rights of the Respondent and Marie Buchman, a non-party, in their personal financial information and is requesting production of information in violation of Respondent's Fifth Amendment right not to be compelled to be a witness against himself. Respondent has not waived any of his rights with respect to the documents nor has Marie Buchman.

Relevancy

Rule 1.280, Florida Rules of Civil Procedure provides that a party may seek discovery as to any matter that is not privileged and which is relevant to the subject matter of the pending action. To determine what information is considered relevant, the parties are directed to the pleadings. If the discovery sought to be produced is related to the issues involved in the litigation and is not privileged, it is considered discoverable if it will lead to the discovery of admissible evidence. See e.g., Allstate Insurance Co. v. Langston, 655 So.2d 91, 94-95 (Fla. 1995). As it relates to allegations of fraud, a party is afforded wide latitude in seeking discovery so long as it is relevant to the subject of the proceeding. Davich v. Norman Brothers Nissan, Inc., 739 So.2d 138 (Fla. 5th DCA 1999).

The Administrative Complaint that was filed against the Respondent frames the issues for consideration in this proceeding. As alleged, the only issue for determination in this proceeding is whether Respondent's settlement with the United States Tax Court can be considered a violation of Section 473.323(1)(k), Florida Statutes. Cf. Bova v. United States, 236 B.R. 431 (M.D. Fla. 1998)(court holding that fraud can not be inferred from a settlement with the United States Tax Court). The express allegations of the Administrative Complaint, paragraphs 4, 5 and 6, merely track the language of the consent decree and do not provide the Respondent with sufficient notice of the acts or omissions Petitioner alleges were committed by the Respondent in connection with his income tax returns for 1988, 1989, and 1990. Petitioner has not alleged sufficient facts to determine the conduct proscribed by Section 473.323(1)(k), Florida Statutes. (See Motion for Attorney's Fees under Section 120.595, Florida Statutes for deficiencies raised in connection with the charge brought against the Respondent, incorporated herein by reference); see also, Hickey v. Wells, 91 So.2d 206 (Fla. 1956)(specificity of the charges in administrative proceedings is necessary to accord due process); Davis v. Department of Professional Regulation, 457 So.2d 1074 (Fla. 1st DCA 1984)(charges must be specific enough to allow a fair opportunity to defend); Seminole County Board of Commissioners v. Long, 422 So.2d 938 (Fla. 5th DCA 1982)(complaint not required to meet the technical requirements of civil pleading as long as it provides a fair opportunity to defend); Section 120.60(5), Florida Statutes. There are no facts alleged from which a party can infer fraud even if all of the facts of the Administrative Complaint are taken to be true. Thus, the relevancy of the documents in possession of the Internal Revenue Service cannot be ascertained from comparison of the request to the facts alleged in the Administrative Complaint.

When asked to further delineate the acts or omissions of the Respondent constituting a violation of Section 473.323(1)(k), Petitioner could not state the acts or omissions of the Respondent that it contends constitutes a violation of Section 473.323(1)(k), Florida Statutes other than to state "See report and Probable Cause Panel testimony of Tom Reilly. Investigation and discovery continue." Respondent's Exhibit "17." Respondent is not on notice as to those facts upon which Petitioner is basing the instant action. Neither Tom Reilly's report nor his testimony before the Probable Cause Panel elucidates the specific acts or omissions alleged to have been committed by the Respondent in violation of Section 473.323(1)(k). Both Tom Reilly's report and his testimony before the Probable Cause Panel clearly indicate that no conclusions can be reached on whether Respondent had committed fraud.

As framed by the Administrative Complaint, the information sought from the Internal Revenue Service seeks information outside of the express allegations of the complaint, which allegations relate solely to the fact that the United States Tax Court entered a decision requiring the re-payment of certain monies and the imposition of certain penalties. The decision of the United States Tax Court is not one that can lead to an inference or suspicion of fraud. Bova. The mere fact that Respondent settled with the Internal Revenue Service and their conclusions as to the strength and weaknesses of their case is irrelevant to the determination of whether Petitioner can prove the allegations of the Administrative Complaint.

While broad latitude is afforded discovery when fraud is alleged, Petitioner has not further specified the acts or omissions of the Respondent that would enable a proper determination of whether its discovery directed to the Internal Revenue Service would be relevant to this proceeding. To constitute fraud, Petitioner must allege the following elements:

(a) A false statement concerning a material fact;

(b) knowledge by the person making the statement that the representation is false;

(c) intent by the person making the statement that the representation will induce another to act on it; and

(d) reliance on the representation to the injury of the other party.

See e.g., Lance v. Wade, 457 So.2d 1008, 1011 (Fla. 1984); Nantell v. Lim-Wick Construction Co., 228 So.2d 634, 637 (Fla. 4th DCA 1969)(allegations of fraud should be specific and facts constituting fraud clearly stated); Kutner v. Kalish, 173 So.2d 763 (Fla. 3d DCA 1965)(allegations of fraud must be clearly stated). Petitioner's complaint does not allege any of the elements from which fraud could be inferred. Absent these elements, there is no basis upon which to determine whether Petitioner's discovery request relates to any alleged wrongful conduct or would lead to the discovery of admissible evidence in support of its allegations. Although an administrative complaint is not required to adhere to the technical requirements of a civil pleading, it must still afford a licensee with notice of the proscribed conduct and an opportunity to defend against the charges. Seminole County. The Complaint filed against the Respondent does neither. It cannot support a blanket release of information from the Internal Revenue Service. Before such production could be ordered, an *in camera* inspection of the documents would be required to protect the privacy interests of the non-party and Respondent. Voytish v. Ozycz, 695 So.2d 1301 (Fla. 4th DCA 1997)(for protection of a non-party's privacy rights, an *in camera* inspection of tax returns is required prior to disclosure of information implicating his or her privacy rights).

Request improperly invades upon the privacy rights of Respondent and Marie Buchman

Even if the documents in the possession of the Internal Revenue Service are somehow relevant to this proceeding, as framed by the Administrative Complaint, Petitioner's request is overly broad and seeks to invade the privacy rights of a non-party. The request seeks all documents

related to Respondent's 1988, 1989, and 1990 tax returns as well as tax return information and the Internal Revenue Service's penalty and examination files. There is no showing by Petitioner that its request is narrowly tailored to discover relevant evidence for use in this proceeding. As Petitioner concedes, the documents sought by Petitioner are protected under Federal law and are considered strictly confidential. Title 26 United States Code, Section 6103(a). Severe sanctions can be imposed for improper release of tax returns and tax return information. Title 26 United States Code, Section 7213. The Internal Revenue Service can only disclose the documents under certain limited exceptions not present here. Title 26 United States Code, Section 6103 generally.

An administrative disciplinary proceeding is not one in which either the Division of Administrative Hearings or the Department of Business and Professional Regulation may compel production of the records directly from the Internal Revenue Service. Title 26 United States Code, Section 6103. Absent specific written authorization from the taxpayer, neither entity may seek the records directly from the Internal Revenue Service or require their disclosure by the Service. Id.

In Florida State University v. Hatton, 672 So.2d 576 (Fla. 1st DCA 1996), the Court examined whether the Division of Administrative Hearings could order the production of redacted student records from Florida State University where those records were protected by law. At issue was whether formal orders applying to all Student Conduct Code cases could be produced with any and all information by which a student could be identified redacted. Student records are considered confidential by law and the Court held that nothing in the statute protecting the records authorized the Division of Administrative Hearings to order production of the student records redacted form, as it was not a court of competent jurisdiction and the statute did not permit release of the records in edited format. Likewise, Section 6103 does not permit the Division of Administrative Hearings to order release of redacted information. Section 6103 holds the records as strictly confidential and

neither the Petitioner nor the Division of Administrative Hearings is listed as one of those entities for which release of the records is authorized.

Congress has not designated administrative disciplinary proceedings as proceedings in which the confidentiality afforded to a person's tax return and return information may be invaded. It has not designated the State of Florida or any of its executive agencies as having the authority to request release of tax return and tax return information in administrative disciplinary proceedings. Although Petitioner has the statutory duty to protect the public from dishonest public accountants, its statutory duty is insufficient to authorize it access to Respondent and Marie Buchman's personal tax information and tax returns.

Petitioner seeks to circumvent the confidentiality afforded to the documents in the possession of the Internal Revenue Service by suggesting that Respondent's ability to consent to disclosure of the documents places them under his control. Petitioner suggests that under Rule 1.350, Florida Rules of Civil Procedure, it can compel production of the Internal Revenue Service's records indirectly through compelled "consent" for release of the records by Respondent. In short, Petitioner suggests that by bringing an action for discipline against the Respondent, it can compel invasion of Respondent's privacy and the privacy of a non-party in their federal tax returns through the use of Rule 1.350 even though it does not have independent authority to obtain the information directly from the Internal Revenue Service. In essence, Petitioner seeks to gain power not specifically granted to it by the Legislature. Its request for compelled release of records is in direct violation of the specific grant of power given it by the Legislature and violates Article I, Section 18 of the Florida Constitution[1].

[1] Beacon Finance, Inc. v. Department of Insurance, 656 So.2d 197 (Fla. 1st DCA 1995)(Court finding that the Department was a creature of statute and had only that power granted by the Legislature).

Even if it had the power to compel the Respondent to "consent" to the release of information from the Internal Revenue Service, Florida provides a strong Constitutional guarantee of the right to privacy. Article I, Section 23, Florida Constitution. Florida also recognizes an individual's legitimate expectation of privacy in his or her personal financial information. Berkeley v. Eisen, 699 So.2d 789 (Fla. 4th DCA 1997). Before a person's right of privacy in personal financial information can be invaded, the requesting party must show exceptional necessity to invade the privacy rights of a party and more importantly, it must show exceptional necessity to invade the privacy rights of a non-party. Berkeley; Higgs v. Kampgrounds of America, 526 So.2d 980, 981 (Fla. 3d DCA 1988)(moving party has burden to show exceptional necessity which outweighs a non-party's rights to privacy in personal financial information); Beverly Enterprises-Florida, Inc. v. Deutsch, 765 So.2d 778 (Fla. 5th DCA 2000)(Florida provides strong protection for the rights of privacy which can not be overcome absent showing of exceptional necessity and party may raise a non-party's interests in privacy of the information sought).

Petitioner has not shown exceptional necessity to breach the confidentiality afforded to the documents in the possession of the Internal Revenue Service. Nor has Petitioner provided this Administrative Law Judge with a sufficient basis to justify an invasion of Respondent's privacy rights or the privacy rights of Marie Buchman, a non-party to this proceeding. It has not shown that documents are necessary for it to be able to prove the allegations of the Administrative Complaint. Higgs at 981 (Court noting that access to a taxpayers information should only be granted when necessary to determine a contested issue). Nor has it shown that it cannot secure the information from any other source. Berkeley.

Petitioner has not sought to avail itself of the right to secure information directly from the Internal Revenue Service through application properly made under 26 Code of Federal Regulations

Section 301.9000-1. It has not sought to depose agents of the Internal Revenue Service in accordance with Rule 1.310, Florida Rules of Civil Procedure and 26 Code of Federal Regulations Section 301.9000-1. Nor has Petitioner sought records or depositions of any other person in connection with Respondent's tax returns. Instead, it has improperly attempted to secure production of documents and the testimony of agents of the Internal Revenue Service through surreptitious use of a DOAH subpoena to compel the Internal Revenue Service to appear at its offices for a non-existent formal hearing. See Exhibit 15. It has sought to compel Respondent to "consent" to the release of the confidential records in the hands of the Internal Revenue Service without compliance with the rules and statutes pertaining to discovery of information in the possession of a Federal agency. In Franco v. Franco, 704 So.2d 1121, 1122-1123 (Fla. 3d DCA 1998), a husband in a divorce proceeding sought compelled release of a psychologist's record from his wife. He argued that since the wife had not objected to his request for records from the psychologist, she had waived her right to assert any privilege to the documents. The Court found that the husband had not made proper use of the discovery tools to secure production of the records. The Court went on to hold that the confidentiality provisions for medical records does not allow a party to easily circumvent the statutes by resort to compelled release of the confidential information where there is a possibility that the records might be privileged. Here, Section 6103 does not allow a party to circumvent the statute by resort to compelled release of the information. There is no showing that the records in the possession of the Internal Revenue Service are not privileged.

This situation is not unlike that found in Franklin v. Nationwide Mutual Fire Insurance Co., 566 So.2d 529 (Fla. 1st DCA 1990) where a party sought to avoid use of the tools of discovery and instead sought compelled authorization for release of medical information that was protected as confidential by law. The Court found that the use of a compelled authorization for release of

information to avoid use of available discovery tools constituted a departure from the essential requirements of law. In evaluating whether the compelled release of medical information was authorized, the Court noted that the statute rendering the information as confidential did not expressly provide the court with the authority to direct execution of the releases sought to be compelled. Id. at 532. Likewise, there is no provision in Title 26 United States Code, Section 6103 authorizing the compelled release of information from the Internal Revenue Service.

The only justification that Petitioner has alleged entitles it to invade the privacy rights of Respondent and Marie Buchman through compelled "consent" is its statutory duty under Section 473.301, Florida Statutes to protect the public from incompetent and dishonest practitioners. This duty is insufficient in the face of a specific statutory provision rendering the documents confidential. Mercy Hospital v. Department of Professional Regulation, 467 So.2d 1058, 1060-1061 (Fla. 3d DCA 1985)(Court declining to grant the Department access to medical records protected as confidential under law and finding that it was not one of the enumerated entities entitled to the documents).

Petitioner suggests that Mercy Hospital holds that the Department's duty to protect the public is sufficient to override the privacy interests of Respondent and Marie Buchman in their personal financial information such that it has the right to request compelled consent to release of records from the Internal Revenue Service. Mercy Hospital does not stand for the proposition that Petitioner has the right to request compelled consent to release of records from the Internal Revenue Service. This action is not one in which the Petitioner has properly made a request for information from the Internal Revenue Service to which the Internal Revenue Service has objected. Nor is it an action in which there is no clear statutory protection for the documents sought by the Petitioner.

Mercy Hospital concerned a subpoena issued by the Department of Professional Regulation requesting medical records and peer review records related to two physicians who had been suspended by the hospital following a peer review investigation. The Court noted that the peer review records were confidential under Florida law but had not been excluded from use and discovery in administrative disciplinary proceedings. The Third District Court of Appeal found that in situations where the Legislature has not specifically protected peer review documents from discovery or use in proceedings, there was an overwhelming public interest in protecting the confidentiality of peer review records. Dade County Medical Association v. Hlis, 372 So.2d 117 (Fla. 3d DCA 1979). In situations where there was no clear statutory protection for the records, the Court noted that to overcome the overwhelming public interest in protecting the confidentiality of the peer review records, a party must show exceptional necessity or extraordinary circumstances to justify their disclosure. Mercy Hospital at 1060 (Court citing Dade County Medical Association v. Hlis at 121). The Court found that the Department's duty to protect the public from treatment by unqualified physicians under the unique circumstances of the case required disclosure of the records because they were not expressly prohibited from use in disciplinary proceedings. The Court found that the statutory duty to protect the public was a sufficient showing of "exceptional necessity" under the express circumstances of the case to justify disclosure of peer review documents. The two physicians had been suspended for incompetence by the hospital after a full investigation casting serious doubts about their qualifications and competency to practice. In the absence of a legislative directive making the documents confidential, the Court ordered their disclosure to the Department. Mercy Hospital at 1060[2].

[2] Subsequent to Mercy Hospital, the peer review statutes were amended to prohibit the discovery of peer review records in disciplinary proceedings and in Bayfront Medical Center v. Agency for

However, unlike the situation in Mercy Hospital, the Legislature has not delegated to the Petitioner the right to examine or invade the privacy rights of its licensees or other persons with regard to their personal tax returns or tax return information. To the contrary, Congress has expressly rendered tax returns and tax return information as strictly confidential. Neither the Congress nor the Florida Legislature has delegated to the Petitioner the right to secure tax return information from the Internal Revenue Service. Congress has not made administrative disciplinary proceedings an exception justifying the invasion of the confidentiality afforded to the tax returns and tax return information. Unlike the situation present in Mercy Hospital, Respondent's settlement with the Internal Revenue Service does not raise an inference of fraud. Bova. Since there were no findings made by the United States Tax Court that Respondent had engaged in any fraudulent activity in connection with his income tax returns for 1988, 1989, and 1990, the Petitioner cannot suggest that the settlement with the United States Tax Court amounts to the equivalent of a suspension of a physician followed by a full peer review investigation. Given the total lack of findings in the Consent Decree, Petitioner cannot suggest that there was a full investigation by the Internal Revenue Service or that the Service carefully considered any facts with respect to its decision to settlement with the Respondents sufficient to overcome the countervailing interests in protecting the confidentiality of the tax returns and return information.

Neither Respondent nor Marie Buchman waived the confidentiality afforded to their personal tax returns by entering into the consent decree with the Internal Revenue Service. Nor were their rights to privacy in the documents waived when Petitioner's consultant was permitted

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Health Care Administration, 741 So.2d 1226 (Fla. 2d DCA 1999), the Court denied the Agency access to peer reviews because they expressly protected by law from disclosure.

access to documents in the possession of the Respondent during the pre-probable cause investigation.

In Colonial Medical Specialties of South Florida, Inc. v. United Diagnostic Laboratories, Inc., 674 So.2d 923 (Fla. 4th DCA 1996), the Court was asked to consider an order requiring production of confidential patient identifying information where the party making the request already had possession of information for the non-party patients. The Court held that the mere fact that a party has some information for a non-party does not negate rights of non-parties to the protection of the information. In this case, Petitioner has some information related to Marie Buchman. Nonetheless, Marie Buchman has not waived her right to privacy in the tax returns and tax return information. Petitioner cannot compel Ms. Buchman to waive her rights, as she is not a party to this proceeding. Nor can Petitioner circumvent her rights by compelling Respondent to authorize the release of information.

In Beverly Enterprises-Florida, Inc. v. Deutsch, 765 So.2d 778, 780-781 (Fla. 5th DCA 2000), Deutsch argued that he should be given access to the room where the patient was being cared for and where she fell. His complaint did not allege any facts regarding the design of the room, its construction, or maintenance as causing or contributing to the injuries suffered by the patient. The Court held that the non-party resident's rights to privacy outweighed any interest Deutsch had in examining the room and prohibited the inspection. Likewise, the Court held that Deutsch could not have access to the personnel file of a non-party and that Beverly had standing to raise the non-party's privacy interests.

Berkeley v. Eisen is particularly relevant here. In Berkeley, the Eisens filed a suit against Berkeley alleging that he had placed their funds in unsuitable high-risk investments in breach of his fiduciary duty and by use of fraud. In the course of discovery, the Eisens received documents from

Berkeley containing the identities of 75 other clients who also participated in the block trades on the riskier stocks. The Eisens moved for production of the addresses and telephone numbers of these other clients so they could take their depositions. The Eisens alleged that the depositions were "essential to the development of the case" but provided no specifics concerning their possible relevance or admissibility to the pending action against Berkeley. In evaluating whether the Eisens could be furnished with the information, the Berkeley Court found that Florida recognizes a right to privacy in personal financial information and that this right cannot be easily invaded absent an exceptional necessity for the information. The Court noted that the party seeking the information has the burden to demonstrate exceptional necessity and in making that showing must relate the information sought to be obtained to the issues of the pending action. Whenever available, the Court noted that less intrusive means should be employed to secure the information implicating privacy rights and that the mere fact that a party may be using the privacy rights of a non-party for its own protection was an insufficient basis to overcome the non-party's rights in having the information withheld from production. In assessing whether the non-party clients had waived their rights to privacy in the information, the Court noted that the privacy rights belonged to the clients and not Berkeley. There was no evidence in the record that the non-party clients gave their permission for release of the information or took any steps inconsistent with a reasonable expectation of privacy. As a result, the Court held that the Eisen's were not entitled to the information. Here, there is no record that Marie Buchman was consulted about the release of her personal financial information to the Petitioner during the investigation. While she did provide a statement concerning her medical well-being at the time of the United States Tax Court settlement, there is nothing in her written statement purporting to consent to the release of her personal financial information to the Petitioner.

There has been no waiver of the Fifth Amendment Objection

In Vining v. Real Estate Commission, 281 So.2d 487 (Fla. 1973) and Kozerowitz v. Florida Real Estate Commission, 289 So.2d 391 (Fla. 1974), the Florida Supreme Court held that for proceedings "penal" in nature, a licensee can not be compelled to respond to the charges brought against him or her and has a constitutional right to remain silent. Proceedings are considered penal in nature if they seek to degrade an individual's professional standing, reputation, or livelihood. Vining at 491. However, proceedings of the Department of Business and Professional Regulation held prior to the determination of probable cause are not penal in nature and do not become so until a person is given notice of the alleged violation and a right to a hearing. Northwest Florida Home Health Agency v. Merrill, 469 So.2d 893 (Fla. 1st DCA 1985).

The pre-probable cause proceedings constitute the non-adversarial executive fact-finding function of the agency held to discover or procure information relative to the alleged violation. The proceedings are confidential by law and protect the licensee from unfounded complaints while still allowing the Department to seek the truth and determine whether a matter warrants further investigation or discipline. Merrill at 900; Section 455.225, Florida Statutes. Once a determination of probable cause has been made, the Department is required to give the licensee notice of the alleged violation and an opportunity for a hearing to challenge the intended agency action. Section 455.225, Florida Statutes; Merrill. The furnishing of information to the Department during the course of pre-probable cause investigations does not waive the privilege afforded the documents or a party's Fifth Amendment rights. Stuart at 462 (Court noting that privilege does not attach until Government inquiry has reached the stage of an investigation for a possible penal sanction). Furnishing information during the course of a pre-probable cause investigation is encouraged due to the confidential nature of the proceedings. There are substantial benefits that can be obtained by

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participation in the proceedings including possible dismissal of the action[3] without a determination of probable cause such that disclosures made during the course of the proceedings cannot be considered voluntary for purpose of Fifth Amendment analysis. State v. Spiegel, 710 So.2d 13, 16-17 (Fla. 3d DCA 1998). Waiver of the privilege will not be lightly inferred and courts are directed to indulge every reasonable presumption against finding waiver. Id.

When a person is forced to choose between waiving his constitutional privilege against self-incrimination or foregoing another substantial benefit or guaranteed right, such as keeping the State's inquiry concerning his license confidential under Section 455.225(10), Florida Statutes, there is no choice and waiver is considered to be compelled and ineffective. Spiegel at 17 (court finding that requiring exercise of the privilege during the fact-finding function of a bar grievance committee would be in contravention of its duties to seek the truth); Davis v. Wainwright, 342 F. Supp. 39, 42-43 (M.D. Fla. 1971)(testimony before a court to secure payment for the defense can not be used to find a waiver of the 5th amendment privilege in a later prosecution); Simmons v. United States, 390 U.S. 377 (1968)(waiver of 5th amendment right to remain silent not found where testimony was given to secure benefit of evidentiary suppression hearing).

Respondent chose to participate in the investigation by providing the Petitioner's consultant access to documents in his possession concerning his the tax returns. He made the documents available to Petitioner's consultant at his offices and stood ready to explain the information contained in the returns. Petitioner's consultant did not avail himself of the opportunity to review all of the documents and focused his attention on only a small portion of the documents. After reviewing the small portion of the records, he contacted the Legal Department to determine whether

[3] Substantial benefits gained from participation in Panel deliberations include avoidance of the determination of probable cause and reduced recommendations for discipline.

he should continue with his efforts to review the information in the possession of the Respondent. The Legal Department directed that he conclude his review and write up a report for consideration by the Probable Cause Panel. See Exhibit C attached to the Response to the Motion for Order Compelling Release of Records. Following receipt of his report, Petitioner determined to pursue a formal action against the Respondent's license for a violation for which no prior notice had been given.

The case of Stuart v. United States is directly applicable here. The Internal Revenue Service was conducting an inquiry concerning taxpayers' returns and requested records from the taxpayers. The records were made available to the Internal Revenue agent through the taxpayers' CPA and the agent was permitted time to review the documents and make a determination concerning the returns. During her evaluation, the agent discovered possible indications of fraud and notified the Internal Revenue Service of her findings. No notice regarding her findings was provided to the taxpayers. Subsequently, a Special Agent was assigned to look into whether fraud had occurred. The Agent requested access to the records and the taxpayers objected on grounds of Fifth Amendment. The Court found that the inquiry by the Internal Revenue Service had changed from a civil inquiry to a criminal inquiry and that the taxpayers could rightfully assert their Fifth Amendment objections to the documents and that they need not be disclosed. In evaluating whether the Internal Revenue Service Special Agent should be given access to the records, the Court found that the taxpayers had acted in good faith by allowing access to the records during the initial inquiry and had done so for the convenience of the government. The Court went on to find that the taxpayers had not waived their Fifth Amendment rights by providing the records in a convenient manner for the agent's review during the initial inquiry. It upheld their objections to production of the documents and prohibited the Internal Revenue Service from gaining access to them.

Similarly, the Department of Business and Professional Regulation requested that Respondent participate in the pre-probable cause fact-finding function of the agency and produce records and testimony concerning his tax returns. The Department did not advise the Respondent that by doing so he would be waiving any Fifth Amendment rights he had in the documents. Respondent granted the Department access to his records, only a small portion of which was evaluated by the Department's consultant. When the Department filed a formal complaint against the Respondent premised on allegations of fraud, he timely asserted his rights under the Fifth Amendment and refused Petitioner access to the documents and/or to provide any testimony concerning the documents.

The situation is no different than that in Stuart and Respondent has not waived his Fifth Amendment rights by participating in the free-form proceedings of the agency prior to the determination of probable cause. Likewise, the furnishing of information and a response to the Panel when the focus of the investigation was on whether the Respondent violated Section 473.323(1)(g), Florida Statutes did not waive Respondent's right to later claim protection under the Fifth Amendment when the Department shifted its determination of probable cause to one of whether Respondent violated Section 473.323(1)(k), Florida Statutes, a different violation for which no prior notice was given under Section 455.225, Florida Statutes.

While many of the records generated by the Respondent in connection with the preparation of his tax returns may themselves not all be privileged, he can not be compelled to produce the records when the act of producing the records has communicative aspects. United States v.Doe, 465 U.S. 605 (1983); Mertens v. Division of Consumer Services, 596 So.2d 89, 91-92 (Fla. 1st DCA 1992). Asking the Respondent to sign the authorization proposed by the Petitioner would compel the Respondent to be a witness against himself in violation of his right to remain silent during the

course of these proceedings. The Fifth Amendment protects an individual from revealing directly or indirectly his knowledge of the facts relating to him or from having to share his thoughts and beliefs with the government. St. George v. State, 564 So.2d 152, 154-155 (Fla. 5th DCA 1990); United States v. Hubbell, 167 F.3d 552 (D.C. 1998). The authorization seeks to have the Respondent admit the existence or lack of existence for information substantiating his income tax returns for 1988, 1989, and 1990.

Based on the position taken by Petitioner, the request for information from the Internal Revenue Service goes directly to the heart of Petitioner's allegations that Respondent committed fraud in connection with his income tax returns. Petitioner infers that Respondent has no documentation to substantiate his returns for 1988, 1989, and 1990 and that reference to the records of the Internal Revenue Service will go to the issue of whether the Internal Revenue Service had a basis to allege fraud against the Respondent. Such issues are not a foregone conclusion with respect to the tax returns. Cf. State v. Wellington Precious Metals, Inc., 510 So.2d 902 (Fla. 1987)(Court noting that unless possession, existence, and authentication are a foregone conclusion, compelled disclosure can not be made for records citing Fisher v. United States, 425 U.S. 391 (1975)). The existence, authentication, and possession of documents in the hands of the Internal Revenue Service are not a foregone conclusion and compelling Respondent to execute the authorization for release of records from the Internal Revenue Service would force him to be a witness against himself. He has not waived his right to object to the compelled execution of a release for the records of the Internal Revenue Service.

WHEREFORE, Respondent respectfully requests that this Administrative Law Judge deny the Motion for an Order Compelling Authorization for Release of Records From the Internal Revenue Service.

Respectfully submitted,

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SLOTHER, & SLEET
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Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 209-0214
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. mail, postage prepaid, and facsimile to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and in lieu of original filing, one copy has been furnished to the Division of Administrative Hearings, DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 by telephone facsimile at (850) 921-6847, this August 20, 2001.

Jon M. Pellett

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DOAH Case Nos. 01-2507PL
01-2329PL
DBPR Case No. 97-01770

RALPH A. BUCHMAN,

Respondent
_____/

MEMORANDUM OF LAW REGARDING RESPONDENT'S WAIVER OF FIFTH AMENDMENT PRIVILEGE AGAINST SELF INCRIMINATION

COMES NOW, the PETITIONER, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, and files this memorandum in response to the court's request of August 14, 2001 in support of its Motion to Compel Consent to Release of Records From a Third Party:

1. On or about October 30, 1997, Respondent, through his attorney, Grover C. Freeman, supplied documentation to the Department regarding the charges and the settlement with the Internal Revenue Service.

2. On or about December 9, 1998, Department Consultant and Expert, Thomas F. Reilly, visited the Respondent's office to investigate the complaint which had been lodged against Respondent regarding the settlement with the IRS. When Mr. Reilly arrived at the Respondent's office he was provided with a packet of documents purportedly supporting Respondent's position. Upon further discussion, Mr. Reilly was told by the Respondent that the documentation and information which had been stored on the Respondent's computers had been lost. However, he was told that invoices and

receipts for the tax years in question were in the office. At that time, Mr. Reilly did not feel he had sufficient opportunity to review the 20 exhibits provided by the Respondent in a way that would allow him to efficiently search for the invoices and receipts that would support the returns.

3. Respondent has since asserted his Fifth Amendment Privilege Against Self-Incrimination in objection to requests for further documentation regarding the tax documentation in his possession custody or control.

MEMORANDUM OF LAW

As noted above, the Respondent previously supplied to the Department the IRS tax returns from 1988, 1989, and 1990, documentation relating to the adjustments made by the IRS to the Respondent's tax returns, pleadings in the case between Ralph and Marie Buchman vs. The Commissioner of Internal Revenue and the Official Notice of Deficiency from the IRS.

Pursuant to *Garner v. United States,* 424 U.S. 648, 96 S. Ct. 1178, 47 L. Ed. 2d 370, (1976), the Respondent has waived his Fifth Amendment Privilege Against Self-Incrimination by disclosing the above referenced documents relating to the IRS tax case, by letter and by making them available to the Department's expert.

In *Garner*, a criminal defendant was convicted for illegal gambling based in part, on evidence from his tax returns where he reported his occupation as a professional gambler and reported substantial income from gambling. The court ruled that because Petitioner freely made the incriminating disclosures on his tax returns, failing to assert the privilege at the time of making the returns, Petitioner's Fifth Amendment Rights were not violated because the admissions on the returns were not compelled by the government.

Similarly, the Respondent fully disclosed and provided to the Department the tax returns and various related documentation. Consequently, the Respondent cannot now attempt to reassert the privilege with regard to the tax returns and documentation provided and/or made available to the Department.

Furthermore, Respondent's decision to present the tax return and various other documentation which he believed would exonerate him, constitutes a waiver of the right to withhold further documentation of the details behind such information. It is well settled that a witness "may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." *Mitchell v. United States*, 526 U.S. 314, 320 , 119 S. Ct. 1307, 1311, (1999). As noted in *Schlien v. Schlien*, 763 So. 2d 350, (4th DCA 1998), the U.S. Supreme Court in *Brown v. United States*, 356 U.S. 148, 155, 78 S. Ct. 622, 627, (1958), stated that a defendant "cannot reasonably claim that the Fifth Amendment gives him not only the choice, but if he elects to testify, an immunity from cross-examination on matters he has himself put into dispute. See also *Booker v. State*, 397 So. 2d 910, 913-914 (Fla. 1981).

Respondent has opened the door to disclosure of his tax return information by providing the State with his 1988, 1989, and 1990 tax returns. By waiving his privilege regarding the tax returns he has waived the privilege with regard to the details of the returns as well.

While there is case law supporting the fact that the Respondent has waived his privilege against self-incrimination regarding the admissibility of the documentation which he has already provided, there does not appear to be much applicable case law which would bear on the issue of whether the Respondent's initial decision to make

certain documents available constitutes a Fifth Amendment waiver with regard to future compelled production of those same documents. Petitioner would argue that common sense and the related case law cited above, dictates that the waiver is permanent and cannot be rescinded.

However, regardless of this Court's decision on this issue, the Petitioner's Motion should be granted based upon the fact that the Respondent's act of signing a consent directive does not violate his Fifth Amendment privilege against self-incrimination. As briefed in Petitioner's previous memorandum of law, *Doe v. United States,* 487 U.S. 201, 219 (1988) clearly indicates that Respondent's Fifth Amendment rights are not implicated by the Petitioner's motion.

Furthermore, although there have been statutory rule changes with regard to the discoverability of the hospital peer review records in *Mercy Hospital v. Department of Professional Regulation, Board of Medical Examiners*, 467 So. 2d 1058 (3rd DCA 1985), that court's ruling that the interest in protecting the public from unqualified licensees meets the test of "exceptional necessity" remains controlling precedent. Petitioner's interest in protecting the public still outweighs Respondent's confidentiality interest in his tax return information in the possession of the IRS.

As noted by the court in *McSurely v. McAdams*, 502 F.Supp. 52, 56 (D.C. Dist. 1980), the overriding purpose of 26 U.S.C. Sect. 6103 was to "protect tax returns and return information from **misuse** by the White House, various Executive branch agencies and other government entites. More specifically, Congress was concerned with the misuse of said information for partisan political purposes. *Id.* The Court also noted that the statute's purpose was to end "wholesale, unregulated access to tax information" and

to protect the interests of federal tax administration. *Id* at 56-57. While the statute provided specific designated "material interest" categories whereby a private party might gain access to tax information, the Court opined that it was not convinced those categories were intended to be the sole avenues of disclosure. *Id* at 56.

Similarly, in the instant case, there does not appear to be an applicable category under the statute by which the Petitioner can gain access to Respondent's tax return records other than by compelling his consent. However, it is doubtful that Congress intended the statute to protect taxpayers in situations like this where a state governmental agency is attempting to discipline a licensee.

In fact, Sect 6103(k)(5) provides a specific category for disclosure to such agencies for purposes of regulating tax return preparers. Since Respondent was preparing his own joint returns in this case, Sect 6103(k)(5) does not appear to be applicable. Nevertheless, it is an indication that this is the type of interest that would justify disclosure.

In conclusion, Petitioner's interest in regulating and disciplining CPAs for the purpose of protecting the citizens of the state of Florida quite simply does not contravene the confidentiality interests that were meant to be protected by Section 6103. There are no political motives, the IRS' tax administration would not be effected and Petitioner would be willing to agree to any measure the Court requires which would continue to protect the Respondent's privacy interests without hindering the Department's prosecution of this case. Accordingly, Petitioner's Motion is properly granted.

Respectfully Submitted,

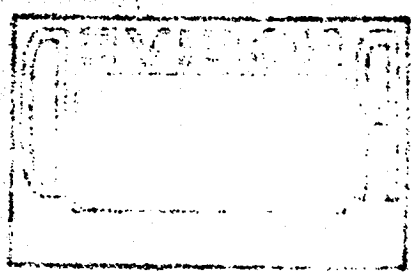
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Telephone: (850) 487-9636
Facsimile: (850) 414-6749

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and U. S. mail to Mr. Jon M. Pellett, Esquire, Barr, Murman, Tonelli, P.A., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida, 33602-5829, this 20th day of August, 2001.

Michael D. Kooi
Assistant General Counsel



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

NOTICE OF FILING IN EXHIBITS FOR CONSIDERATION WITH RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION TO COMPEL CONSENT TO RELEASE RECORDS

COMES NOW, the RESPONDENT, RALPH A. BUCHMAN, C.P.A., through undersigned counsel, and hereby gives Notice of filing the following exhibits for consideration with Respondent's Memorandum of Law in Opposition to the Motion to Compel Consent to Release Records:

1. Memorandum Charles Tunnicliff to Probable Cause Panel dated May 30, 1997
2. Respondent's October 30, 1997 response to the investigative report
3. Transcript of the November 10, 1997 Probable Cause Panel Meeting
4. Index to Exhibits copied by Thomas Reilly, C.P.A. - December 9, 1998
5. Memorandum Charles Tunnicliff to Probable Cause Panel dated June 14, 1999
6. Letter from Respondent's counsel dated December 9, 1999
7. Memorandum Monesia Brown to Probable Cause Panel dated May 12, 2000
8. Memorandum David Minacci to Probable Cause Panel dated July 13, 2000

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9. Transcript of Probable Cause Panel October 27, 2000

10. Petitioner's Motion for Continuance, DOAH Case 004692

11. Settlement Stipulation, DBPR Case 97-01770

12. Transcript Board of Accountancy Meeting January 29, 2001

13. Composite of correspondence on issue of referral to DOAH following January 29, 2001 Board Meeting

14. Petitioner's First Request to Produce and Respondent's Response, DOAH Case 01-2507PL

15. Notice of Objection Under Rule 1.351(b), FRCP July 11 & July 17, 2001

16. Letter from Internal Revenue Service July 9, 2001

17. Petitioner's Response to Respondent's First of Interrogatories

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing with attachments have been furnished by overnight delivery to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and the original and one copy have been furnished to the Division of

Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 by overnight courier, this August 17, 2001.

Jon M. Pellett

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles
Governor

Richard T. Farrell
Secretary

RECEIVED
JUN 09 1997
BOARD OF ACCOUNTANCY

MEMORANDUM

TO: Probable Cause Panel, Board of Accountancy

FROM: Charles F. Tunnicliff, Chief Attorney

RE: Raplh A. Buchman
Case Number 97-01770

DATE: May 30, 1997

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Attached please find the investigative materials in the above-cited case. These materials are provided to you, pursuant to Section 455.225, Florida Statutes, for your determination of whether or not probable cause exists to believe that a violation of Chapter 473, Florida Statutes, or the rules promulgated thereunder, has occurred.

The relevant statutory and rule provisions that apply to this case include the following:

Sections 473.323(1)(g), Florida Statutes.

Thank you for your consideration in this matter.

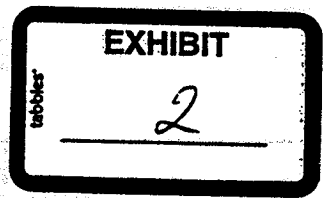
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EXHIBIT
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Ralph A. Buchman, C.P.A.
DBPR Case No.97-01770

Prepared for your consideration by:

GROVER C. FREEMAN
FREEMAN, HUNTER & MALLOY
201 East Kennedy Boulevard
Suite 1950
Tampa, Florida 33602
(813) 222-8200



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Attorneys at Law

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Telephone: (813) 222-8200
Fax: (813) 222-8210

October 30, 1997

Probable Cause Panel
Board of Accountancy
Department of Business and
Professional Regulation
2610 N.W. 43rd Street, Suite 1A
Gainesville, Florida 32606

Re: Ralph A. Buchman, C.P.A. DBPR Case No. 97-01770

Dear Members of the Probable Cause Panel:

I have the pleasure of representing Ralph Buchman with respect to the above referenced investigation.

Please accept this letter and enclosures as Mr. Buchman's supplemental response to the investigative report, which you are considering. Further, Mr. Buchman does wish to participate at the Panel meeting scheduled for November 10, 1997. Therefore, please also consider this letter and attachments as his written notice of intent to participate.

We believe that after reviewing this information, you will determine that there is not probable cause to bring a disciplinary action against Mr. Buchman. On behalf of Mr. Buchman, we would respectfully request that this matter be dismissed. Our request is based on the following:

The Department's investigation began with its receipt of a Consent Order entered into between Mr. Buchman and the Internal Revenue Service (IRS) concerning the payment of his personal income taxes for tax years 1988, 1989 and 1990. Attached as Exhibit A is a copy of the Consent Order.

Mr. Buchman entered into the Consent Order, Exhibit A, which you now have before you for consideration, as a no contest plea. It does not represent an admission of wrongdoing.

Mr. Buchman then and now asserts that he accurately reported his income and paid the appropriate taxes for tax years 1988, 1989 and 1990. He vehemently denies that he engaged in any fraudulent behavior and specifically denies that he engaged in any fraud, deceit, negligence, incompetency, or misconduct in the practice of public accountancy.

Mr. Buchman cooperated with the IRS investigation and stood willing to furnish the IRS auditor with all information concerning his tax returns. Mr. Buchman had available for review by the IRS investigator all the backup documentation to substantiate his claims. The investigator did not avail herself of the opportunity to review this material. Shortly after her initial contact, Mr. Buchman was notified that IRS was looking at the case as a criminal matter.

Then, as indicated by Exhibit B, IRS determined that this was not a criminal matter and referred the case back to its Examination section. Shortly thereafter, IRS notified Mr. Buchman that it had determined that a deficiency existed for tax years 1988, 1989 and 1990. Attached as Exhibit C is a copy of the deficiency notice.

He was shocked to say the least when he received the notice considering the fact that there had been no review of his records conducted by IRS. By failing to look at his records, IRS overlooked certain key documents and failed to examine the General Ledger and other basic items, which would have easily verified his claims.

In their notice of deficiency, IRS disallowed Mr. Buchman's claimed expenses for Commissions, Insurance, Interest, Professional Fees, Legal Fees, Travel, and Depreciation. These claims were all well documented and available to IRS yet never reviewed by them.

IRS notified Mr. Buchman that because of its disallowance, his taxable income was increased for 1988 by $56,833.00, for 1989 by $71,662.00, and for 1990 by $131,878.00. IRS determined that for 1988, Mr. Buchman should pay a penalty of $14,513.00 plus $3,903 for understatement of income tax due. For 1989 and 1990, IRS determined that Mr. Buchman should pay penalties of $36,135.00 and $33, 619.00, respectively.

Mr. Buchman timely challenged the determination by IRS regarding the amount of income taxes due for the years in question and he requested a hearing. The hearing was ultimately scheduled for March 20, 1995. Attached as Exhibit D is a copy of the Notice of Hearing.

Mr. Buchman never under-reported his income nor did he over-state his expenses. He was fully prepared to go to hearing and felt confident that a review of his tax returns along with the back-up documentation would exonerate him and substantiate his claims.

Additionally, after reviewing preliminary information in Mr. Buchman's files, IRS declined to pursue a criminal investigation of the matter, indicating that in their mind criminal or fraudulent behavior had not occurred. See Exhibit B.

As Mr. Buchman approached the date of the hearing before the Tax Court, his key witness, Mrs. Marie Buchman, became ill and was physically and mentally unable to testify concerning the taxes paid, the operations of Mr. Buchman's business, and the handling of receipts, moneys, expenses and other items for his business. Mrs. Buchman worked as Mr. Buchman's office manager during the years in question and was intimately familiar with the books and records. Her testimony was a crucial part of Mr. Buchman's case so much so that she was even listed as a witness for the government. Attached and incorporated herein by reference as Exhibit E is a copy of a letter written by Ms. Buchman, who is now divorced from Mr. Buchman, confirming the status of her health at the time of the hearing before the Tax Court.

IRS proposed to Mr. Buchman a settlement offer in which his financial exposure would be minimized under the applicable provisions of the tax code. By way of the agreement, he would not have to pay exorbitant penalties on the amounts allegedly owed and the total amount due was significantly reduced.

By agreeing to the entry of the disposition, Mr. Buchman's ultimate financial expense with penalty was significantly reduced, determinable, and manageable. With his key witness unavailable and with his financial exposure minimized, on the eve of the hearing, Mr. Buchman made the decision to enter into the Consent Order rather than pursue the matter any further.

The Consent Order reflects that there was an alleged deficiency in income tax for tax years 1988 in the amount of $9,812.00, 1989 in the amount of $35,337.00, and 1990 in the amount of $35,094.00. Special additions were added under I.R.C. § 6653(b)(1) for 1988 in the amount of $4,906.00; under § 6661 for 1988 in the amount of $2,453.00; and

under § 6663 for 1989 and 1990 in the amounts of $17,669.00 and $17,547.00, respectively. Under the Consent Order, the total amount due to the IRS was $122,818.00.

As evidenced by the material previously furnished for review, he has made timely payments to IRS on the total amount due under the Consent Order. By entering into the Consent Order, he experienced a total reduction of $72,970.00 from the original deficiency notice, which requested $195,788.00 plus interest.

It should be noted that the alleged deficiency described in the Order was the subject of dispute between Mr. Buchman and IRS. Solely because of personal and financial considerations and because a key witness was unavailable to attend the IRS hearing, Mr. Buchman entered into the agreement, Exhibit A. The agreement is the equivalent of a no contest plea and does not represent an admission of wrongdoing. It was entered into without IRS even looking at the information, records, and backup documentation, which were always available to substantiate Mr. Buchman's claims.

By virtue of the Consent Order, IRS imposed a civil fraud penalty under § 6653(B)(1). IRS also imposed penalty in 1988 for substantial understatement taxes under § 6661 and imposed a civil fraud penalty under § 6663 for 1989 and 1990. As evidenced by the original deficiency notice and the Consent Order, the dollar amounts at issue were clearly a subject of dispute. IRS' willingness to impose penalties under these provisions of the tax code does not equate to a finding of fraud having been committed by Mr. Buchman. They represent an easy and convenient way in which to assess penalties in a case and in a manner easily determined for the parties.

By entering into the Consent Order, IRS reduced its overall request by $72,970.00. The focus of the dispute was whether Mr. Buchman's disallowed claims constituted ordinary and necessary business expenses, represented expended funds or whether the funds were expended under the category as claimed.

Mr. Buchman maintained all records to substantiate his claims. There was never any intent to deceive or understate his income or overstate his expenses. He stood willing to cooperate with IRS during the investigation; yet, they did not avail themselves of the opportunity to review his records prior to initiating an action to collect these alleged deficiencies nor at anytime before entering into the Consent Order.

The entry of the Consent Order does not change the facts of this case. No fraud was committed. The agreed imposition of a dollar amount under the heading of a civil fraud penalty alone and when done to resolve a matter with IRS does not equate to Mr.

Buchman actually having committed fraud, deceit, negligence, incompetency, or misconduct in the practice of public accounting.

Therefore, we would respectfully request that the Panel dismiss this case. Mr. Buchman has not committed a violation of his practice act with respect to this matter. He will be present at the Probable Cause Panel Meeting to address any questions you might have concerning this matter.

Sincerely,

Grover C. Freeman

Enclosures

cc: Charles F. Tunnicliff, Esq.
Ralph A. Buchman

ORIGINAL

1/2/97 970770

UNITED STATES TAX COURT

RECEIVED

DEC 26 1996

BOARD OF ACCOUNTANCY

ADM.
RECORDED
SEC.
CAL. RFD
S.T. JUDGE
FILES

RALPH BUCHMAN and
MARIE C. BUCHMAN,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 27077-93

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED AND DECIDED: That there are deficiencies in income tax due from the petitioners for the taxable years 1988, 1989, and 1990 in the amounts of $9,812.00, $35,337.00 and $35,094.00, respectively.

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6653(b)(1) for 1988 in the amount of $4,906.00. Civil Fraud

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6661 for 1988 in the amount of $2,453.00.

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6663 for 1989 and 1990 in the amounts of $17,669.00 and $17,547.00, respectively.

Fraud

Judge.

Entered: MAR 28 1995

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

REPORT
EXHIBIT #
PAGE #

SERVED MAR 28 1995

0062

It is further stipulated that, effective upon the entry of the decision by the Court, petitioners waive the restriction contained in I.R.C. § 6213(a) prohibiting assessment and collection of the deficiency (plus statutory interest) until the decision of the Tax Court has become final.

STUART L. BROWN
Chief Counsel
Internal Revenue Service

By:

RONALD J. RUSSO
Counsel for Petitioners
Tax Court Bar No. RR0589
4100 W. Kennedy Blvd.
Suite 304
Tampa, FL 33609
Telephone: (813) 282-1299

Date: 3/20/95

WILLIE FORTENBERRY, JR.
Senior Attorney
Tax Court Bar No. FW0152
Box 35027, Federal Building
Suite 564 - Stop C
400 West Bay Street
Jacksonville, FL 32202
Telephone: (904) 232-2788

Date: 3/20/95

REPORT
EXHIBIT #
PAGE #

Internal Revenue Service Department of the Treasury

District
Director

Ralph A. Buchman
2899 S.E. Italy Street
Port St. Lucie, FL 34952

Person to Contact:
Revenue Agent Jennifer Stewart
Telephone Number:
(407) 340-5615
Refer Reply to:
1101
Date:
SEP 20 1993

Dear Mr. Buchman:

You are no longer the subject of an investigation by the Criminal Investigation Division regarding your Federal tax liability for 1988, 1989 and 1990. However, this does not preclude re-entry by the Criminal Investigation Division into the investigation.

The matter is presently in the Examination Division for further evaluation.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Daniel M. Bockum
Chief
Criminal Investigation Division

cc: Ronald Russo
4100 W. Kennedy Boulevard
Tampa, FL 33609

00064

Department of the Treasury
Internal Revenue Service
District Director

Date of This Letter: OCT 21 1993

Letter Number 531(P)

Ralph and Marie C. Buchman
2899 Southeast Italy Street
Port St. Lucie, Florida 34952

Taxpayer Identifying Number:
262-50-8130
Form:
1040
Person to Contact:
Laura Marcincak
Telephone Number:
(305) 424-2311
Refer Reply to:
4042:drm

CERTIFIED MAIL 283265

--NOTICE OF DEFICIENCY--

Taxable Year Ended:	Deficiency	Additions to the Tax - IRC Section 6653(b)(1)	Section 6661	Section 6663
December 31, 1988	$15,613.00	$14,513.00	$3,903.00	
December 31, 1989	$48,180.00			$36,135.00
December 31, 1990	$44,825.00			$33,619.00

We have determined that you owe additional tax or other amounts, or both, as shown for the tax year(s) identified above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this determination in court before making any payment, you have 90 days from the date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the deficiency. For a petition form, write to:

United States Tax Court
400 Second Street, NW.
Washington, DC 20217

Send the completed petition form, a copy of this letter, and all relevant statements or schedules that accompanied this letter to the Tax Court at the same address. The petition must be timely filed with the court within 90 days from the above mailing date (150 days if addressed to you outside of the United States). However, if the petition is filed after the 90 day (or 150 day) period, it is considered timely filed if the postmark date falls within the prescribed period and the envelope containing the petition is properly addressed with the correct postage.

The time for filing a petition with court (90 or 150 days as the case may be) is set by law and cannot be extended or suspended. Thus, contacting the Service for more information or receiving other correspondence from the Service will not change the period for filing a petition with the Tax Court. The court cannot consider your case if the petition is filed late.

If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign and file the petition or each must file a separate, signed petition. If more than one year is shown above, you only need to file one petition form showing the years you are contesting.

The Tax Court has a simplified procedure for small tax cases, when the dispute is for $10,000 or less for any one tax year. You can get information about this procedure, as well as a petition form you can use, by writing to:

Clerk of the United States Tax Court
400 Second Street, NW
Washington, DC 20217

Do this promptly if you intend to file a petition with the Tax Court.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the court.

If you decide not to file a petition with the Tax Court, please sign and return the enclosed waiver form. This will permit us to assess the deficiency quickly and can help limit the accumulation of interest. The enclosed envelope is for your convenience.

If you decide not to sign and return the waiver, and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the deficiency after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you are a "C" corporation, Section 6621(c) of the Internal Revenue Code provides that an interest rate two percent higher than the normal rate of interest be charged on large corporate underpayments of $100,000 or more.

If you have questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach this letter to help identify your account. Keep the copy for your records. Also, please include your telephone number and the most convenient time to call, so we can contact you if we need additional information.

If you prefer, you may call the IRS contact person at the telephone number shown above. If this number is outside your local calling area, there will be a long distance charge to you. You may call the IRS telephone number listed in your directory. An IRS employee there may be able to help you, but the contact person at the address shown on this letter is most familiar with your case.

Thank you for your cooperation.

Sincerely yours,

Commissioner
By

Merlin W. Heye (CCA)
Merlin W. Heye
District Director

Enclosures:
Copy of this letter
Waiver
Envelope

Form 4089
(Rev. January 1983)

DD - Ft. Lauderdale - 4040

Notice of Deficiency Waiver

Name, SSN or EIN, and Address of Taxpayer
Ralph and Marie C. Buchman
2899 Southeast Italy Street
Port St. Lucie, Florida 34952

SSN: 262-50-8130

Kind of Tax Income

Copy to Authorized Representative

Deficiency

Taxable Year Ended:	Deficiency	Additions to the Tax - IRC Section 6653(b)(1)	Section 6661	Section 6663
December 31, 1988	$15,613.00	$14,513.00	$3,903.00	
December 31, 1989	$48,180.00			$36,135.00
December 31, 1990	$44,825.00			$33,619.00

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law

Your Signature — date

Spouse's Signature — date

Taxpayer's Representative Signature — date

Corporate Name

Corporate Officers Signature — date

Note: If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

Who Must Sign: If this waiver is for any year(s) for which you filed a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

If you agree, please sign one copy and return it; keep the other copy for record

00068

Form 5278
Taxpayer:
Ralph and Marie C. Buchman
Return Form #
1040

STATEMENT - INCOME TAX CHANGES

Notice of Deficiency

	Tax Years Ended December 31, 1988	December 31, 1989	December 31, 1990
1. Adjustments to Income			
a. Schedule C Gross Receipts	$2,183.00	$69,371.00	$6,887.00
b. Schedule C Expenses	56,833.00	71,662.00	131,878.00
c. Self Employed Health Ins.	(1,334.00)	(1,080.00)	(1,080.00)
d. One Half S.E. Tax			(3,924.00)
e. Captial Gains and Losses			3,000.00
f. Schedule A Itemized Ded.	(6,525.00)	(4,667.00)	(519.00)
2. Total adjustments	$51,157.00	$135,286.00	$136,242.00
3a. Taxable income	10,836.00	28,070.00	861.00
Adjusted gross inc			
Tax table income			
b. No return filed [ ]			
Notice of def [ ]			
Return as filed [X]			
4. Taxable inc as rev [X]			
Adj gross inc as rev [ ]	$61,993.00	$163,356.00	$137,103.00
Tax table inc as rev [ ]			
5. Tax from:			
Tax tables			
Schedule TC			
Tax rate schedules	$13,491.00	$46,141.00	$37,105.00
6. Alternative tax if applicable			
7. Corrected tax liability	$13,491.00	$46,141.00	$37,105.00
8. Less credits:			
9. Balance	$13,491.00	$46,141.00	$37,105.00
10. Plus:			
a. Investment Credit Recapture			
b. Self Employment Tax	5,859.00	12,500.00	15,698.00
c. Earned Income Credit Recapture			
11. Total corrected income tax liability	$19,350.00	$58,641.00	$52,803.00
12. Total tax:			
Shown on return and/or	3,737.00	10,461.00	7,978.00
As previously adjusted			
13. Increase in tax	$15,613.00	$48,180.00	$44,825.00
14. Additions to the tax			
Internal Revenue Code			
a. Section 6653(b)(1)	$14,513.00		
b. Section 6661	$3,903.00		
c. Section 6663		$36,135.00	$33,619.00

Ralph and Marie C. Buchman

EXPLANATION OF ADJUSTMENTS
for Taxable Years
Ended
December 31, 1988, 1989 and 1990

Statutory Notice
Statement

1a. It is determined that during the taxable years ended December 31, 1988, 1989 and 1990, that Ralph Buchman received Schedule C Gross Receipts in the amounts of $2,183.00, $69,371.00 and $6,887.00. Therefore, your taxable income is increased in the amounts of $2,183.00, $69,371.00 and $6,887.00 for the taxable years ended December 31, 1988, 1989 and 1990.

1b. It is determined that during the taxable years ended December 31, 1988, 1989 and 1990, that Ralph and Marie C. Buchman are not allowed the Schedule C Expenses listed below, because it has not been established that any of the amounts listed constitutes an ordinary and necessary business expense, were expended, or were expended for the purpose designated. Accordingly, your taxable income is increased in the amounts of $56,833.00, $71,662.00 and $131,878.00 for the taxable years ended December 31, 1988, 1989 and 1990.

Category of Expense	1988	1989	1990
Commissions Expense(R)	$	$	$ 36,000.00
Insurance Expense(R)	7,910.00	8,751.00	11,235.00
Interest Expense(R)	3,420.00	4,553.00	-
Interest Expense(M)			7,001.00
Professional Fees(R)	6,919.00	7,453.00	3,462.00
Professional Fees(M)			14,000.00
Legal Fees(R)		4,595.00	
Travel Expense(R)	14,407.00	8,937.00	15,091.00
Travel Expense(M)			13,991.00
Depreciation Expense(R)	24,177.00	37,373.00	31,098.00
Total	$56,833.00	$71,662.00	$131,878.00

(R) - Ralph Buchman
(M) - Marie C. Buchman

1c. It is determined that during taxable years ended December 31, 1988, 1989 and 1990 that you were entitled to self employed health insurance in the amounts of $1,334.00, $1,080.00 and $1,080.00 due to the adjustments made to your Schedule C. Therefore, your taxable income is decreased in the amounts of $1,334.00, $1,080.00 and $1,080.00 for the taxable years ended December 31, 1988, 1989 and 1990.

Ralph and Marie C. Buchman | EXPLANATION OF ADJUSTMENTS for Taxable Years Ended December 31, 1988, 1989 and 1990 | Statutory Notice Statement

1d. It is determined that you are entitled to one half of the self employment tax of $3,924.00 for the taxable year ended December 31, 1990. Therefore, your taxable income is decreased in the amount of $3,924.00.

1e. It is determined that you are not entitled to the capital gain loss in the amount of $3,000.00 for the taxable year ended December 31, 1990. Therefore, your taxable income is increased in the amount of $3,000.00 for the taxable year ended December 31, 1990.

1f. It is determined that you are entitled to Schedule A Itemized Deductions in the amounts of $6,525.00, $4,667.00 and $519.00 for the taxable years ended December 31, 1988, 1989 and 1990. Therefore, your taxable income is decreased in the amounts of $6,525.00, $4,667.00 and $519.00 for the taxable years ended December 31, 1988, 1989 and 1990.

10b. It is determined that for the taxable years ended December 31, 1988, 1989 and 1990 that Ralph Buchman received self-employment income as defined by section 1402 of the Internal Revenue Code in the amounts of $74,493.00, 93,072.00 and $67,226.00. It is determined that for the taxable year ended December 31, 1990 that Marie C. Buchman received self-employment income as defined by section 1402 of the Internal Revenue Code in the amount of $139,727.00.
Therefore, you are subject to the self-employment tax imposed by section 1401 of the Code on that part of the self-employment income received during the taxable year which does not exceed the contribution and benefit base (as determined under section 230 of the Social Security Act) reduced by the amount of wages received during the taxable year which were subject to F.I.C.A. taxes.
(See Exhibits A, A1 and A2)

Ralph and Marie C. Buchman

EXPLANATION OF ADJUSTMENTS
for Taxable Years
Ended
December 31, 1988, 1989 and 1990

Statutory Notice
Statement

14a. All of the underpayment of tax required to be shown on the return for the tax year ended December 31, 1988, is due to fraud. Consequently, the addition to the tax is charged for this year, as provided by section 6653(b)(1) of the Internal Revenue Code.
(See Exhibit B)

14b. It is determined that all of the underpayment of tax for the taxable year ended December 31, 1988 is a substantial understatement of income tax, since the resulting understatement of tax exceeds the greater of 10% of the tax required to be shown on the return or $5,000.00 ($10,000.00 if a corporation).

Consequently, there is added to the tax an amount equal to 25% of such underpayment of tax, pursuant to Section 6661 of the Internal Revenue Code.
(See Exhibit C)

14c. All of the underpayment of tax required to be shown on the return for the tax year ended December 31, 1990, is due to fraud. Consequently, the addition to the tax is charged for this year, as provided by section 6663 of the Internal Revenue Code.
(See Exhibit D)

SELF-EMPLOYMENT TAX COMPUTATION Exhibit- A

Ralph Buchman

	1988	1989
Self-employment income per return	$15,477.00	($47,961.00)
Adjustments:		
Schedule C Gross Receipts	2,183.00	69,371.00
Schedule C Expenses	56,833.00	71,662.00
Self-employment income as determined(1)	$74,493.00	$93,072.00
Maximum SE income subject to self-employment tax	$45,000.00	$48,000.00
Income subject to FICA withholding	0.00	0.00
Maximum of your SE income subject to self-employment tax(2)	$45,000.00	$48,000.00
Lesser of (1) or (2)	$45,000.00	$48,000.00
Times rate	0.1302	0.1302
Self-employment tax as determined	$5,859.00	$6,250.00

SELF-EMPLOYMENT TAX COMPUTATION Exhibit- A1

Ralph Buchman

	1990
Self-employment income per return	($547.00)
Adjustments:	
Schedule C Gross Receipts	6,887.00
Schedule C Expenses	60,886.00
Self-employment income as determined(1)	$67,226.00
Adjustment Rate .9235(2)	62,083.00
Maximum SE income subject to self-employment tax	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Income subject to FICA withholding	0.00
Maximum of your SE income subject to self-employment tax(3)	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Lesser of (2) or (3)	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Times rate	0.1530
Self-employment tax as determined	$7,849.00

SELF-EMPLOYMENT TAX COMPUTATION Exhibit- A2

Marie C. Buchman

	1990
Self-employment income per return	$68,735.00
Adjustments:	
Schedule C Expenses	70,992.00
Self-employment income as determined(1)	$139,727.00
Adjustment Rate .9235(2)	129,038.00
Maximum SE income subject to self-employment tax	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Income subject to FICA withholding	0.00
Maximum of your SE income subject to self-employment tax(3)	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Lesser of (2) or (3)	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $51,300.00
Times rate	0.1530
Self-employment tax as determined	$7,849.00

Exhibit - B

COMPUTATION OF ADDITION TO THE TAX FOR FRAUD UNDER SECTION 6653(b)(1) OF THE INTERNAL REVENUE CODE

		1988
1	Corrected income tax liability as determined	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX $19,350.00
2	Income tax liability disclosed on a timely filed return	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX 0.00
3	Income tax liability subject to penalty	19,350.00
4	Penalty - % of line 3, column 1 .75 2 3	14,513.00
5	Penalty previously assessed	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX 0.00
6	Penalty under IRC 6653(b)(1)	$14,513.00

Exhibit - C

COMPUTATION OF SECTION 6661 PENALTY

		1988
1	Amount of tax required to be shown	$19,350.00
2	Less: Amount of tax shown on return	3,737.00
3	Understatement	15,613.00
4	Less: Amount of tax attributable to IRC section 6659	0.00
5	Understatement attributable to IRC section 6661	15,613.00
6	Times rate (25%)	25%
7	Substantial Understatement Penalty as provided by section 6661	$3,903.00

Exhibit - D

COMPUTATION OF ADDITION TO THE TAX FOR FRAUD UNDER SECTION 6663 OF THE INTERNAL REVENUE CODE

		1989	1990
1	Corrected income tax liability as determined	$58,641.00	$52,803.00
2	Income tax liability disclosed on a timely filed return	10,461.00	7,978.00
3	Income tax liability subject to penalty	48,180.00	44,825.00
4	Penalty - % of line 3, column 1 / 2 / 3	36,135.00	33,619.00
	75 / 75		
5	Penalty previously assessed	0.00	0.00
6	Penalty under IRC 6663	$36,135.00	$33,619.00

UNITED STATES TAX COURT
Washington, D.C. 20217

October 19, 1994

Ralph & Marie C. Buchman
Petitioner,

v.

Docket No.: 27077-93

Trial On: March 20, 1995

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Trial At: Room 640
Timberlake Federal Annex
501 East Polk Street
Tampa, FL 33602

NOTICE SETTING CASE FOR TRIAL

The parties are hereby notified that the above-entitled case is set for trial at the Trial Session beginning on March 20, 1995.

The calendar for that Session will be called at 10:00 A.M. on that date and both parties are expected to be present at that time and be prepared to try the case. YOUR FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

Your attention is called to the Court's requirement that, if the case cannot be settled on a mutually satisfactory basis, the parties, before trial, must agree in writing to all facts and all documents about which there should be no disagreement. Therefore, the parties should contact each other promptly and cooperate fully so that the necessary steps can be taken to comply with this requirement. YOUR FAILURE TO COOPERATE MAY ALSO RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

If there are a number of cases to be tried, the Court will fix the time of each trial at the end of the calendar call. The Court makes every effort to suit the convenience of the petitioners in fixing trial times, but because of conflicting requests received from petitioners, the final determination of trial times must rest in the Court's discretion.

Charles S. Casazza
Clerk of the Court

Ronald John Russo
Suite 304
4100 W. Kennedy Blvd.
Tampa, FL 33609

0079

To Whom it may Concern
From: Marie C. Buchman
October 22, 1997

I understand that there is currently an investigation of Ralph A. Buchman, my former husband, by the DPR.

The following is presented to you:

I worked in my former husband's office from March, 1985 to April, 1996. We were divorced in April, 1996.

My duties were:

a) To hire and manage personnel
b) Handle collection of Accounts Receivable
c) Write checks and pay Account Payables
d) Prepare and make bank deposits
e) Purchase equipment and supplies
f) Perform all other duties to manage the business such as office maintenance and repairs, lawn

2/

care and building repairs.

Mrs Buchman at no time made bank deposits, collected payments or wrote checks. She handled the clients and I handled the business, sometimes with the help of our bookkeeper.

There was no wrong doing in our Tax Returns for the years 1988- 1989 or 1990- or for any other year for that matter.

I wanted to defend the assessment as did my husband. However, because of the toll the IRS investigation had taken on my health I was unable to go to Tax Court in March of 1995. Unless you have had personal experience yourself you cannot ever begin to understand how these unfair and unfounded accusations by the IRS can affect a person's physical and mental health.

I.R.S. did nothing wrong and all

were persecuted and unfairly treated by the IRS from June, 1991 until March, 1995.

This situation severely affected my health in that my blood pressure remained elevated and I developed heart palpitations, dizziness & shortness of breath. I also contracted a respiratory ailment in March of 1995, which caused me to lose my voice. That led to chronic laryngitis which lasted for almost a year. Many tests including a cat-scan, chest X-Ray and allergy testing proved negative. Almost a year later, on February 7, 1996, Dr Gliedt informed me he felt most of my ailments were caused by anxiety and stress.

It has taken me a long time to recover and I have spent almost a year in therapy trying to deal with all the problems the IRS invasion of my life caused.

at the time Ralph and I were scheduled to go to tax court, I was extremely ill. I asked Ralph if the court date could be re-scheduled - and he called his attorney, Lon Russo, who said he could not re-schedule.

I told Ralph I could not go, I was too sick. Mr. Russo advised him to settle.

Mr. Buchman reluctantly agreed to settle with the IRS only after I told him I could not go. He was concerned for my physical and mental health. He was ready to go and fight to cure that terrible injustice being done to both of us, but he was more concerned about my health, since he could see I was close to a breakdown after all the years of harassment by the IRS. So he made the decision to settle very reluctantly.

Subsequently, all the tension put a great deal on [illegible]

5/

on our marriage and we were divorced in April of 1996, after 17 years of marriage.
I have no reason to be untruthful.

Our Tax Returns were not fraudulent.

I am enclosing my medical records from 1994 to 1996 for your review.

Marie L. Buchner

2937-5. Atlantic Ave
Apt. # 1602
Daytona Shores, Fl. 32118

STANDARD BRUCE PROTOCOL EXERCISE STRESS TEST

Name Buckman Marie Age 59 Date 9-20-94

ATTENDING PHYSICIAN Dr. Makhani DIAGNOSIS Chest Pain / SOL

DS Estrace Provera Vantec

RESTING B/P 143/80 RATE PREDICTED 161

RESTING H/R 80 TIME STARTED 85% PREDICTED 137

RATE ACHIEVED 148

STAGE	MIN	SPEED ELEVATION	METS	BLOOD PRESSURE	HEART RATE	COMMENTS
REST	0	0			78	
I	1	1.7mph	3.5	150/80	112	
	2	10%	4.5	209/86	125	
	3		5.0	226/78	128	
II	4	2.5mph	5.5	210/62	141	flu-PAC's
	5	12%	6.5		145	dl SOB
	6		7.0	238/69	148	
III	↑610	3.4mph	8.0		149	
	8	14%	9.0			
	9		10.0			
IV	10	4.2mph				S2 70
	11	16%				35462
	12					
V	13	5.0mph				No % C.P
	14	18%				dl. SOB / " fluG wm
	15					

POST EXERCISE RECOVERY

MIN	B/P	H/R	COMMENTS	MIN	B/P	H/R	COMMENTS
1	233/87	127		6			
2		117		7			
	201/68	104		8			
4	183/68	93		9			
5				10			0085

REASON FOR STOP: GENERALIZED FATIGUE ✓ END OF PROTOCOL ____ C/P ____

MAKHNI CARDIOLOGY & MEDICAL ASSOCIATES, P.A.
Malvinder S. Makhni, M.D.
Parveen B. Makhni, M.D.

1700 S.E. Hillmore Drive, Suite 307, Port St. Lucie, Florida 34952, 335-3700, 878-0277

BUCKMAN, MARIE
09/20/94

STRESS TEST:

INDICATIONS:
The patient is a 59-year-old female, with a history of chest pain and shortness of breath. Stress test is being performed to rule out significant underlying coronary artery disease.

Resting electrocardiogram showed sinus rhythm, with a heart rate of 78 per minute, PR [illegible] 0.2, QRS 0.08.

Conclusion: Non-specific ST-T changes.

PROTOCOL:
Stress test was performed using the regular Bruce protocol. She was on the treadmill for 6 minutes 10 seconds. Stress test was terminated because of shortness of breath. Her heart rate increased to 149 per minute, which is 92% of her maximum heart rate. Blood pressure increased from 143/80 to 238/89 mmHg. The patient did not complain of any chest pain. The shortness of breath subsided with rest. Electrocardiogram taken during the stress test showed mild ST segment depression in leads V5 and V6. However, these ST segments could not be evaluated accurately because of wandering of the baseline. Electrocardiogram taken at the end of the stress test showed upsloping of the J-point and ST depression of about 1 mm was seen in lead V5. Electrocardiogram taken during the recovery period showed about 1 mm of ST depression in lead II and aVF. The patient did not complain of any chest pain during the stress test or during the recovery period.

The patient had a regular stress test and not a thallium study because she was not willing to have the thallium injection.

CONCLUSION:
1. STRESS TEST IS NEGATIVE FOR EXERCISE-INDUCED CHEST PAIN AT 92% OF HER MAXIMUM HEART RATE.
2. MILDLY POSITIVE FOR MYOCARDIAL ISCHEMIA IN THE INFERIOR LEADS.
3. NEGATIVE FOR EXERCISE-INDUCED VENTRICULAR ARRHYTHMIA.
4. PHYSICAL TOLERANCE TO EXERCISE IS FAIR.
5. NEGATIVE FOR EXERCISE-INDUCED VENTRICULAR ARRHYTHMIA.

MALVINDER S. MAKHNI, M.D.
MSM:medi:1

0086

Treasure Coast Imaging Center

1579 Lennard Road
Port St. Lucie, Florida 34952

(407) 337-5575
Fax: (407) 337-5213

Physician Stress Test Report

PATIENT: [redacted] MARY DATE: 9-20-94

AGE: 59 PHYSICIAN: DR MAKHIJ

==========

INDICATION FOR STRESS TEST: (✓) Angina/Atypical chest pain
( ) S/P CABG ( ) S/P PTCA ( ) S/P MI (✓) Other: SOB

==========

PHYSICAL EXAM: [redacted] Stresses: (✓) Yes ( ) No

Resting EKG: ( ) Normal ( ) Abnormal: _____

( ) RBBB ( ) LBBB ( ) MI: _____

==========

EXERCISE TEST REPORT: APMHR (220-age): 161 85%: 137 70%: 113

Protocol: Bruce Persantine ( ) Yes (✓) No

Peak Heart Rate: 149 Peak BP: 235/69

Chest pain: ( ) Yes [redacted] ST changes: ( ) Yes (✓) No

==========

CONCLUSIONS: ( ) Strongly positive

( ) Positive

( ) Equivoca[redacted]

( ) Negative

( ) Inconclusive: target heart rate not achieved

( ) Uninterpretable secondary to: LBBB Digoxin LVH
(circle one)

_____ M.D.

0087

ST. LUCIE - MARTIN OTOLARYNGOLOGY, P.A.

DR. RICHARD B. ALLEN, M.D.
DR. LESLIE R. BERGHASH, M.D.
DR. JAMES W. McCONNELL, M.D., P.A.
DR. JOHN T. LANZA, M.D.

NAME: Mari Buchman

MAR 23 1995 - age 59 -

Laryngitis since last nov -

Allergic Edema
Rea Medi
Vasotec
Estrace
Phenera

March 23, 1995 JWM/sb

Upper respiratory symptoms, onset of hoarseness last night, non-smoker.

EXAMINATION: Nasal congestion. Some purulence. No antral or frontal tenderness. Mouth and tongue are clear. Nasopharynx purulent PND. Oropharynx ejection. Hypopharynx and larynx ejection. Vocal cords move well. Neck no cervical masses. Status post left superficial parotidectomy.

IMPRESSION:
1. Pharyngitis
2. Sinusitis
3. Laryngitis

DISPOSITION:
1. Seldane 1 bid
2. Keflex 500 one qid

Return prn.

4/13/95 MARIE C. BUCHMAN FCA/WEST

SUBJECTIVE: Mrs. Buchman presents to the office today to establish medical care. She has recently joined the Humana Plan and has had her medical problems being treated by Dr. Blomer, her Gynecologist. She is being followed for hypercholesterolemia. Apparently her cholesterol has been up to 400 and recently has gotten it down to 350 with diet alone. She's tried Mevacor, Zocor but has had some side effects to the Zocor, which she tolerated much better than the Mevacor. She does eat a lot of butter. Between she and her husband she probably eats about a pound of butter per week. She also likes shrimp. Otherwise, she watches her cholesterol intake. She also walks about 4 miles per day and has lost about 30 lbs. in the past 6 months or so. She states that about last August she was having some palpitations, underwent a treadmill test and echocardiogram with Dr. Makhni and these were okay. Apparently her symptoms were chalked up to palpitations, nerves and hypertension.

Other PMH includes hay fever, Hepatitis B in 1964.

PAST SURGICAL HISTORY: BTL in 1973. Removal of several benign tumors of the neck in 1963, 1973, 1980 and 1989. D&C x 2, the last one in 1968 and 1973. Left hand surgery secondary to fracture which did not heal properly. Carpal tunnel syndrome with median nerve release in 1987. Last Pap smear was January of 1995; all Paps have been normal. The patient entered menopause in her mid 50's and has had no problems. She has been on hormone replacement therapy for the last 15 years.

MEDICATIONS: Estrace 1 mg.
Provera 2.5 mg. qd
Vasotec 5 mg. qd

ALLERGIES: CODEINE!

PERSONAL HABITS: The patient has never used tobacco. She has a rare alcoholic beverage. She drinks 4-5 cups of coffee per day.

FAMILY HISTORY: Remarkable for a mother with stomach cancer and father with an MI in his mid 50's.

PHYSICAL EXAM: Wt. 168 lbs., P 104, BP 146/86. In general a WDWN Caucasian female INAD.

SKIN: Warm & dry w/o rash or lesions.

HEENT: No conjunctival injection or exudate, TMs benign, canals patent. Posterior pharynx w/o inflammation. No oral lesions.

NECK: Supple w/o adenopathy, JVD, carotid bruits or thyromegaly.

LUNGS: CTA.

HEART: RRR. S1 and S2 w/o murmur.

ABDOMEN: Soft, nondistended and nontender. Normally active bowel sounds. No organomegaly, no masses palpated. No flank pain.

Continued on next page .....

4/26/95 MARIE C. BUCHMAN FCA/WEST

SUBJECTIVE: Mrs. Buchman presents to the office today stating that she has not been feeling well. She has been c/o fatigue for the last couple of months. She had a respiratory virus in 3/95 and still c/o a hoarseness secondary to that episode. She has had some tumors removed from the throat area by Dr. Allen (details unknown). She is afraid that the tumors may be recurring. She also states she feels like her heart has been racing lately and she is having some palpitations. We have sent for recent records from Dr. Makhni's and Dr. Blomer's office and have yet to receive any of this information. Apparently there is some information about treadmill and Echocardiogram done recently.

PMH/PSH:
1) HTN
2) Hypercholesterolemia
3) Post-menopausal

MEDICATIONS: Vasotec 5 mg. qd
Estrace 1 mg. qd
Provera 2.5 mg. qd

ALLERGIES: CODEINE !

PHYSICAL EXAM: Wt. 168, BP 162/96, P 80, T 98.4 In general a WDWN, somewhat anxious Caucasian female INAD.
HEENT: PERRL, EOMI. No conjunctival injection or exudate. TMs benign, canals patent. Posterior pharynx w/o inflammation. No oral lesions.
NECK: Supple w/o adenopathy. No JVD, carotid bruits or thyromegaly.
LUNGS: Clear.
HEART: Regular w/o murmur.

IMPRESSION: 1) FATIGUE
2) CHRONIC LARYNGITIS

PLAN:
1) We will again try to obtain Dr. Makhni's records.
2) We will draw a CBC, Chem-19, TSH and Monospot today instead of waiting for Dr. Blomer's records to arrive.
3) We will have her RTO in one week. If she still has the hoarseness and if none of the workup explains this symptom, then we will send her to an ENT physician for further evaluation. MELANIE R. WILTSHIRE, M.D./df

5/23/95 Call II Panel

5/24/95 BUCKMAN, MARIA

SUBJECTIVE: Mrs. Buckman presents to the office today to follow-up on laryngitis. She states that she still is hoarse and it is a little bit better than it was, but still is a problem that is bothering her. She is concerned secondary to some tumors which were removed from the neck by Dr. Allen.

PAST MEDICAL HISTORY:
1. HYPERTENSION.
2. HYPERCHOLESTEROLEMIA.
3. POST-MENOPAUSAL ESTROGEN DEFICIENCY.

MEDICATIONS:
1. Vasotec, 5 mg., one q.d.
2. Estrace, 1 mg. q.d.
3. Provera, 2.5 mg. q.d.

ALLERGIES: CODEINE

PHYSICAL EXAM:
V.S. - WT: 171, P: 92. BP: 152/92.

In general, well developed, well nourished, CF INAD.

Examination of the throat reveals no inflammation, no tonsilar hypertrophy, no oral lesions.

NECK: Supple w/o adenopathy, no JVD, bruits, or thyromegaly.

IMPRESSION:
1. CHRONIC LARYNGITIS.

PLAN:
1. We will refer the patient to St. Lucie Otolaryngology Associates for evaluation of chronic laryngitis.

]MELANIE R. WILTSHIRE, M.D. :bah

7-3-95 - estrace 1mg #30
Provera 2.5mg #30 } Eck. 337 2553 --

8-4-95 refill estrace 1mg. #30 337-2553
provera 2.5 mg #30 PW w/4K

FAX
DATE 8-4 | PAGES | FROM
TO Margo | CO. FAMILY CARE ASSOC
PH # 407-
FAX # 407-

MESSAGE

000091

ST. LUCIE MARTIN OTOLARYNGOLOGY

RICHARD B. ALLEN, M.D.
LESLIE R. BERGHASH, M.D.
JAMES W. McCONNELL, M.D., P.A.
JOHN M. LANZA, M.D.

PATIENTS NAME Marie Buchman

A voicemail

MAY 26 1995 Pt c c/o persistent Hoarseness. x 4 days Heavy Mucus. Green to white = Blood tinge only in AM. (HH)
4 days Hydromox Afrin x 1 week
+ ???
Flonase

LRB:vdg

HPI: The patient complains of intermittent hoarseness, frontal sinus congestion and pressure, post nasal drainage foul tasting, intermittently green, intermittently blood tinged. Has had some intermittent pressure in the ears. She has been using Afrin nasal spray for approximately one weeks time. She has a strong history of allergies but has never been tested nor has she been on desensitization.

PHYSICAL EXAMINATION: TMs are normal and mobile. Intranasal exam shows moderate congestion of the nasal mucosa with mucopurulence bilaterally. Her septum is midline. Oral exam mild inflammation of the posterior pharynx. Neck no evidence of adenopathy.

IMPRESSION: Acute sinusitis with underlying allergic rhinitis.

PLAN: Flonase nasal spray. Duricef x 14 days. Continue Seldane. Follow-up in two weeks time with consideration of allergy evaluation.

JUN 07 1995 RTO For 2 week F/U - Some improvement Coughing up yellow - persistent thick PND (HH)

Sl. improved - (not Dr.)

June 7, 1995 LRB/sb

Patient returns to the office for recheck and re-evaluation. She has almost completed her course of Duricef and has been using the Flonase. She is approximately 50% improved.

(OVER)

10/25/95 BUCHMAN, MARIE C.

PROBLEM LIST:
1. Hypertension.
2. Hypercholesterolemia
3. Post-menopausal estrogen deficiency.

from march, 1995

MEDICATIONS:
Vasotec 5 mg. q.d.
Estrace, 1 q.d.
Provera, 2.5 q.d.

SUBJECTIVE:
She presents with the chief complaint of laryngitis x 8 months. She states that she has had problems with the laryngitis over this period of time and had a CT-scan of the paranasal sinuses which was reviewed and showed chronic sinusitis, was told by Dr. Berghash this was the etiology to her problems. She was placed on Claritin D which caused problems with her. She was also recommended an allergy evaluation which was refused through the HMO.

PHYSICAL EXAMINATION:
HEENT: Nose, turbinates were boggy and swollen. Throat was red and inflamed.
LUNGS: Clear.
HEART: Regular.

IMPRESSION:
RECURRENT LARYNGITIS, ETIOLOGY AT THIS TIME UNDETERMINED.

PLAN:
I would recommend a repeat referral to Dr. Berghash for ENT evaluation. I will be checking a chest X-ray and thyroid profile on her and be placing her on Sterapred pack for six days and will be seeing her in two weeks.

ROSS E. GLIDER, D.O.

RG:bah

11-8-95 wt 177 BP 146/102 P 96 t 97.5

Radiology Imaging Associates

2306 Nebraska Avenue
Fort Pierce, Florida 34950
(407) 464-1650
FAX (407) 464-5881

R. F. Basilico, M.D.
E. Gallagher, M.D.
R. J. Raffa, M.D.
J. T. Charles, M.D.
A. N. Vennos, M.D.
R. J. Connolly, M.D.
R. G. Beaton, M.D.
B. Breslaw, M.D.

October 27, 1995

Ross Glider, D.O.
Family Care Associates
1651 SE Tiffany Avenue
Port St. Lucie, FL 34985

Re: **BUCHMAN, MARIE**
No: **06-15-35**

CHEST PA AND LATERAL VIEWS: 10-26-95

Films performed at Family Care Associates, P.A.

No significant abnormalities of the bones, lung fields, pulmonary vascularity, heart size and mediastinum are seen.

IMPRESSION: NEGATIVE CHEST.

Thank you for the referral of this patient.

R. J. CONNOLLY, M.D.
RJC:bmm

NOV

000094

11/8/95 BUCHMAN, MARIE C.

SUBJECTIVE: Mrs. Buchman is still having consistent hoarseness and has developed URI symptoms on top of this with nasal congestion and post-nasal drip.

PHYSICAL EXAM:
NOSE, turbinates were boggy and swollen. Throat was red and inflamed.
LUNGS: Clear
HEART: Regular.

IMPRESSION:
1. POST-NASAL DRIP WITH MAYBE SINUSITIS, ALSO PERSISTENT HOARSENESS WHICH I AM CONCERNED ABOUT.

PLAN:
1. I am going to refer her back to Dr. Berghash for examination, continue her on Flonase, one puff b.i.d.
2. Claritin D., one q.d. PRN.
3. Amoxil, 500 mg. t.i.d. for 10 days.
4. I will be following her back in one month here.
ROSS E. GLIDER, D.O.

RG:bah

12-13-95 wt 174 BP 134/94 P 88
Lipid Chem 19 (CB)

ST. LUCIE - MARTIN OTOLARYNGOLOGY, P.A.

DR. RICHARD B. ALLEN, M.D.
DR. LESLIE R. BERGHASH, M.D.
DR. JOHN T. LANZA, M.D.

- - - - - - - - - - - - - - - - - - - -

PATIENT'S NAME: MARIE BUCHMAN

November 20, 1995 LRB/sb

The patient returns to the office with continued complaints of sinus congestion, postnasal drainage, intermittent laryngitis. She has been followed by Dr. Glider recently at Family Care Associates. She continues on the intranasal steroid spray and is here for re-evaluation regarding her larynx.

EXAMINATION: TMs are normal and mobile. Intranasal exam again reveals deviation of the nasal septum to the right, 2+ congestion of the nasal mucosa, without mucopurulence. Oral exam is normal. Neck exam revealed no evidence of adenopathy.

Under topical anesthesia, a flexible fiberoptic examination was performed, revealing again irritated, injected vocal cords.

PLAN: I had a frank discussion with the patient again today regarding allergy evaluation. I have also discussed this with Dr. Glider on the phone. We will go ahead and order South Florida RAST testing for her. She will continue on her present medications.

LRB

1/15/96 BUCHMAN, MARIE C.

SUBJECTIVE: This 60 year old with recurrent sinus problems. She is getting some blood coughing up. It has gone from her nose down to her chest. She is getting some allergy testing done in 9 days.

CURRENT REGIMEN:
1. Vasotec, 5 mg.
2. Zocor or Pravachol
3. Estrace
4. Provera
5. Flonase which she hadn't been using. It didn't work.
6. Claritin D which she stopped. "It put her into a nose dive of depression".

She has pain around her head. She tends to get a laryngitis. She has had chronically inflamed vocal cords.

I reviewed her records. She has had a CT-scan of her sinuses showing a deviated septum. She is getting allergy testing.

PHYSICAL EXAM:
V.S. WT: 174 lbs. BP: 138/82 P: 76 T: 97

HEENT: TMs were clear. Nose showed swelling on both sides with some redness. Pharynx was normal.
LUNGS: Had a slight end-expiratory wheeze.

ASSESSMENT: Probable recurrent sinusitis with allergy symptoms.

PLAN:
1. Duricef, 500 mg. #30, one b.i.d. and also I will have her restart the Flonase. I think that to be safe and after she gets her allergy testing I may try her on another course of steroids.
2. Marie states she is working about 70 hours a week. This may be contributing to her general problems.
ERIC K. YOUNG, M.D.

EY:bah

FAX 1-23-34 BLVD.
Kathy Debbie Allen
MESSAGE

1/24/1996 DEAN S. COHEN, D.O.

FOLLOW UP VISIT

CHIEF COMPLAINT AND HPI:

Marie is coming in for allergy testing as requested by Dr. Glider. She has a history of a long-standing laryngitis. She had a thorough evaluation of this and no cause was found and it spontaneously improved. She gets intermittent choking spells. She denies any nasal itching although she does have chronic nasal congestion. She does have a fair amount of irritation in her throat associated with postnasal drip. She denies any sneezing or ocular itching. The patient underwent allergy testing and the positive did react appropriately as did the negative. Allergy testing revealed no evidence of atopy for the antigens that were tested.

PLAN:

1. The patient will be referred back to Dr. Glider for him to continue his search for her "choking sensation at night" although I suspect it is related to postnasal drip. Other possibilities to consider is a trial of Prilosec in the evening time approximately 2 hours before bed time to see whether or not this leads to resolution. If so, strong suspicion for a reflux tracheitis should be given. I have taken the liberty of placing her on Prilosec 20 mg about 2 hours before bedtime and she will follow-up with Dr. Glider in approximately 2 weeks time.

DEAN S. COHEN, D.O./dsj

2-7-96 wt 174 BP 152/96 P 80 t 96.3

2/07/1996 ROSS E. GLIDER, D.O.

FOLLOW UP VISIT

PROBLEM LIST:

1. Reflux esophagitis
2. Post nasal drip probably causing her recurrent laryngitis
3. Hypertension
4. Mild chronic anxiety disorder which is stable at this time

CURRENT MEDICATIONS:

1. Vasotec 5
2. Pravachol 20
3. Estrace
4. Provera
5. Flonase one puff b.i.d.
6. Prilosec 20 q.d.

SUBJECTIVE:

[?]

PHYSICAL EXAMINATION:

VITAL SIGNS: W 174 lbs., BP 140/86, HR: 80 T: 96.3
LUNGS: Clear
HEART: Regular

IMPRESSION:

1. GERD

PLAN:

1. Prilosec with antireflux measures over the next month or two and then reevaluate in 2 months to see if this has been effective in preventing further laryngitis. I think her anxiety is a huge component to this lady's problems.

ROSS E. GLIDER, D.O./dsj

3.21.96 wt 174 BP 142/78 T 80.

2/21/96 BUCHMAN, MARIE

MEDICATIONS:
1. Vasotec 5
2. Pravachol 20
3. Estrace
4. Provera
5. Flonase one puff b.i.d.
6. Prilosec 20 q.d.

PROBLEM LIST:
1. Reflex esophagitis
2. Post nasal drip probably causing her recurrent laryngitis
3. Hypertension
4. Mild chronic anxiety disorder which is stable at this time.
5. Hypercholesterolemia

SUBJECTIVE:
Patient is feeling much improved. Cholesterol is down to 264 with an LDL of 174 which was considerably diminished from the 325 cholesterol where she was.

PHYSICAL EXAM:
V.S. WT: 176 BP: 142/70 Heart rate - 80

HEENT: Sinuses improved.
LUNGS: Clear
HEART: Regular

IMPRESSION:
1. Sinusitis, laryngitis stable.
2. Reflux. We will re-prescribe Prilosec.
3. Hypertension on Vasotec.
4. Hypercholesterolemia on Pravachol.

PLAN:
She does not need to be seen for three months. Liver and lipid panel at that time.
ROSS GLIDER, D.O.

RG:bah

3496 provera 2.5 mg # 30
Vasotec 5mg # 30 } (X3) - Ck 33? 2553 pkg/RF
Estrace 1mg # 30

PROBABLE CAUSE PANEL MEETING
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

IN RE: RALPH BUCHMAN, CPA

DBPR CASE NO. 97-1770
_____/

TRANSCRIPT OF PROCEEDINGS

DATE:	NOVEMBER 10, 1997
TIME:	1:17 - 1:25 p.m.
PLACE:	GRAND SHERATON WESTSHORE Buchanan Room Tampa, Florida
BEFORE:	CYNTHIA A. CIANCIOLO Court Reporter Notary Public

RECEIVED
MAY 0 5 2000

ORIGINAL

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EXHIBIT
tabbies 3
000101

APPEARANCES:

PANEL MEMBERS:
MIRTHA MARTIN, CHAIRMAN
STEVE OSCHER
CHARLES CALHOUN

MARTHA WILLIS, DIVISION DIRECTOR
JOHN RIMES, ASSISTANT ATTORNEY GENERAL
CHARLES TUNNICLIFF, CHIEF ATTORNEY FOR THE DBPR

ALSO PRESENT:
GROVER C. FREEMAN, ESQUIRE
Freeman, Hunter & Malloy
201 E. Kennedy Boulevard
Suite 1950
Tampa, Florida 33602
Attorney for Ralph Buchman, CPA

Ralph Buchman, CPA

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MS. MARTIN: This is the Board of Accountancy hearing at the Grand Sheraton Hotel. We are in the Buchanan Room. The time is 1:17 p.m.

Let the record reflect that today's date is November 10th and the time is 1:17 p.m. Let me introduce the individuals in the room.

We have Mr. Charles Tunnicliff, Chief Attorney, Department of Business and Professional Regulation.

Ms. Martha Willis, Division Director, Department of Certified Public Accounting.

John Rimes, Assistant Attorney General and counsel to the Panel.

Our Court Reporter is Cindy Cianciolo.

Panel members are Steve Oscher to my left and Charles Calhoun to my right, and myself, Martha Mirtin.

This is a hearing of the Probable Cause Panel of the Florida Board of Accountancy. You're entitled to make an opening statement if you wish. We'd appreciate it if you would keep the opening statement to approximately five minutes. You will be given an opportunity to respond to the Department's case once they have made their presentation.

Do you wish to make an opening statement?

MR. FREEMAN: Yes, I would.

My name is Grover Freeman. I represent Mr. Buchman. I believe this can be done quite briefly.

The matter that brings us here is a decision from the United States Tax Court which assessed back taxes and certain penalties, and that's the subject matter in the investigation. What we would respectfully suggest is that decision was in the way of a compromised agreement between Mr. Buchman's then attorney representing him in that matter and the IRS.

The real issue is whether or not the underlying facts evidence any kind of a fraudulent activity or other procedures or processes in the preparing of his own return and his wife's return at the time that would warrant disciplinary action.

My suggestion to you is this, that it would be best to have this reviewed by a consultant to the Board who could look through the materials to determine if in fact the underlying situation evidences a violation or not. What our position is is that this was an plea of convenience for economic issues and not an admission of any fraudulent or wrongdoing act or conduct. Unfortunately the matters that are material to that issue are not before you at this time.

Mr. Buchman has indicated he would cooperate rightfully with an investigator who might look through those

materials and be better able to advise you as to whether or not there would be a basis for entering some kind of a disciplinary action.

I might note that while an Administrative Complaint might issue, it would issue only on the face of this document itself according to the information that we have available to us concerning what is in the Department's file. If that were the case, we would contest that and then put forward the same issues so that it might be more efficient and get to the heart of the subject rather than your taking our word that these acts were not fraudulent acts, and this was a matter of negotiation, and to have one of your consultants take a look at the underlying documentation.

Now, we are here to answer any questions you have. We want to cooperate in any way we can. The material that I earlier provided to you was to give you some insight into it. I think the material is too complex to really go through line item by line item, but we are here at your pleasure and for your indulgence.

MS. MARTIN: Let the record reflect that Mr. Buchman is present here at the meeting.

Charles.

MR. TUNNICLIFF: Mr. Freeman has stated the reason for the Complaint. We received a notification from

the Internal Revenue Service that he was reported to pay back taxes for three years and we sent it to the Panel. I agree with Mr. Freeman that unless you find that just the order to pay these tax indicates they weren't paid, it's just deficiencies that were later assessed.

MR. CALHOUN: The Complaint as I read it says "subject failed to pay income taxes". There is, it looks like, a failure to file, but in looking at the other materials it does not look like that is the issue at all. It's not a failure to file?

MR. TUNNICLIFF: No.

DR. CALHOUN: I would suggest that we follow up on Mr. Freeman's recommendation.

MR. OSCHER: I second that motion.

MS. MARTIN: Okay. That is unanimous.

MR. FREEMAN: Thank you very much. If you will let us know, we will certainly cooperate with whoever is appointed and give that material and we'll see where it goes from there.

MR. RIMES: The only thing to be careful about is when you're having the consultant standing in, since this was-- you have got the issue of whether it's fraud, obviously it's a very important matter, and the question is whether or not he prepared the tax return appropriately and completely enough to determine. Both

standards would be looked at however probably.

MR. FREEMAN: Thank you.

MR. OSCHER: We would be incurring the cost of this investigation?

MR. TUNNICLIFF: Yes.

MR. FREEMAN: Thank you.

(WHEREUPON, the taking of the proceedings was concluded at 1:25 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA :
COUNTY OF HILLSBOROUGH :

I, CYNTHIA A. CIANCIOLO, Court Reporter, Notary Public, do hereby certify that I stenographically reported the proceedings at the time and place so designated, and that the foregoing pages are a true and correct, verbatim record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of any attorney or counsel connected with this action, nor am I financially interested in the outcome of this litigation.

DATED this 5 12 day of May, 2000, in Tampa, Hillsborough County, Florida.

CYNTHIA A. CIANCIOLO
Court Reporter
Notary Public, State of Florida

My Commission Expires: 2/28/02
Commission No. CC 720003

NOTARY PUBLIC STATE OF FLORIDA
CYNTHIA A. CIANCIOL...
MY COMMISSION # CC 720...
EXPIRES: February 28, 20...
1-800-3-NOTARY Fla. Notary Service & Bond...

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DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, *Governor* Cynthia A. Henderson, *Secretary*

MEMORANDUM

RECEIVED
JUN 16 1999
BOARD OF ACCOUNTANCY

TO: Probable Cause Panel
Board of Accountancy

FROM: Charles F. Tunnicliff
Senior Attorney

RE: Ralph A. Buchman, Case No. 97-01770

DATE: June 14, 1999

****

Attached please find the investigative materials in the above-cited case. These materials are provided to you, pursuant to Section 455.225, Florida Statutes, for your determination of whether or not probable cause exists to believe that a violation of Chapter 473, Florida Statutes, or the rules promulgated thereunder, has occurred.

The relevant statutory and rule provisions that apply in this case include the following:

Section 473.323(1)(d), Florida Statutes; Section 473.323(1)(e), Florida Statutes; Section 473.323(1)(g), Florida Statutes; Section 473.323(1)(h), Florida Statutes, to wit: Rule 61H1-21.002, Florida Administrative Code; and Section 473.323(1)(k), Florida Statutes.

The Department recommends the Subject be invited to appear at a hearing. The Panel previously considered this matter on November 10, 1997, and requested the assignment of a Consultant for further investigation. Consultant Thomas Reilly's report is attached for your review.

Thank you for your consideration.

EXHIBIT
tabbies
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FREEMAN HUNTER & MALLOY

Attorneys at Law

Grover C. Freeman
C. Howard Hunter
Timothy F. Malloy

Misty D. Broderick
Karen A. Dean
Jeffrey S. Hunter
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Telephone: (813) 222-8200
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December 9, 1999

Charles Tunnicliff, Senior Attorney
Dept. of Bus. & Prof. Regulations
1940 North Monroe Street
Suite 60
Tallahassee, FL 32399-2202

Re: Ralph Buchman, CPA
DBPR Case No. 97-01770

Dear Charles:

I correspond with you in response to the notification that the above-captioned file will be presented to the Probable Cause Panel of the Board of Accountancy and to advise you that neither Mr. Buchman nor I shall attend. My letter dated October 30, 1997, details the response of Mr. Buchman to the Notice of Investigation and our position in this matter. As you may recall, Mr. Buchman and I appeared before the Panel on November 10, 1997. At that time Mr. Buchman fully answered all questions asked of him. It was at that point that the Panel decided to request a consultant's review and thereafter Mr. Rilly was appointed for that purpose.

Mr. Buchman cooperated fully with Mr. Rilly when he appeared at his office and all materials were made available to him for his inspection and review. Mr. Rilly's report indicates that he has received no cooperation from the Internal Revenue Service. I doubt that anyone ever will.

In effect, Mr. Rilly reports to the Probable Cause Panel that he has found no evidence to substantiate fraud or any wrongdoing. This has always been Mr. Buchman's position.

As the report of the Board's consultant does not find evidence of any wrong doing, it is difficult to envision that the Department would seek to file an formal Administrative Complaint under such circumstances, particularly given the burden of proof in sustaining any charges and the obvious lack of evidence.

EXHIBIT
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Neither Mr. Buchman nor I feel that there is any further information that we have to offer that has not already been provided. For that reason we shall not attend. I thank you for you continued courtesies and the cooperation you have always given to us.

Sincerely yours,

Grover C. Freeman

GCF/keb

Signed in the absence of
Mr. Freeman to avoid delay
in mailing.

.NSACTION REPORT

Transmission
Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
320	DEC. 9 09:45	8504879622	0° 01' 18"	003	OK	N ECM

FREEMAN, HUNTER & MALLOY
Attorneys at Law

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FACSIMILE TRANSMITTAL COVER SHEET

TO: Charles Tunnicliff **FAX NO.:** 850-487-9622

FROM: Grover Freeman

DATE: 12-9-99 **NO. OF PAGES (INCLUDING COVER SHEET):** 3

RE: Ralph Buchman

MESSAGES:
____ Please Sign and Return
____ Please Call Me
____ As We Discussed
____ For your Review and Comment
____ For Your Information
____ As You Requested

COMMENTS:

CONFIDENTIALITY NOTE

000113

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, *Governor* Cynthia A. Henderson, *Secretary*

MEMORANDUM

TO: Board of Accountancy

FROM: Monesia Taylor Brown
Assistant General Counsel

RE: Ralph A. Buchman, Case No. 97-01770

DATE: May 12, 2000

****

The above-referenced case was considered at the Board's Probable Cause Panel meeting held on December 13, 1999. Because the Subject and his counsel did not appear at the meeting and neither had discussed their non-appearance, the Board found probable cause in this matter and directed the filing of an Administrative Complaint against the licensee. Following the meeting, a letter was received from the licensee's counsel, apparently sent before the meeting, indicating they would not be appearing. The letter is attached for your review.

Because our consultant's findings were not conclusive as to any wrongdoing under the law, the Department recommends this file be closed. An executed Stipulation for Closure from the licensee's counsel is also attached for your review.

EXHIBIT
tabbies
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December 9, 1999

Charles Tunnicliff, Senior Attorney
Dept. of Bus. & Prof. Regulations
1940 North Monroe Street
Suite 60
Tallahassee, FL 32399-2202

Re: Ralph Buchman, CPA
DBPR Case No. 97-01770

Dear Charles:

I correspond with you in response to the notification that the above-captioned file will be presented to the Probable Cause Panel of the Board of Accountancy and to advise you that neither Mr. Buchman nor I shall attend. My letter dated October 30, 1997, details the response of Mr. Buchman to the Notice of Investigation and our position in this matter. As you may recall, Mr. Buchman and I appeared before the Panel on November 10, 1997. At that time Mr. Buchman fully answered all questions asked of him. It was at that point that the Panel decided to request a consultant's review and thereafter Mr. Rilly was appointed for that purpose.

Mr. Buchman cooperated fully with Mr. Rilly when he appeared at his office and all materials were made available to him for his inspection and review. Mr. Rilly's report indicates that he has received no cooperation from the Internal Revenue Service. I doubt that anyone ever will.

In effect, Mr. Rilly reports to the Probable Cause Panel that he has found no evidence to substantiate fraud or any wrongdoing. This has always been Mr. Buchman's position.

As the report of the Board's consultant does not find evidence of any wrong doing, it is difficult to envision that the Department would seek to file an formal Administrative Complaint under such circumstances, particularly given the burden of proof in sustaining any charges and the obvious lack of evidence.

Neither Mr. Buchman nor I feel that there is any further information that we have to offer that has not already been provided. For that reason we shall not attend. I thank you for you continued courtesies and the cooperation you have always given to us.

Sincerely yours,

Grover C. Freeman

GCF/keb

Signed in the absence of
Mr. Freeman to avoid delay
in mailing.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION,

Petitioner,

vs. DBPR CASE NO.

RALPH A. BUCHMAN,

Respondent.
_____/

Pls file w/agency Clerks office - then arrange for certified copy to Lisa

STIPULATION FOR CLOSURE

1. For the purpose of disposing of this matter in an expeditious manner, Respondent and Petitioner agree and stipulate as set forth below.

2. Respondent has been notified by the Department of Business and Professional Regulation of certain factual allegations against Respondent, which are alleged in this case.

3. In view of changes in the status of the case since probable cause was found and certain prosecution resource issues affecting Petitioner, the parties hereby agree to a dismissal of this case and each party shall bear all their own costs and attorney fees associated with any and all aspects of this matter.

4. If Respondent duly executes this document and timely returns same to the Department's prosecuting attorney, the prosecuting attorney binds himself to recommending acceptance of

this Stipulation to the Probable Cause Panel. However, the Respondent understands that the Probable Cause Panel may reject the prosecutor's recommendation and may reject this Stipulation. If such rejection occurs, all agreements made herein, and this entire document shall be considered void and as if never made and entered into and prosecution of this case shall then continue.

5. Respondent understands that he is under no obligation to sign this Stipulation and may contest the allegation(s) and demand a formal hearing and proof of the allegations by the Department.

Ralph A. Buchman
Case No. 97-01770
(signature must be notarized below)

Before me, personally appeared RALPH BUCHMAN, Respondent whose identity is known to me by ORL / LIC (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed by Respondent before me this 21 day of NOV., 2000.

OFFICIAL NOTARY SEAL
JOYCE PETROCELLI
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC915873
MY COMMISSION EXP. MAR. 5,2004

NOTARY PUBLIC
My Commission Expires:

APPROVED this ____ day of _____, 2000.

By: Monesia Taylor Brown
Assistant General Counsel

Subject

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, *Governor*

Cynthia A. Henderson, Secretary

RECEIVED
JUL 14 2000
BOARD OF ACCOUNTANCY

MEMORANDUM

To: Board of Accountancy

From: David K. Minacci, Lead Attorney for Professions

RE: Ralph A Buchman, Case No. 97-01770
Reconsideration case for PCP

Date: July 13, 2000

Please place the above-referenced case on the agenda to be presented to the PCP for reconsideration as a recommended closure. This case is public since there has already been a finding of probable cause. Feel free to contact me if you have any questions. Thank you.

EXHIBIT
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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

PROFESSION:	ACCOUNTANCY
CASE NUMBER:	97-01770
COMPLAINT MADE BY:	DBPR
DATE COMPLAINT RECEIVED:	January 2, 1997
COMPLAINT MADE AGAINST:	RALPH A. BUCHMAN 2301 SE West Street Port St. Lucie, Florida 32984
INVESTIGATOR:	Thomas F. Reilly
REVIEWED BY:	David K. Minacci/tas
STAFF RECOMMENDATION:	DISMISS (PL-82)

CLOSING ORDER

THE COMPLAINT: The Complaint alleges that Subject violated section 473.323(1)(k), *Florida Statutes* - performing any fraudulent act while holding a license to practice public accounting.

THE FACTS: The Internal Revenue Service filed a decision for deficiencies in income tax due from Subject and his wife for the years 1988, 1989, and 1990. Subject was assessed with penalties for civil fraud and substantial understatement. The matter was also reviewed by the Criminal Investigation Division of the Internal Revenue Service, but was subsequently closed. Subject later agreed to settle with the Internal Revenue Service for less than the original assessment.

The Department investigated the matter and referred it to the probable cause panel in 1997. At that meeting the panel requested that the Department engage an expert to review the matter. While the panel subsequently found probable cause in this case, the Department, upon review of the evidence available for hearing, has decided to dismiss this case as nolle prosequi. In doing so, the Department suggests that there is insufficient evidence to find any fraudulent act. While Subject was found to have engaged in civil fraud, the expert opinion stated that no evidence existed to substantiate that a fraud was committed. Civil Fraud has been referred to as "an act of fraud done knowingly or an act of negligence." Here, the Department does not know what proof the government had to show the violation, nor can it adequately prove whether it was fraud or negligence from the documents still available. While the Subject has provided the Department with what evidence he can still muster, the United States government is unwilling to provide the Department with its evidence.

THE LAW: Based on the foregoing, the evidence indicates that this case should be closed without further prosecution pursuant to Section 455.225, Florida Statutes and Rule 21-31.001, Florida Administrative Code.

It is, therefore ORDERED that this case be and hereby is DISMISSED.

DONE and ORDERED this _____ day of _____, 2000.

_____
Chairperson, Probable Cause Panel
Board of Accountancy
Case No. 97-01770

DKM/tas

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, Governor — Cynthia A. Henderson, Secretary

Ralph A. Buchman
2301 SE West Street
Port St. Lucie, Florida 32984

Case No: 97-01770

Dear Mr. Buchman:

Probable Cause has been found in the above-referenced matter, based on the existence of evidence which indicated that a violation of the accountancy licensing statutes had possibly occurred.

The administrative complaints filed against you contained a charge of a violation of the accountancy licensing statutes. That charge involved performing any fraudulent act while holding a license to practice public accounting. However, in evaluating the evidence during trial preparation, we have determined that the evidence in this case does not meet the standard of proof imposed on disciplinary licensing actions.

Please note that if the allegations in the administrative complaints were proved, such conduct would constitute violations of the accountancy licensing statutes.

Sincerely,

David K. Minacci
Lead Professions Attorney

DKM/tas

000123

PROBABLE CAUSE PANEL MEETING
OCTOBER 27, 2000
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY
TAMPA AIRPORT HILTON
TAMPA, FLORIDA

IN RE: THE MATTER OF:

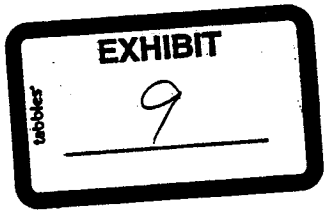
RALPH A. BUCHMAN

CASE NO.: 97-01770

PROBABLE CAUSE HEARING

BEFORE:	PROBABLE CAUSE PANEL
DATE:	Friday, October 27, 2000
TIME:	Commencing at 11:00 a.m. Concluded at 11:45 a.m.
PLACE:	Tampa Airport Hilton 2225 Lois Avenue Tampa, Florida
REPORTED BY:	CEIGE AMES, RPR Court Reporter Notary Public State of Florida at Large

ORIGINAL



PROBABLE CAUSE PANEL MEMBERS:

MIRTHA MARTIN
STEVE OSCHER
CHARLIE CALHOUN

JOHN RIMES, ESQUIRE
Assistant Attorney General
Counsel to the Panel

MARTHA WILLIS, EXECUTIVE DIRECTOR
Division of Certified Public Accountants
2610 N.W. 43rd Street, Suite 1A
Gainesville, Florida 32606

DAVID K. MINACCI, ESQUIRE
Assistant General Counsel
Office of the General Counsel
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399

TOM REILLY, CPA

ON BEHALF OF RALPH A. BUCHMAN

JON M. PELLETT, ESQUIRE
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201 East Kennedy Boulevard
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P-R-O-C-E-E-D-I-N-G-S

MS. MARTIN: Let the record reflect that today's date is Friday, October 27, 2000, and the time is 11:00 a.m.

And this is Case No. 97-01770 for Ralph Buchman.

MR. PELLETT: Good morning, Madam Chairman. I'm Jon Pellett with the law firm of Barr, Murman, Tonelli, Slother & Sleet. We represent Mr. Ralph Buchman. You should have a letter that I forwarded to the Board of Accountancy on October 16th that indicates that we would be participating in this reconsideration of Mr. Buchman's case. However, the letter is in error. It indicates that Mr. Buchman would be present and he will not be present, our firm will be on his behalf.

MS. MARTIN: Thank you.

Let me introduce the individuals in the room. We have Mr. David Minacci.

MR. MINACCI: Good job.

MS. MARTIN: Assistant General Counsel, Department of Business and Professional Regulation.

Our CPA consultant, Mr. Tom Reilly. Martha Willis, the Division Director for Division of Certified Public Accounting. John Rimes, Assistant

Attorney General and counsel for the panel. Our court reporter is Ceige Ames. And the panel members are, to my left, Steve Oscher and Charlie Calhoun and myself Mirtha Martin.

This is a hearing of the Probable Cause Panel of the Florida Board of Accountancy. And you're entitled to make an opening statement, if you wish. We would appreciate it if you would keep the opening statement to approximately five minutes. You will have ample opportunity to respond to the Department's case once they've made their presentation.

Do you wish to make an opening statement?

MR. PELLETT: Not at this time, Madam Chairperson.

MS. MARTIN: Okay.

MR. MINACCI: Let me give a brief background on why we're here on this case today. As you can see, this is an old case. This is a 1997 case. It all stemmed from the fact that the IRS filed a decision for deficiencies in income taxes due from the subject and his wife for the years 1988, 1989, and 1990. The subject was assessed with penalties for civil fraud and substantial understatement.

We have had some difficulty in obtaining

documents from the IRS to support these charges. And based on that, the Department entered into a stipulation foreclosure with the subject back in April of this year, basically dismissing the action, with each side bearing their own attorney's fees and costs.

I have obtained the file. I have reviewed the file. It seems clear that a violation did occur. We are having difficulty in, like I said, in obtaining documents and I think we would have difficulty if we went to trial. I am not -- I'm inclined to take it. I'll take it to trial if it's the panel's desire, but I felt obligated, given the fact that prior counsel entered into this stipulation for closure, that I bring this back before the panel to get an idea on where the panel would like me to go on this before we actually set this thing for trial or if we go ahead and dismiss it, as the stipulation states.

MR. OSCHER: Tom, do have anything?

MR. REILLY: Well, I know this goes back a long way and maybe just a little recap of history might help us at this point in time.

I was sent the case file a while ago to visit Mr. Buchman because of the complaint about the

civil fraud that had been asserted and the penalties that had been assessed. I think there was an initial hearing and Mr. Buchman had indicated that he had all documentation to support all the information in his file. And that's what I was sent down there to do, was to review the documentation.

I went down there and met with Mr. Buchman and I explained -- you know, I would ask for the typical types of information that you would seek to support a tax return, the trial balances, general ledgers, invoices, some organized fashion in which to support a return. And I was told at that time that there were no trial balances, there were no general ledgers. He had to piecemeal the information together to attempt to reconstruct what numbers went on the tax return, because relative to the trial balance and general ledgers, his hard drive had a failure and he didn't have hard copies of all that.

However, prior to that, he had made thousands of copies of documents including general ledgers, trial balances, invoices to go to the IRS when they were performing their examination. So, as far as I'm concerned, the IRS had all the information with

which to conduct a thorough investigation. I went down there and I saw piecemeal information.

After I got that information, I called the DBPR, spoke to Charles Tunnicliff at the time and said, "Charles, here's the situation." I said, "I could spend ages down there trying to go through all these documents and maybe never even then come up with the support for the items on the return. What do you what to do?"

And the conclusion at that time was to go ahead and prepare my report based upon the information I had at that time. And what I said in my report was, "However, due to the nature of this investigation and the piecemeal manner in which this information was compiled, this investigator is unable to draw any conclusions relative to the proper or improper completion of licensure's individual income tax return."

Now, while I was there, I did talk to Mr. Buchman about a number of things. I tried to use a logical view on this thing. And I said, "Ralph, these numbers don't make any sense to me." I said, "You've got a practice," and I'm just trying to fill you in on what transpired when I was there. I said, "You've got a practice that

generated $221,000 in receipts in 1988 and your net income is $15,000. And in 1989 the $378,000 worth of gross receipts and income is $94,000. And in 1990 you generated $461,000 in receipts and your net income was $68,000. That's between 15 to 25 percent of your gross income. I have never seen a CPA have that ineffective of practice." So, those are my thoughts to him.

And his comment to me was: "I've got an expensive practice." So, I said, "You know, I see the documentation you provided me. I really can't draw any conclusions if there isn't documentation, that I would want to see to be able to say that your return was properly prepared."

What I did know was that he agreed to a substantial penalty of $122,000 that he paid to the IRS based upon civil fraud, which is defined as civil fraud. Penalty is asserted when the Service has clear and convincing evidence that any portion of underpayment tax is due to fraud with intent to evade taxes.

That's pretty much where I am on this thing.

MR. OSCHER: If I may. What I'm hearing is we don't have documents specific because Mr. Buchman has indicated that those documents no longer exist.

We know they did exist because the IRS used those documents to draw their own conclusions with regards to Mr. Buchman and his behavior. We have not received those documents. Is that because we've issued a subpoena to the Service and they've not responded to our subpoena or we've not made the attempt to secure documents that we know exist that were the basis for the penalties?

MR. REILLY: What I attempted to do was to get on the phone and made a bunch of phone calls to the IRS trying to find somebody who was involved in this particular litigation. And the IRS was very unwilling to provide a lot of information, even referring me to different offices. It's difficult for me to gather the information needed. Again, got back to the DBPR and said, "Here's the situation. Can you get a subpoena or somehow can you track this thing through the IRS?" And that's where I left it, waiting to hear back from the DBPR as to what was going to be done.

MR. OSCHER: Okay.

MR. REILLY: The next thing I know, we're here with this case.

MR. OSCHER: David, my question then goes to you. I mean, was the subpoena issued to the

Service?

MR. MINACCI: Not that I know of, no.

MR. OSCHER: Is that something that they are required to respond to?

MR. MINACCI: Sure.

MR. OSCHER: So, at the moment what we're left with -- if I -- I'm trying to cut through all the -- and just go straight -- are we believing that there is an issue, but we do not have the documentation to support that claim and before we make any determination from here, it would probably be in our best interest to get that information?

MR. MINACCI: Right. I think what happened -- I think that the Department misinterpreted the investigative report based on what documents are needed. If all effort has been exhausted to obtain those documents, and just presume that we weren't going to be able to obtain them, and, therefore, entered into the stipulation to close the case.

And that's really why I wanted to bring -- I don't think it's fair to Mr. Buchman, if it has been presented to him that the Department is going to stipulate and close this case, I don't think that I can just turn around unilaterally and open up the investigation and then proceed to try to

obtain these documents. I think I at least owe a duty to Mr. Buchman to bring it back before the panel and get your all's thoughts on it.

MR. OSCHER: Okay.

MS. MARTIN: I think in certain instances, like if we have a case with the SEC, we will rely, like, on somebody else's findings. And, you know, in here it's -- I don't know -- can we move forward just knowing that the IRS has based the penalty on civil fraud and just use that as the basis?

MR. RIMES: To some extent, you'll have difficulty in this one. There was no adjudication. There was a civil fraud. What there was was a stipulation signed by the parties and whether they agreed to pay certain penalties. But there was no admission that he engaged in civil fraud, only the stipulation.

A decision from the tax floor that says pursuant to the agreement of the parties, these following things are going to be assessed. There's no admission of finding that the underlying basis was civil fraud, although the numbers look like that. So, we don't really have -- and there's no restriction upon his activities, as far as I can tell, for practice in front of the IRS or the

likelihood being the other basis we're dealing with.

So, you're essentially sitting here with the underlying information, but no finding by a court or a finding by a regulatory body that he has admitted the requirement, the violation.

MR. OSCHER: This isn't the first case that Mr. Buchman has come before --

MR. RIMES: Yes, but this is the case in front of you now.

MR. OSCHER: I understand that. And I do understand that we're dealing with the issue again, but I was just reminded when I was thumbing through this again that there have been other matters that have existed with regards to Mr. Buchman.

MR. RIMES: That's probably correct.

MR. OSCHER: I understand.

MS. MARTIN: What's Mr. Buchman currently doing?

MR. PELLETT: He is practicing in Port St. Lucie on a limited basis. I believe Mr. Reilly was there and was able to verify that he has still maintained a practice in Port St. Lucie.

The materials that you have before you were developed and the issue of coming before you on a

nol pros closure from the Department were developed by discussions between the late Grover Freeman and Charles Tunnicliff, who was the chief attorney at the time that these discussions were had and then was a senior attorney with the Department of Business and Professional Regulation.

My understanding is that the materials that the Board of Accountancy would want to review to determine if, in fact, there was civil fraud committed by Mr. Buchman are not available. I don't know whether they're accessible through the Internal Revenue Service. The closing order reflects that at least a minimal effort was made to contact the Internal Revenue Service to gather these documents and that they were not very cooperative.

I know that Mr. Buchman was desirous to be cooperative with the Department and your desire to review this matter, and made all of the available documentation that he had. He made that available to Mr. Reilly when he went down for his interview and review.

The other issue as to what he is -- to answer your specific question on what he is doing. He is maintaining a small practice doing, I believe, tax

consults. And I think that the report that you have and the discussion that you have from December of '99 indicates that.

MR. OSCHER: Well, the Service would not have received any information that would not have gone through your office first?

MR. PELLETT: We did not represent Mr. Buchman in relation to his IRS --

MR. OSCHER: Ron Russo did?

MR. PELLETT: That's correct.

MR. OSCHER: Has a check of Ron's record -- of Mr. Russo's records been made?

MR. PELLETT: All the records that Mr. Buchman has as a result of that action were made available to Mr. Reilly. What other records may be in the possession of Mr. Russo were returned to Mr. Buchman, it's my understanding, and that those backup records, to the extent that he had them, were given to Mr. Reilly. Other records were turned over to the Internal Revenue Service, the originals, and those were not returned. And they should still be in the possession of the Internal Revenue Service.

MR. OSCHER: So, if we recommend at least holding off and making any determination until we

issue the subpoena to the Service to make a determination of what records might be available, is that what now might be the recommendation?

MR. MINACCI: I think -- I hate to make a recommendation, given the fact that the Department has already entered into a proposed agreement with the individual.

MR. OSCHER: Yes, but I heard today from Mr. Reilly what I thought was a fairly strong comment that he believed that things are not what they appear to be. And save for the fact that there aren't the underlying records to support this position, you want the move forward -- or previously to close. And yet if we haven't done everything we can to secure the information, then are we really in the correct position to close? That's what I'm hearing.

MR. RIMES: Mr. Minacci's problem is the problem that he's endeavoring to respect the actions of another negotiations of the parties, and I can understand that. And certainly, if you direct the Department to do things, I suspect he will do it. You may well want to have some formalized specific request from the Service. I'm not sure a subpoena will work, but you can make an

effort to do that, to see if there is any possibility that under more than formal as opposed to telephone calls or public discussions, the Service will check its records and see if it has anything and actually may get back to you saying "We don't have it" or "We have it and we're not going to give it to you."

MS. MARTIN: I wouldn't feel comfortable doing that.

MR. RIMES: You can direct that, if you want.

MS. MARTIN: On the surface, yes, we only have indirect evidence. I wouldn't feel comfortable just closing it.

Is there a motion?

MR. RIMES: Direct that they do that and if nothing is available, then close it?

MR. CALHOUN: Yes.

MR. OSCHER: But again, I just want to make sure, because I want -- David, I want to make sure I heard you correctly, and that is that why you said there was a prior order to close, based on Mr. Tunnicliff's discussions with Mr. Freeman. What I sort of heard you indicating was that you still believe, based on even the information that we had, that it might be the Department's desire to

move forward as far as doing something actionable against Mr. Buchman, is that -- you weren't feeling the same way that Mr. Tunnicliff was feeling?

MR. MINACCI: Correct.

MR. OSCHER: So, that's why it's before us now?

MR. MINACCI: Correct.

MR. OSCHER: Mr. Reilly is saying he clearly doesn't feel that way, but he doesn't have the underlying support information to make that determination himself. So, now we're in a position of saying, we can perhaps look for records that don't currently exist or we don't currently have but may exist someplace else?

Do we need to make a motion on that?

MR. RIMES: Well, I think David's asking for your direction on this.

MR. MINACCI: I would like you to make a motion that we pursue all avenues available to secure the information that the Service had.

MR. OSCHER: And I guess once you determined that, whatever response you get on that, then you would come back to the panel and see what the panel wishes to do?

MR. CALHOUN: That's a motion that we propose.

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MR. RIMES: Sure. Is there a timeframe particularly you want to put on that?

MR. OSCHER: I don't know how quickly they'll respond. But I think to use the proper legal remedies to try to secure the information may take 30 or 60 or possibly 90 days to get service.

MR. PELLETT: Madam chairperson and members of the panel, there is an overriding issue here that -- and I appreciate your concerns and I understand that the Department will follow those directives.

There are two issues that I want to bring to your attention. One is that the stipulation for closure bound the Department to come to you and recommend dismissal. And I understand that the Department no longer feels that they should dismiss the case, but because of that prior stipulation are here before you to let you know that they no longer feel that the case should be dismissed, but they wanted to turn it over for your consideration.

Secondarily, on the administrative complaint that's been charged, Mr. Buchman has requested a formal hearing. And if, in fact, you are tabling this as opposed to acting on the Department's recommendation for dismissal, then the case would

be referred to the Division of Administrative Hearings, the stipulation for closure would be withdrawn and we would proceed to formal hearing.

And whatever evidence that the agency comes forward with would obviously be what they would present. So, the timeframe of 30, 60 or 90 days might not apply, because it would then fall within the jurisdiction of the Division of Administrative Hearings, at which point whatever timeframe applies, because they would then -- we would be in a party litigation status and they can only act as a party litigant and their departmental subpoenas would no longer be valid and they would have to use the division subpoenas.

MR. RIMES: Mr. Pellett is absolutely correct. And all of the discussions you had with the department folks here are all prefaced upon the idea that the administrative proceeding would be abated or no longer go forward. And absolutely, Mr. Pellett is right. They can demand their hearing and if the Department is not ready to go to trial, then too bad. But that's between these folks to talk about, not you.

MR. PELLETT: Because I was unaware that the Department had any lingering concerns with the case

or we would have assured that all the material that you needed to make the decision would be before you as opposed to coming here and there still be some concern over documentation.

The representations between Mr. Tunnicliff and Mr. Freeman were that the agency would be advocating for dismissal based on these evidentiary problems, and that's why I'm here without Mr. Buchman being present. And now that I understand that the Department has lingering concerns, as you do, then obviously that leaves us with an inability to provide that for you today.

And this case has come before the panel on a couple of occasions. And each time it comes before the panel, that's obviously an increased expense to Mr. Buchman to try to give you the material that he did. Now that I know what you need, I may work with the Department to try and help facilitate that. I just wanted you to be aware that there is this pending request for a formal hearing.

MR. MARTIN: You're saying now that you know what we need, that there has been what's been needed since the case first started, that the information we are requesting, we're not looking for anything new?

MR. PELLETT: I understand that is now what you feel, but nobody has requested of us any information with the Internal Revenue Service. We turned over all the materials that Mr. Buchman had in his possession to the Department when the investigator, Mr. Reilly, came down to look at those materials.

I understand from his report he had some concerns over what he was looking at because there were items that he expected to see that weren't present, and that there was an issue with the computer system that Mr. Buchman had that prevented the generation of some of those items for his review. What we're now looking over to the Internal Revenue Service is to see if they have possession of those, is what I understand the focus is to be.

If you look at the response that was submitted by our office back in October of 1997, you will see that some materials were to be made available to the IRS that they never came and retrieved. And it's those materials that I suspect are going to be the ones that you really are the most interested in. And apparently, they were not in the box of materials that Mr. Buchman had, so that would have

been the materials in his computer and that may be lost.

So, I think what we're going to end up finding is that the IRS has some documents that they based their action on, but they did not have the backup documentation because that's covered -- if you look at the response in October and you come down -- because this was a disputed case between Mr. Buchman and the IRS and they were ready to go to trial and it was settled on the eve of trial in the tax court.

And as he approached the date for the hearing -- if I may, there was a meeting to be set up between Mr. Buchman and the investigators for the IRS, and that meeting never took place. And that was where the materials were going to be -- he had available for review by the IRS investigator, all the backup documentation to substantiate the claims that he made on his tax returns.

The investigator did not avail herself of the opportunity to review that material. Shortly after that is when he received his notice that they were look at this as a criminal matter. Then it was scheduled for the tax court. They gave notice that they were not going to treat it criminally. And

they settled it on the eve of trial.

Where these documents that Mr. Reilly was interested in, I would not be able to tell you where those might be. But I suspect that this backup documentation that you're looking for is, in part, what was on the computer and would have been available to the investigator and is no longer available.

I know Mr. Reilly had a comment.

MR. REILLY: Yes, I just wanted to comment again on the discussion I had with Mr. Buchman when I was there. I asked him, "Can you explain to me what the disallowed expenses relate to?" His answer was, "I don't know." So, the disallowing certain expenses, that I don't know what they specifically relate to.

So, even if I did all this work, I don't know what numbers I'm working against to try to determine whether they're valid or not. That's why I wanted more specific information. Tell me what they are, then we can talk about them to determine whether I agree that they're valid or not.

So, he's telling me "I have no idea why the IRS disallowed these expenses. I don't know which ones they relate to in all the numbers that are

generated in a general ledger during the year." So, that's the position I was in.

MR. RIMES: I venture to say it's likely he would -- that's a whole different question in the Service, that there will be a trial memorandum or there will be a statement from the agent explaining what the analysis was and based upon.

MR. REILLY: I just find it hard to believe that I would enter into an agreement to pay $122,000 without knowing what I'm being fined for. I just find that hard to believe.

MR. OSCHER: My motion stays to try to secure additional information on that basis to make sure that we are doing all we can to make sure we are doing the right thing, that is really all I'm after.

MS. MARTIN: Ready to vote?

MS. CALHOUN: Let's vote.

MS. MARTIN: All in favor?

MR. OSCHER: Motion.

MR. CALHOUN: Second.

MS. MARTIN: Oppose? The motion carries. Thank you.

[Hearing concluded.]

CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, CEIGE AMES, COURT REPORTER, NOTARY PUBLIC, DO HEREBY CERTIFY that I was authorized to, and did report the proceedings and evidence in this hereinbefore-styled cause, as stated in the caption attached, and that the preceding transcript attached hereto is a true, accurate and correct computerized transcription of my report of the proceedings had at said session.

I FURTHER CERTIFY that I am not employed by or related to the parties to this matter nor interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in Tampa, Hillsborough County, Florida, this 3rd day of November, 2000.

Ceige Ames, RPR

NOTARY PUBLIC CEIGE AMES COMMISSION # CC621260 EXPIRES FEB 13, 2001 BONDED THROUGH ... CO INC

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DOAH Case No.: 00-4692
DBPR Case No.: 97-01770

RALPH BUCHMAN,

Respondent.
_____/

PETITIONER'S MOTION FOR CONTINUANCE OF FORMAL HEARING

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, hereby moves this honorable Court to continue the formal hearing currently scheduled for video teleconference December 21, 2000, at 9:30 a.m. As grounds for this Motion, Petitioner states:

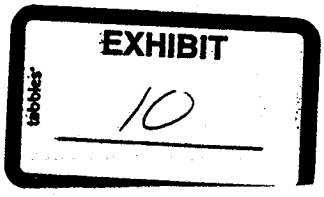
1. This case was set for formal hearing to begin on December 21, 2000 by this Court's Notice of Hearing dated November 29, 2000.

2. On November 15, 2000, Petitioner attempted to contact agent James Alexander of the Internal Revenue Service, Gainesville, Florida office.

3. Petitioner was informed via voicemail that agent Alexander was "out of the office" until November 17, 2000.

4. On November 17, 2000, Petitioner contacted agent Alexander, who referred the Petitioner to Barbara Ferris, an Internal Revenue Service disclosure officer.

5. On November 17, 2000, Petitioner attempted to contact Ms. Ferris. Petitioner's call was answered by office voice mail informing Petitioner that the entire office was closed until November 20, 2000. Petitioner left a message for Ms. Ferris to contact the Department.



6. On November 20, 2000, Petitioner contacted Ms. Ferris to inquire about subpoenaing records from the Internal Revenue Service pertaining to this cause of action. Ms. Ferris referred Petitioner to disclosure agent Melanie Romano. Ms. Romano informed Petitioner that as a state agency it would be unable to subpoena the requested records from the Internal Revenue service unless the records fell within IRS Code Sections 6694, 6695, or 7216. If the records did not fall within one of these code sections, Respondent would have to authorize the release in writing via IRS form 8821 or 4506. Ms. Romano indicated she would inform Petitioner whether the requested records fell within one of the above-referenced code sections within a few days.

7. On or about November 22, 2000, Ms. Romano informed Petitioner that the requested records did not fall within any of the above-referenced code sections because Respondent did not prepare the tax returns for another party. The conversation disclosed that, hypothetically if the documents did in fact exist, Respondent would have a copy of them in his possession. Petitioner inquired about the proper name of documents used by the Internal Revenue Service in similar fact situations. Ms. Romano informed Petitioner of the proper names of the documents.

8. That based upon the delays in contacting the proper authorities within the Internal Revenue Service, the late date of learning the Internal Revenue Service would be unable to disclose the requested documents, delay in determining the proper names of documents to be requested, the undersigned counsel being on previously scheduled vacation time and unable to be contacted the week of November 20 through November 26 for the Thanksgiving holidays, and Department offices being closed from November 23 though 26, 2000, Petitioner was unavoidably delayed in the filing of its discovery requests until November 30, 2000.

9. As a result of this late filing, Respondent is not obligated under Fla. R. Civ. P. 1.340(a), 1.350(b), and 1.370(a), via Fla. R. Civ. P. 1.090, to file responses to Petitioner's discovery requests until on or about January 2, 2001.

10. As of the filing of this motion, Respondent has not responded to Petitioner's initial set of discovery, which is necessary information for the formal hearing of this case.

11. That Petitioner has been unable to have departmental experts review this necessary information for the formal hearing of this case until it is produced. Furthermore, Petitioner is unable to compel response to its discovery requests because the response deadline is after the scheduled hearing date for the formal hearing of this case.

12. That Petitioner is not obligated to respond to Respondent's voluminous production requests until on or about December 20, 2000. Petitioner will in all likelihood need the entire authorized response period to finish gathering and reproducing all the requested materials. As the hearing is scheduled to begin at 9:30 a.m., the next day, Respondent will have very little time to prepare for the hearing using Petitioner's responses.

13. That Petitioner was required to file a response to the Honorable Administrative Law Judge's Initial Order dated November 16, 2000 within seven days of the order.

14. That Petitioner in good faith coordinated with Respondent in providing ALL dates for the formal hearing both parties were available. However, the Joint Response to Initial Order was filed on November 21, 2000, before Petitioner received an answer from the Internal Revenue Service.

15. The filing dates for pleadings in this case were further complicated by the Thanksgiving holiday as the Division of Administrative hearings and Petitioner as a state agency were required to be closed both November 23 and 24, 2000.

16. If the formal hearing in this matter were to continue on the date currently set, undersigned counsel would not be "afforded a reasonable time to prepare and present their case" as required by Rule 2.085(a) of the Rules of Judicial Administration.

17. Undersigned counsel has presented good cause for granting this Motion for Continuance and has done so in a diligent manner before trial so that no parties are prejudiced by continuance.

18. This motion is filed in good faith and has not been made for the purpose of delay. In fact, undersigned counsel would like to set the hearing of this matter to a date certain convenient for all parties within twenty to forty-five days from January 2, 2001. In accord, no party will suffer any undue prejudice if continuance is granted.

19. Respondent objects to this continuance.

WHEREFORE, the Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, respectfully requests this honorable Court to enter an Order granting a continuance of this matter for a date certain mutually convenient for all said parties.

RESPECTFULLY SUBMITTED this 14th day of December, 2000.

David K. Minacci
Assistant General Counsel
Fla. Bar No.: 0056774
Department of Business and
Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399-2202
Telephone: (850) 488-0062
Facsimile: (850) 414-6749

Attorney for Petitioner

000153

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Continuance was served by U. S. mail on Jon M. Pellett, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, on this 11th day of December, 2000.

David K. Minacci
Assistant General Counsel

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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs. CASE NO. 97-01770

RALPH BUCHMAN,

Respondent
_____/

SETTLEMENT STIPULATION

RALPH BUCHMAN, hereinafter referred to as "Respondent", and the Department of Business and Professional Regulation, hereinafter referred to as "Department", hereby stipulate and agree to the following Settlement Stipulation and the entry of a Final Order of the Board of Accountancy, incorporating this Settlement Stipulation and agreement in the above-styled matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed public accountant in the State of Florida, having been issued license number AC 0001176.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with a violation of Chapter 473, *Florida Statutes*. A true and correct copy of the Administrative Complaint is attached as Exhibit "A".

3. Respondent denies the allegations of fact contained in the Administrative Complaint attached as Exhibit "A".

EXHIBIT
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STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed public accountant, admits that in such capacity he is subject to the provisions of Chapters 455 and 473, *Florida Statutes*, and the jurisdiction of the Department and the Board.

STIPULATED DISPOSITION

1. Respondent shall not, in the future, violate Chapters 455 or 473, *Florida Statutes*, or the rules promulgated thereunder.

2. **DISMISSAL OF COUNT:** The Board hereby dismisses the sole count contained in Administrative Complaint number 97-01770.

3. Upon the Board's adoption of this Stipulation, the parties hereby agree that each party will bear it's own attorney's fees and costs resulting from prosecution and/or defense of this proceeding.

4. The parties, for the purpose of avoiding further administrative action in this matter, have executed this Settlement Stipulation.

5. In this regard, Respondent expressly authorizes the Board to review and examine all investigative file materials concerning Respondent which have been served on Respondent by the Department prior to, or in conjunction with, consideration of the Settlement Stipulation.

6. Respondent and the Department fully understand that this Settlement Stipulation and subsequent Final Order incorporating same, will in no way preclude additional proceedings by the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complainant with the exception of those acts or omissions that would have been revealed by review of the investigative file materials for case number 97-01770 and/or in the

materials presented to the Board prior to, or in conjunction with, consideration of this Settlement Stipulation.

7. It is expressly understood that this Settlement Stipulation is subject to the approval of the Board and has no force and effect until the Board enters a Final Order adopting same.

8. Upon the Board's adoption of this Stipulation, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Stipulation of Facts, Conclusions of Law, the Stipulated Disposition, and the Final Order of the Department incorporating said Stipulation, or any part thereof.

WHEREFORE, the parties hereto request the Board to enter a Final Order accepting and implementing the term and conditions contained herein.

SIGNED this 20 day of December, 2000.

Ralph Buchman
Respondent

STATE OF FLORIDA
COUNTY OF St Lucie
Before me personally appeared Ralph Buchman, whose identity is known to me by Drivers License (type of identification), and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 20 day of December, 2000.

NOTARY PUBLIC
MY COMMISSION EXPIRES:

SUSAN K. MANNINO
COMMISSION # CC 695625
EXPIRES NOV 15, 2001
BONDED THRU
ATLANTIC BONDING CO., INC.

Approved this 24th day of January, 2000.

David K. Minacci
Lead Professions Attorney

DKM/mad

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY MEETING

JANUARY 29-39, 2001

Amerisuites
Orlando Airport/Northwest
5435 Forbes Place
Orlando, Florida

EXCERPT OF MEETING

Consider Stipulation in Case No. 97-01770,

Ralph Buchman, Port St. Lucie [CC/MM/SO]

BOARD MEMBERS PRESENT:

Dr. Charles Calhoun, Chairman
Mr. Byron E. Shinn, Vice Chairman
Ms. Tanya Davis, Member
Mr. Stephen Oscher, Member
Ms. Lourdes Boue, Member
Ms. Carol Wilson, Member
Mr. Frank Puissegur, Member
Ms. Martha Martin, Member

ORIGINAL

STAFF MEMBERS PRESENT:

John Rimes, Assistant Attorney General
Martha Willis, Division Director
Barbara Houston, DBPR Investigator
June Carroll, Board Staff

PROSECUTION STAFF PRESENT:

Allison Deison, Esquire
Barbara Houston, DBPR Investigator

EXHIBIT
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PROCEEDINGS

CHAIRMAN CALHOUN: Let's move to Tab No. 4, the attorney for Ralph Buchman, I believe is here.

MS. DEISON: Mr. Chairman, the court reporter has asked that you all speak up a little bit.

CHAIRMAN CALHOUN: I'm speaking as loud as I can right now.

Recused in this case, the Probable Cause Panel was myself and Martha and Steve Oscher.

Ms. Deison, you've got the floor.

MS. DEISON: Mr. Chairman, I'll take it.

We have here today Jon Pellett who is the attorney for Ralph Buchman who is before you today on his number 97-01770.

Whereupon, probable cause was found October 27th of the year 2000. An Administrative Complaint was filed January 18th of 2000 regarding deficiencies in income tax due for the Respondent in 1998 for $9,812, 1989 for $35,337, and 1990 for $35,094 dollars.

The Respondent entered into a Stipulation with the IRS to repay those monies. The Administrative Complaint alleged a violation of 473.323(1)(k), performing a fraudulent act while

holding a license.

The Department and the Respondent have entered into a Settlement Stip which is presented before you today whereupon we would dismiss the sole count in the Administrative Complaint.

CHAIRMAN CALHOUN: Mr. Shinn, I'm recused, so this case is yours.

VICE CHAIRMAN SHINN: So you are recommending that we drop our --

MS. DEISON: Yes, sir, Mr. Vice Chair. When he entered into the Settlement Stipulation with the IRS he did not admit or deny any of the allegations that he entered into there. He also, in responding to the discovery request, in trying to prosecute this case he plead the Fifth Amendment. And we are unable to obtain the records from the Internal Revenue Service.

VICE CHAIRMAN SHINN: But we have a CPA licensed in Florida who has agreed to settle with the IRS for in excess of a hundred thousand dollars, and the CPA is making $122,818, which includes taxes and penalties.

So the CPA is agreeing to make restitution with the IRS on an installment basis.

MR. PELLETT: If I may, Mr. Vice Chair.

VICE CHAIRMAN SHINN: Yes, sir.

MR. PELLETT: I'm Jon Pellett with the law firm of Barr, Murman and Tonelli, a firm in Tampa. We represent Mr. Buchman.

What you have is an agreement that Mr. Buchman worked out with the Internal Revenue Service to resolve alleged discrepancies in his tax returns for 1988, 1989 and 1990. He agreed to repay the Internal Revenue Service at a rate of $1,500 a month. Afterwards, he filed for Chapter 13 bankruptcy. And in the reorganization he agreed to repay $1,300 a month. My understanding is that the full amount of that discrepancy has been repaid to the IRS as agreed in the Consent Order.

Subsequently, after a couple of years of investigation, you've had the case since 1997, or the Department has. When they filed the Administrative Complaint they alleged that due to the penalties that were agreed to in the Consent Order that Mr. Buchman had performed a fraudulent act while holding a license to practice public accounting.

The defect with that charge is you can't premise the charge based on the Consent Order

alone. The Consent Order does not provide you with evidence one direction or the other, whether fraud had occurred. Mr. Buchman vehemently denies that he engaged in any fraudulent behavior.

When this case was first presented to the Probable Cause Panel you sent out your investigator consultant, and Mr. Buchman made available to him all of the records that he had in his possession. And as that report indicates, the records that were needed to tie the information, the back-up documents with the information that the IRS was claiming was deficient, the general ledger and the trial balances, those documents had been given to the IRS. The computer form of those documents have been lost in 1997 and were unavailable.

The IRS will not disclose information due to privacy concerns. Mr. Buchman has his right to remain silent and require that the Agency prove the charge that's been filed against him.

There is an opinion out of the -- and I don't know if this is in the materials that you have before you, this was filed after the case was referred to the Division of Administrative Hearings, but in the Middle District of Florida

there's an opinion regarding Robert Bova on this very issue where Mr. Bova and his wife had settled the same kind of a discrepancy with the IRS. Then they petitioned for bankruptcy. The IRS wanted to argue that that was a non-dischargeable debt. And the reason was the penalties were for fraud, that were in the Consent Order, but there was no admission of fraud. And what the court said is, you cannot rely on that Consent Agreement as any evidence of a fraudulent activity.

So where we are today is, we have a case where I understand the Board's concerns, because you have a very huge penalty that was assessed against Mr. Buchman, which he paid back, and he agreed to pay that back to the IRS. But if you'll look through your materials you'll see in our response from October of, I don't remember the year, this case is fairly old, but Mr. Buchman was prepared to go to hearing in March of 1995. Unfortunately on the eve of trial to challenge these assessments, the key witness, who was then his wife, became ill. And your records include her medical records so that you can see that that did in fact occur. And since she was unable to testify, he had to settle the case with the IRS.

He was always prepared to defend the assessment and show that the entries that he had made and the tax returns were truthful. And where we are is there's not enough evidence to prove the case. You don't have clear and convincing evidence, which is what you need to prove the charge that you've brought forth in the Administrative Complaint.

The Department, recognizing that, has agreed to settle this case and dismiss the Complaint in what would essentially be a nolle pros.

Now I understand the Board's concerns with the case, but unfortunately there is just not enough evidence for the Board to go forward on this case.

VICE CHAIRMAN SHINN: Two other questions.

MR. PELLETT: Yes.

VICE CHAIRMAN SHINN: You're saying, in the penalties was there substantial understatement and and were civil fraud penalties assessed?

MR. PELLETT: That was the statutory provision that they cited as the basis for the assessment. But when he signed the Consent Order the court made no findings that he had actually committed those violations.

VICE CHAIRMAN SHINN: But they assessed him that additional penalty charge --

MR. PELLETT: That's correct. And he had to pay --

VICE CHAIRMAN SHINN: -- as part of his settlement.

MR. PELLETT: Right. And he has paid back that money. So I mean, he has not walked away from what the IRS had done. He had to pay all that money back, and he's incurred substantial attorney fees in defending this case for the last four years. So although the case is being dismissed, he has in fact, in some sense paid a penalty for those tax returns.

VICE CHAIRMAN SHINN: And what's the CPA doing currently?

MR. PELLETT: He has a practice in Port St. Lucie. But under a prior Final Order that he had entered into with a Consent Agreement with this Board he's not allowed to do audits or reviews. So his practice is focused away from that. The exact nature of it I think is included in Mr. Riley's report, and --

VICE CHAIRMAN SHINN: Is he practicing solo or with other CPAs?

MR. PELLETT: I can't answer that question. Unfortunately, I don't know the answer.

I believe he's a solo practitioner, but he may have one or more other accountants working with him.

VICE CHAIRMAN SHINN: Any other questions from any of the Board members.

(No Response.)

VICE CHAIRMAN SHINN: He's advising that we drop the Stipulation.

MEMBER DAVIS: Regardless of what it looks like from what we're reading in the transcripts and the information that we've provided, the only reason then that we're considering, and I guess for either of the two of you, the only reason that we're considering dropping this is that if it went to an additional hearing, I guess, we would probably not win because we can't prove?

MR. RIMES: Well, as I understand what has occurred in all of this, that the problem is that the records that appear to be necessary for your experts to prove, and they would have to prove that there was a violations, a fraudulent violation of the tax code, those records are simply not available. Not that they man not

exist, but you can't get them.

MEMBER DAVIS: We definitely can't get them. Because what I remember reading was that --

MR. RIMES: Well, you have to ask the Department. I assume they made every effort they can to get them.

MS. DEISON: Right.

MR. RIMES: Mr. Buchman was required to produce whatever he has. And apparently he has produced whatever he has. He's not required to answer any questions at all.

MEMBER DAVIS: Okay.

MR. RIMES: And therefore you can't take any inference as a result of that, directly. You can't base a finding simply upon that. And so the Department would have to present evidence to show that the fraud existed and assuming they are having a difficult time -- are unable to tie those two together.

MEMBER DAVIS: Okay, in addition to the phone calls that have been made, what have we done to try and get the information from the IRS?

MS. DEISON: If it's not in the file, I know that we tried to subpoena the letters. But we can't get any of it.

VICE CHAIRMAN SHINN: Is he still able to practice before the IRS?

MR. PELLETT: I don't know the answer to that question, Mr. Vice Chair.

VICE CHAIRMAN SHINN: I would think, Mr. Rimes, that if the IRS has limited his ability to practice in front of them then we have some direct knowledge of --

MR. RIMES: Well, that also would be another charge that's not presently pending.

VICE CHAIRMAN SHINN: Right.

MR. RIMES: The Department would have to investigate that, but that's a different question. I know of nothing in this file that shows that there was any action taken against him to bar him from practice. But that's a different --

Apparently -- this was, as I understand, not including the personal issue.

VICE CHAIRMAN SHINN: I understand.

If he has signed a return as a preparer of someone else and civil fraud was assessed against the client then there's a very high likelihood that the IRS would go after preparer penalties.

MR. RIMES: That's correct.

VICE CHAIRMAN SHINN: And then take actions

against the preparer as far as being able to practice before them.

MR. PELLETT: I'm not aware of any penalties in that regard.

VICE CHAIRMAN SHINN: I'd like to know if he has any reduced powers in front of the IRS.

MR. RIMES: Certainly the Department can look into that and that would be open to the public or not, but the matter that's in front of you today is the fraud and the only thing -- what they're telling you is they can't prove the case.

VICE CHAIRMAN SHINN: Okay, but Mr. Rimes, what's very frustrating to me is we have a CPA here who got hit with civil fraud penalties and he acceptingly paid them for large dollars. And he's in the tax business. We've heard that he's doing tax returns. And he pleads the Fifth. And he's hiding underneath a rock, and that's very frustrating. And our role is to protect the public.

If every one of the people that come before us want to plead the Fifth, then why waste our time if this is what happens? It's very frustrating as I sit here today. Okay. So what do we do? I'd like to be as tough as possible.

MR. RIMES: Well, I think you're in a situation where you're prosecutors are telling you they can't prove the fraud. And that's the count that you're faced with.

VICE CHAIRMAN SHINN: Well, we can communicate directly with the IRS out of Washington, D.C., and there's an administrative office that we can deal with, and Martha knows it, and we've had contact with them. I would like to go that route.

MR. RIMES: Well, they can certainly investigate that. But that's not the case that's in front of you today. That would be an interstate case. But certainly that can be done.

MEMBER MARTIN: Ms. Deison, is there any letters or information received from the IRS in response to our requests?

MS. DEISON: There's not any in the material, and you've got a copy of the complete file.

VICE CHAIRMAN SHINN: Ms. Deison, I'm the Chair, so anybody ready to make a motion?

MEMBER DAVIS: I move that we close the case.

Can I also --

VICE CHAIRMAN SHINN: Well, I think Ms. Deison has already heard us.

MEMBER MARTIN: I agree with the motion and I second it.

VICE CHAIRMAN SHINN: Okay, we have a motion and a second.

Any further discussion?

(No response)

VICE CHAIRMAN SHINN: Hearing none, all in favor of the motion signify by saying, aye.

(Show of hands.)

VICE CHAIRMAN SHINN: Opposed, same sign.

MR. RIMES: I may also note, by the way, there is no such thing as -- if evidence shows up that was not available, that's always going to be used to reopen if there's a need to do so.

VICE CHAIRMAN SHINN: Thank you very much.

MR. PELLETT: Just for clarification, you adopted the Consent Agreement as it was presented to you.

VICE CHAIRMAN SHINN: That's correct.

MR. PELLETT: Thank you very much, Members of the Board. I know that you're frustrated with this case, and appreciate your time.

* * * *

MR. RIMES: Can we go back to the other case, for a second. Mr. Pellett, you might as well sit down for a second. I want to get something on the record.

Paragraph six of the Complaint, as I understand it, essentially operates the preclusion from you for taking action on any acts or omissions that would have been revealed by a review of the investigative materials which you have in front of you.

In other words, you can't go back and charge him again based on what you have in front of you. Or acts or omission that would have been revealed.

I want on the record to note whether it is the position of the parties, that if it turns out -- I understand that additional information or evidence may result in a subsequent refiling with regard to the fraud or the underlying activities.

With regard to the question as to whether his ability to practice in front of the service was in any way acted against or upon, is it the position of the Parties that this stipulation would preclude the Department from acting against Mr. Buchman for that violation?

I want it on the record, yes or no.

MR. PELLETT: The only thing that I can suggest to the Board is this: Mr. Buchman entered into the stipulation with the intent that this matter be brought to a final conclusion over the 1988, `89 and `90 tax assessments.

I would want to look at any subsequent investigation that might be conducted by the Department and to be sure that whatever investigation might be brought is not estopped by the materials that are before you.

You have an excerpt based on the materials that I received, but if you will look at the materials that Mr. Riley had made available to him during the course of his consult and investigation, those were fairly extensive documents. And I'm not prepared today to suggest to you that that matter would not be precluded by what you have done today. So I cannot agree at this moment that the subsequent investigation would not be barred. But I certainly would suggest that if you wish to investigate the matter then you may. And then if we have a legal argument to bring at that time, that it was included in this Final Order, that's an issue that would be litigated. And if at the time it

appears that it's correct, then there would be an issue of attorneys fees that would be brought up at that point.

But at this moment, you -- and Mr. Buchman's intent was to bring this matter to a final and full resolution.

I understand the Board's concerns, particularly with this tax assessment. And I know that you want to look into the issue that you raised, and as I say, I am not prepared to tell you that you can't do that. I think that you can do that investigation. Should formal charges be brought we would then, if there is a legal argument to raise, that it is something that is considered as part of this Consent Agreement we would raise it.

MR. RIMES: I think the Board has to reconsider it now that I'm -- the Parties -- Mr. Pellett is now telling you that, and I understand his position, I'm not disputing where he's coming from, but what Mr. Pellet is telling you is that there may be some documents that you don't have that may result in preclusion of a matter you're concerned with. And if that's the case, you need to have those documents you need to reach a

decision.

I assumed that when Ms. Gustafson was saying you have the full file, you have the full file. But if there are some additional documents that Mr. Pellett considers to be part of the file I can understand why he says that because it's the investigative file materials. If Mr. Riley has additional material that you've not seen, then you're not able to make a determination as to whether, by adopting this Stipulation you would preclude yourself from looking at the question which you've raised relating to his practice in front of the Service. So you may need to consider where you are.

CHAIRMAN SHINN: Just to make a point, my earlier comment.

MR. PELLETT: Yes.

CHAIRMAN SHINN: I recognize that when you're dealing with the IRS sometimes you're negotiating penalties, whether or not they're going to bring up additional issues, and go to additional years, et cetera. But pleading the Fifth and not coming forth and talking about some of those things makes me go to the next step of, okay, did you accept preparer, or in this case,

taxpayer, you know, civil fraud. And when you do, and he does tax work, that's when I -- I've got to be protective. So I don't think the blanket release is just not going to get it. So we have to do some language, first.

MR. PELLETT: Mr. Vice Chair, if I may.

CHAIRMAN SHINN: Yes, sir.

MR. PELLETT: I'm not suggestion that you can't look at that issue and see if in fact there were preparer penalties imposed on Mr. Buchman.

I don't have your agenda material in front of me. I have a copy of what the Agency sent to me which is fairly thin.

Mr. Riley's report, the intial expert report was several exhibits. That was included in the file materials originally sent to me by the Department. I don't know because I don't have your paginated agenda to know if you have Mr. Riley's complete report with exhibits. I suspect not, based on the copy that I have.

MR. RIMES: I think we have exactly what you have.

MR. PELLETT: And so those exhibits were made up primarily of the documents that Mr. Buchman made available to Mr. Riley. He had all

the documents related to this issue that were in his possession that he gave to Mr. Riley. Mr. Riley incorporated those into his expert report.

I agree with what Mr. Rimes is suggesting to you. If you don't have that complete report then it is unwise of you to adopt this Consent Agreement because you don't know what you're adopting. And I would agree with that position, and I want, and Mr. Buchman wants this to be resolved fully and finally.

My suggestion would be, rather than to vote down the Stipulation, and as much as I hate to do this once more, but to table the case until the next meeting so that you can get those materials. And be sure that you're making a decision that's full and informed so that you can bring it to a close to -- I understand you're not going to be satisfied with the decision to dismiss the case, but at least you'll be satisfied that you have everything that the Department had so that you know what you're adopting.

MR. RIMES: I think you probably need to move to reconsider since you -- and I agree with Mr. Pellett. I think that's what you need to do.

CHAIRMAN SHINN: Do we need two motions?

MEMBER DAVIS: Move to reconsider.

MR. OSCHER: I'm not sure what I'm doing.

MEMBER DAVIS: Move to reconsider Ralph Buchman.

CHAIRMAN SHINN: Do I hear a second?

MR. OSCHER: Second.

CHAIRMAN SHINN: Further discussion?

(No response)

CHAIRMAN SHINN: All in favor say, aye.

MR. RIMES: And what the Department wanted is to -- to understand -- the Chair's ruling is to table it until the next meeting which is in March in Tampa. So it's right next to you folks. And they will copy everything and make it available to the Board members who are participating -- take a look and see what doing.

CHAIRMAN SHINN: In the meantime, do you think you can get some information on the IRS?

MR. RIMES: That can always be done, no matter.

MR. OSCHER: That would be nice, and we can put a bow on this and put it all behind us.

MR. RIMES: It may turn out that there's no action taken at all and as a result it becomes a draw.

MR. PELLETT: Thank you.

(Whereupon, this excerpt is concluded.)

CERTIFICATE

THE STATE OF FLORIDA,)

COUNTY OF SEMINOLE,)

I, Suzette A. Bragg, Court Reporter and Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did transcribe the proceedings of said hearing, and that the foregoing and annexed pages, numbered 1 through 23, inclusive, comprise a true and correct transcription of the proceedings in said cause.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor have I any financial interest in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal, this 16th day of March, 2001.

SUZETTE A. BRAGG, Notary Public
State of Florida at Large

My Commission Expires: 2/21/2005

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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Governor

Kim Binkley-Seyer
Secretary

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June 6, 2001

Mr. Jon M. Pellett, Esquire
Barr, Murman, Tonelli
201 East Kennedy Boulevard, Suite 1750
Tampa, FL 33602-5829

Re: Ralph A. Buchman, Case Number 97-01770

Dear Mr. Pellett:

Pursuant to our recent conversation, based on further research into the above referenced matter, I have decided to move this case forward to the Division of Administrative Hearings. I will be sending the necessary documentation to the Division of Administrative Hearings and you will be receiving the applicable notification at that time.

Please do not hesitate to contact me if you have any questions or comments regarding any of the above.

Sincerely,

Michael D. Kooi
Assistant General Counsel

MDK:jmc

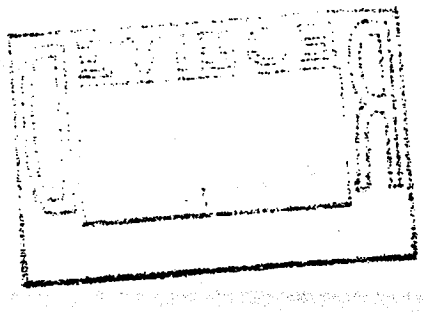


EXHIBIT
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13

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, *Governor* Kim Binkley-Seyer, *Secretary*

May 8, 2001

Jon M. Pellett, Esq.
Barr Murman Tonelli et at
201 East Kennedy Blvd Ste 1750
Tampa FL 33602

Re: Ralph Buchman

Dear Mr. Pellet:

This is to advise that the Board of Accountancy will consider the Stipulation in Case #99-01770 at the following date, time and place:

DATE AND TIME: Wednesday May 23, 2001 at 9:00 A.M.
or as soon thereafter as can be heard

PLACE: Marriott Hotel
Tampa International Airport
Tampa FL

This is an open meeting and you are welcome to attend.

Sincerely,

DIVISION OF CERTIFIED PUBLIC ACCOUNTING

BY Martha P. Willis
Martha P. Willis
Division Director

/jc

CERTIFIED MAIL # 7099 3400 0218 4559 4044

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May 15, 2001

Mr. Jon M. Pellett
Barr, Murman, Tonelli
201 East Kennedy Boulevard
Suite 1750
Tampa, FL 33602-5829

Re: DBPR v. Ralph A. Buchman, Case Number 97-01770

Dear Mr. Pellett:

The above-referenced case is scheduled to be heard before the Board of Accountancy on May 23, 2001.

However, given the fact that the members of the probable cause panel must be recused from hearing your client's case, there will not be a quorum of the Board for your client's hearing on May 23, 2001. Section 455.207(3), *Florida Statutes*, provides in pertinent part:

A quorum shall be necessary for the conduct of official business by the board or any committee thereof.

Nevertheless, your client may agree to waive the right of recusal of the above referenced probable cause panel so that the Board may hear your case. If your client does not wish to waive the right of recusal, the hearing on this matter will have to be rescheduled. Please contact me immediately at (850) 487-9636 if you have any questions regarding this matter. Otherwise, please notify me as to your client's willingness to sign the waiver as soon as possible. You may mail the waiver to the Department's mailing address or fax it to (850) 414-6749 at your earliest convenience.

Sincerely,

Michael D. Kooi
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

RE: DBPR v. Ralph A. Buchman
Case No: 97-01770

MOTION FOR WAIVER OF REQUIREMENT OF RECUSAL OF PROBABLE CAUSE PANEL MEMBERS

I, _____ (Respondent), hereby waive my statutory right to the requirement of recusal of probable cause panel members of the Accountancy Board meeting regarding the above-mentioned case, having been fully advised of said right to the aforementioned requirement of recusal, and having been advised to seek legal counsel as to the matter.

Respectfully submitted,

_____
Ralph A. Buchman
2301 SE West Street
Port St. Lucie, FL 32984

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by _____ who is personally known to me or who has produced _____ as identification, and who did take an oath.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES:_____

Approved this _____ day of _____, 2001.

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JOHN J. KOZAK†

JAMES G. LINDQUIST
JAMES A. MURMAN •
JON M. PELLETT
JERRY A. SETCHEL
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T. GREGORY SLOTHER
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MICHAEL A. TONELLI •
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* Admitted Washington, Washington, D.C. and Florida
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θ Board Certified Civil Trial Lawyer
• Certified Circuit Court Mediator

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May 4, 2001

Michael D. Kooi
Assistant General Counsel
Department of Business & Professional
Regulation
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399

Re: Ralph A. Buchman DBPR Case # 97-01770

Dear Mr. Kooi:

I have received your letter of May 2, 2001 concerning placement of Mr. Buchman's case before the Board of Accountancy at their May 23rd meeting. Please assure that his case is placed on the agenda for consideration of the Stipulation for dismissal. We are not withdrawing from the Stipulation and I will be present at the Board meeting to advocate for the Board to adopt the agreement reached with the Department.

I was somewhat taken back by the Department's change of position with respect to the Stipulation. I had made it clear to your predecessor that Mr. Buchman would not agree to enter into another Stipulation for dismissal if the Department was unwilling to make a good faith effort to have this case dismissed. I thought it was clearly understood that if the Department was unwilling to act in good faith concerning its offer of settlement and seek dismissal of the case before the Board, there was no reason for Mr. Buchman to enter into the agreement and we should proceed to hearing.

The case was settled after the Administrative Law Judge had granted the Department's request for a continuance of the proceeding to allow it sufficient time to secure information from the Internal Revenue Service. Your predecessor had indicated to me that he had exhausted all available avenues to secure the information from the IRS. Simply put, he told me that he had no case to go forward on. He therefore proposed to settle this case for dismissal of the Administrative Complaint and forwarded a draft stipulation for review.

In correspondence and in conversation, I made it clearly known that unless the Department would advocate for dismissal of the case, there would be no waiver of Mr. Buchman's rights including his right to seek attorneys' fees from the Department in connection with this case. In my discussions, I emphasized Mr. Buchman's desire for finality and desire to avoid the chain-of-events which had transpired under the last

Stipulation for Dismissal that had been reached between the parties. For that reason, the Department accepted an expanded version of what became paragraph 6 of the Stipulated Disposition. Likewise, paragraph 4 of the Stipulated Disposition was inserted to assure that the Department was acting in good faith in seeking dismissal of the Administrative Complaint and that both parties were entering into the agreement to avoid further administrative action.

Given the representations of your predecessor, I was assured that the Department would act in good faith. I fully expected that it would seek dismissal of this case consistent with the agreement it proposed and would live with the case as it stood on December 21, 2000. For that reason, I recommended to Mr. Buchman that he settle with the Department under the terms of the Stipulation rather than pursue the various legal remedies available to him. On the basis of the representations made by the Department concerning the Stipulation, we joined in the Department's Motion to have the Division of Administrative Hearings relinquish jurisdiction for the express purpose of presenting the parties' settlement for adoption by the Board.

The attorney representing the Department at the January Board meeting, though not the same person as the one with whom I had my discussions, on questioning by the Board and their counsel, asserted that the Department had made every effort to secure information from the IRS and that the Department was unable to obtain any information from the IRS. After considering the file, the arguments of the parties, and with advice of their own counsel, the Board, at first, adopted the Stipulation.

Unfortunately, the Board was not provided with the Department's complete file preventing their full review of the case as needed to assure an informed decision. This error involving the agenda materials was unknown and arose only after the Board asked whether IRS had disciplined Mr. Buchman's status as a tax preparer. Given the strict parameters of paragraph 6, it was necessary for the Board to have been given the opportunity for review of the Department's complete file to determine whether it could later consider the issue. For that reason, and that reason alone, the case was reconsidered and then tabled to the next meeting so that the Department could provide the Board with their complete file.

Additionally, given the question and the extra time that resulted from the error in presenting the file, the Department was directed to ask whether IRS had sought to discipline Mr. Buchman's ability to prepare tax returns for others. As was learned, the answer to that question is no, IRS has not sought to discipline Mr. Buchman's status as a tax preparer, bringing us to the current state of things.

From our discussions, I understand that you have recently assumed responsibility for this case. I also understand that you have now crafted a legal argument that you believe allows the Department to seek compelled authorization for a signed release of IRS records by Mr. Buchman. Given paragraph 4 of the Stipulated Disposition, I am a little unclear as to the underlying motivation for the Department's continued prosecutorial activity on this case. Our agreement with the Department was meant to bring this activity to a conclusion and keep costs of the litigation at a minimum.

While I am not going to address your legal arguments at this time, I do feel forced to point out that the Department is bound by its agreement to advocate for dismissal of this case. The agreement was reached at arms length and with a full understanding of the nature of the agreement and its intended effect. There was no obligation for the Department to enter into the agreement, save its desire to avoid exposure to the payment of attorneys' fees and costs or to avoid whatever other remedies might be available to Mr. Buchman as a result of this prosecution.

Mr. Buchman has now twice entered into an agreement with the Department for dismissal of this case. Each time he did so, he was under the belief that the Department and its legal staff would act honorably and in accordance with the agreement proposed for settlement of this matter. Each time the agreement has been approved by not only the prosecutor responsible for the file but the Chief Attorney responsible for the prosecution of cases on behalf of the Department. The agreements reflect upon the credibility of the Department.

As I indicated, should the Department breach the latest agreement or fail to act in good faith in connection with that agreement or if the Board rejects the agreement, Mr. Buchman will not thereafter enter into another one in which he waives any of his rights in connection with this case including his rights to seek fees and costs.

Mr. Buchman is resolved to work in good faith with the Department within the bounds already established and under the terms of his agreement. He requests that the Department place his case before the Board for consideration of the Stipulation.

It is hoped that upon receipt of this letter, the Department will act in good faith in connection with this matter and present the case as agreed upon.

I appreciate your assistance and consideration. If there are any questions or concerns, please do not hesitate to let me know.

Sincerely,

Jon M. Pellett

cc: Ralph A. Buchman

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Jeb Bush, *Governor* Kim Binkley-Seyer, *Secretary*

May 2, 2001

Mr. Jon M. Pellett
Barr, Murman, and Tonelli
201 East Kennedy Boulevard
Suite 1750
Tampa, FL 33602-5829

Re: Ralph A. Buchman, Case No. 97-01770

Dear Mr. Pellett:

I am in receipt of your letter and the transcript from the previous Board Meeting regarding the above referenced matter. As we discussed, the Stipulation previously agreed upon was tabled by the Board until the next meeting. Consequently, I am willing to allow the Stipulation to go back before the Board yet again. However, I believe it is very unlikely the Board will accept the Stipulation when I inform them of the legal research I have performed regarding your client's fifth amendment rights in this matter.

If your client is indeed concerned about spending excessive time and money on this matter, it may behoove you to simply agree to drop the Stipulation and move forward from there. Nevertheless, I am willing to allow this matter to go before the Board due to the fact that the Department had previously agreed to the Stipulation. The Board meeting has been scheduled for Wednesday, May 23, 2001, in Tampa beginning at approximately 9:00 a.m. At this time I am not certain of the location of the hotel in which the meeting will take place. You can get this information from the staff of the Board of Accountancy in Gainesville, Florida, at (352) 333-2500 when it is available.

Please feel free to contact me if you have any questions or comments regarding any of the above.

Sincerely,

Michael D. Kooi
Assistant General Counsel

MDK:jmc

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE NO. 00-4692
DBPR CASE NO. 97-01770

vs.

RALPH BUCHMAN,

Respondent.
_____/

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, pursuant to Rule 1.350, Florida Rules of Civil Procedure, requests Respondent, RALPH BUCHMAN, to produce and permit the inspection, copying, testing, and sampling of the following documents and things within the thirty (30) days as prescribed by Rule 1.350, Fla.R.Civ.P. Responses should be directed to David K. Minacci, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202:

The following definitions shall apply:

A. The term "Petitioner" refers to the DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, Petitioner in this action, and all other persons acting on its behalf.

B. The terms "you" and "yours" mean the Respondent and all other persons acting on his/her behalf, and unless privileged, your attorneys.

C. Your "response" to the following shall include, reflect, and contain the knowledge of all persons referred to in definitions A and B hereof, who are presently acting in the referenced capacity or has acted in such capacity at the time of the incidents alleged in the most recently filed complaint.

D. The term "person" means any individual, corporation, partnership, joint venture, group, association, body politic, government agency, unit or other organization.

E. The term "communication" refers to any transmission or transfer of information of any kind, orally, in writing, or in any other manner at any time or place, and under any circumstances whatsoever.

F. The terms "document" or "documents" as used herein, mean any writing, letter, telegram, memorandum, memorandum of conference or telephone conversation, report, study, list compilation of data, papers, books, records, contracts, pictures, photographs, tapes and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photostatic or other copy, magnetic or recorded, is reproduced. Said terms shall also mean copies thereof.

G. To identify a "document" shall mean to state with respect thereto:

i. The identity of the person who prepared it;

ii. The identity of the person who signed it or in whose name it was issued;

iii. The identity of each person to whom it was addressed or distributed;

iv. The nature or substance of the document with the sufficient particularity to enable it to be identified;

v. Its date, and if it bears no date, the date when it was prepared;

vi. The physical location of the document and the custodian or custodians thereof.

H. To "identify a person" with reference to a natural person, means to give his/her name, last known address, and if employed, the name and address of his/her employer and his/her job title or position. To identify a person who is not an individual, means to state the name and principle office of such person.

I. To "identify an oral communication" or equivalent language, means to state with respect thereto:

i. The identification of each person who was present at the time it was made;

ii. The date and place where such oral communication was made or took place;

iii. Whether the communication was made by face to face contact between the person, by telephone or other means;

iv. The content and substance of what each such person said; and

v. The identification of each document pertaining to each such communication.

Please provide the following:

1. A copy of any report of income tax examination changes for the tax years 1988, 1989, or 1990.

2. A copy of the agreement between yourself and the Internal Revenue Service for the payment of taxes and/or penalties owed for the tax years 1988, 1989, or 1990.

3. A copy of the tax returns filed for you and Marie Buchman for the tax years 1988, 1989, and 1990.

4. A copy of any correspondence between yourself and the Internal Revenue Service relating to deficiencies, taxes, penalties, or interest owed or assessed for the tax years 1988, 1989, or 1990.

5. Copies of any checks or credit card receipts pertaining to the payment of taxes, additional taxes, penalties, interest, or deficiencies for the tax years 1988, 1989, or 1990.

6. A copy of the judgment entered against you by the United States Tax Court for deficiencies in income tax due for the tax years 1998, 1989, and/or 1990.

7. All other documents and communications, as defined above, including affidavits, statements, reports, records, notes, depositions, writings, or other correspondence pertaining to this cause of action.

8. All documents and communications, as defined above, referenced in Respondent's answers to Petitioner's First Set of Interrogatories.

9. A copy of all documents Respondent intends to use at trial, either as exhibits or for impeachment purposes.

10. A copy of your current state license as an accountant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was furnished to JON M. PELLETT, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, via certified mail, this 25th day of November, 2000.

David K. Minacci
Lead Professions Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH Case No. 01-2507PL

RALPH BUCHMAN, C.P.A.,

Respondent.
_____/

RESPONDENT'S RESPONSE TO PETITIONER'S FIRST REQUEST FOR PRODUCTION

COMES NOW, the Respondent, Ralph A. BUCHMAN, by and through his undersigned counsel, files this his response to the Petitioner's Request for Production and states as follows:

Respondent objects to Petitioner's Request for Production to the extent it seeks to impose obligations not required by Rule 1.370, Florida Rules of Civil Procedure, Rule 28-106.206, Florida Administrative Code, and Sections 120.569 and 120.57, Florida Statutes. In particular, Respondent objects to the format used and the instructions furnished by the Petitioner as the Petitioner seeks to impose obligations not required by the above referenced statutes and rules.

Additionally, Petitioner's Request to Produce seeks to have the Respondent admit the specific allegations of the Administrative Complaint. The Request to Produce as framed constitutes an attempt by the Petitioner to compel the Respondent to impermissibly answer the allegations of the Administrative Complaint. The proceeding initiated by the Petitioner is penal in nature in that it seeks to revoke, suspend, or otherwise discipline Respondent's professional standing, severely impair his professional reputation and his vested right to earn a living in the practice of his profession. The Respondent has a right to remain silent and not to be compelled

EXHIBIT
tabbies 14

to be a witness against himself by virtue of the guarantees afforded by the Fifth Amendment of the United States Constitution and similar articles of the Florida State Constitution. Respondent asserts his right to remain silent and declines to respond to the Request to Produce #1 through 10 as propounded. Such right has been guaranteed by the Florida Supreme Court in Vining v. Real Estate Commission, 281 So.2d 487 (Fla. 1973); Kozerowitz v. Florida Real Estate Commission, 289 So.2d 391 (Fla. 1974); and affirmed in McDonald v. Department of Professional Regulation, 582 So.2d 660 (5 DCA 1991); Best Pool and Spa Service Co., Inc. V. Romanik, 622 So.2d 65 (4 DCA 1993). The Request to Produce also seeks to invade the privacy of a non-party, Marie Buchman, and to that extent is improper under the Florida Rules of Civil Procedure. Without waiving said objections, Respondent provides the following response:

1. To the extent it is available, see the Department's compiled investigative report and consultant opinion including those documents attached to Respondent's letters dated October 30, 1997 and December 9, 1999.

2. Furnished previously. See number 1 above.

3. In addition to the above; objection seeks documents in the possession of a third person who is not a party to this action and who is not an employee or agent of the Respondent. Additionally, under Federal law the documents sought are confidential and privileged and relate to information concerning a third party, Marie Buchman, who is not a party to this action and for whom there is an independent right of privacy with respect to the requested documents.

4. See number 1 above.

5. See number 1 above.

6. See number 1 above.

7. Objection, work product and attorney client privilege. Otherwise, see number 1

above.

8. See number 7 and 1 above.

9. See number 1 above; otherwise undetermined but will be disclosed in accordance with the joint prehearing statement.

10. In possession of the Petitioner. Otherwise, objection it is no burdensome for Petitioner, the licensing entity for the Respondent, to produce a copy of the Respondent's license as it is for him.

Respectfully Submitted,

JON M. PELLETT
Florida Bar No. 0050679
BARR, MURMAN, TONELLI, SLOTHER & SLEET
201 East Kennedy Boulevard, Suite 1700
Tampa, Florida 33602
Ph (813) 223-3951
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Request to Produce has been furnished by facsimile and by U.S. mail, postage prepaid, to Michael D. Kooi, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202, facsimile (850) 414-6749 and that in lieu of original filing, one copy has been furnished to the Division of Administrative Hearings at (850) 921-6847, this July 6, 2001

Jon M. Pellett

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

DBPR CASE NO. 97-01770

vs.

RALPH BUCHMAN,

Respondent.
_____/

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, pursuant to Rule 1.350, Florida Rules of Civil Procedure, requests Respondent, RALPH BUCHMAN, to produce and permit the inspection, copying, testing, and sampling of the following documents and things that are in your possession, custody, or control within the thirty (30) days as prescribed by Rule 1.350, Fla.R.Civ.P. Responses should be directed to Michael D. Kooi, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202:

The following definitions shall apply:

A. The term "Petitioner" refers to the DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, Petitioner in this action, and all other persons acting on its behalf.

B. The terms "you" and "yours" mean the Respondent and all other persons acting on his/her behalf, and unless privileged, your attorneys.

C. Your "response" to the following shall include, reflect, and contain the knowledge of all persons referred to in definitions A and B hereof, who are presently acting in the referenced capacity or has acted in such capacity at the time of the incidents alleged in the most recently filed complaint.

D. The term "person" means any individual, corporation, partnership, joint venture, group, association, body politic, government agency, unit or other organization.

E. The term "communication" refers to any transmission or transfer of information of any kind, orally, in writing, or in any other manner at any time or place, and under any circumstances whatsoever.

F. The terms "document" or "documents" as used herein, mean any writing, letter, telegram, memorandum, memorandum of conference or telephone conversation, report, study, list compilation of data, papers, books, records, contracts, pictures, photographs, tapes and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photostatic or other copy, magnetic or recorded, is reproduced. Said terms shall also mean copies thereof.

G. To identify a "document" shall mean to state with respect thereto:

i. The identity of the person who prepared it;

ii. The identity of the person who signed it or in whose name it was issued;

iii. The identity of each person to whom it was addressed or distributed;

iv. The nature or substance of the document with the sufficient particularity to enable it to be identified;

v. Its date, and if it bears no date, the date when it was prepared;

vi. The physical location of the document and the custodian or custodians thereof.

H. To "identify a person" with reference to a natural person, means to give his/her name, last known address, and if employed, the name and address of his/her employer and his/her job title or position. To identify a person who is not an individual, means to state the name and principle office of such person.

I. To "identify an oral communication" or equivalent language, means to state with respect thereto:

i. The identification of each person who was present at the time it was made;

ii. The date and place where such oral communication was made or took place;

iii. Whether the communication was made by face to face contact between the person, by telephone or other means;

iv. The content and substance of what each such person said; and

v. The identification of each document pertaining to each such communication.

Please provide the following:

1. A copy of any report of income tax examination changes for the tax years 1988, 1989, or 1990.

2. A copy of the agreement between yourself and the Internal Revenue Service for the payment of taxes and/or penalties owed for the tax years 1988, 1989, or 1990.

3. A copy of any and all documents in the possession of the Internal Revenue Service regarding your income tax returns and investigation of said returns for the tax years

1988, 1989, and/or 1990, including, but not limited to, the penalty file and the examination file relative to the investigation.

4. A copy of any correspondence between yourself and the Internal Revenue Service relating to deficiencies, taxes, penalties, or interest owed or assessed for the tax years 1988, 1989, or 1990.

5. Copies of any checks or credit card receipts pertaining to the payment of taxes, additional taxes, penalties, interest, or deficiencies for the tax years 1988, 1989, or 1990.

6. A copy of the judgment entered against you by the United States Tax Court for deficiencies in income tax due for the tax years 1998, 1989, and/or 1990.

7. All other documents and communications, as defined above, including affidavits, statements, reports, records, notes, depositions, writings, or other correspondence pertaining to this cause of action.

8. All documents and communications, as defined above, referenced in Respondent's answers to Petitioner's First Set of Interrogatories.

9. A copy of all documents Respondent intends to use at trial, either as exhibits or for impeachment purposes.

10. A copy of your current state license as an accountant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was furnished to JON M. PELLETT, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, via certified mail, this _____ day of _____, 2001.

Michael D. Kooi
Assistant General Counsel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

NOTICE OF OBJECTION UNDER RULE 1.351(B) AND MOTION QUASH SUBPOENA DUCES TECUM AND MOTION FOR PROTECTIVE ORDER

COMES NOW, the RESPONDENT, RALPH A. BUCHMAN, C.P.A., through undersigned counsel, and pursuant to Rule 1.351(b), Florida Rules of Civil Procedure hereby enters his objection to the Subpoena Duces Tecum directed by the Petitioner to the Internal Revenue Service (IRS) and requiring an appearance of the Records Custodian for the IRS on July 30, 2001 at 9:00 a.m. or production of records prior to that date. Respondent further moves this Administrative Law Judge to quash the subpoena and enter a protective order prohibiting the Petitioner from seeking records from the IRS. As grounds for his request, Respondent would state the following:

1. On or after June 18, 2001, Petitioner caused to be served on the Records Custodian of the Plantation Regional Office of the Internal Revenue Service a subpoena duces tecum for production of "...all returns and return information for Ralph A. Buchman." The subpoena was obtained from the Division of Administrative Hearings and served without Notice to the Respondent as required by Rule 1.351, Florida Rules of Civil Procedure. A copy of the

EXHIBIT
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Subpoena and correspondence directed to IRS and the Department's investigative field office is attached as composite exhibit "A."

2. A copy of the subpoena was found during review of documents furnished by Petitioner in response to Respondent's first Request to Produce, which response was served on July 6, 2001. Neither the subpoena nor the correspondence directed to the Records Custodian for the IRS were previously furnished to Respondent in compliance with Rule 1.351(b), Florida Rules of Civil Procedure and Respondent was unaware of the existence of the subpoena until July 11, 2001 when it was discovered during review of the documents furnished by Petitioner.

3. The subpoena served on, or intended to be served on, the IRS requires the Records Custodian to appear for what is termed "a formal hearing" on July 30, 2001 at 9:00 a.m. To Respondent's knowledge, there is no formal hearing scheduled for July 30, 2001 in connection with this case. To the extent that Petitioner is seeking compelled testimony and production of documents by the custodian of records for IRS, it has not previously cleared the date of July 30, 2001 with the Respondent for any deposition.

4. Additionally, the subpoena seeks to compel the IRS to produce documents outside of the place wherein the records are located. Such a request is invalid under Rule 1.351(c), Florida Rules of Civil Procedure.

5. Respondent objects to the production of his returns and return information in the possession of the IRS. Said information and returns are protected as confidential under Federal law, Title 26, Section 6103 United States Code , and may not be disclosed within the context of these proceedings. Under Section 6103, neither the Petitioner nor the Division of Administrative Hearings has the authority to compel the production of the documents sought in the Petitioner's request.

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6. Respondent has previously informally notified the Department of Business and Professional Regulation of his objection to production of his tax returns and return information by the IRS.

7. Under Rules 1.351(b) and 1.351(d), Florida Rules of Civil Procedure, once an objection has been raised, no hearing is held to consider the objection. The subpoena is rendered void by the submission of an objection under the rules. See e.g.,

8. In accordance with the requirements of Rule 1.351(b), Petitioner must proceed by way of deposition under the requirements of Rule 1.310, Florida Rules of Civil Procedure.

9. Since all returns and all return information in the possession of the IRS is protected as confidential under Federal law, a deposition of the records custodian would be unnecessary and would cause a needless increase of the costs of the litigation to the Respondent.

WHEREFORE, in accordance with the requirements of Rule 1.351(b), Florida Rules of Civil Procedure, Respondent gives Notice of his Objection to production of the requested records from the IRS.

Further, Respondent requests that the subpoena be quashed and that a protective order issue prohibiting the Petitioner from seeking discovery of the tax returns and tax return information in the possession of the IRS consistent with the requirements of Title 26 United States Code, Section 6103 rendering the information confidential and not subject to discovery.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. mail, postage prepaid, and facsimile to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and in lieu of original filing, a copy has been furnished to the

Division of Administrative Hearings via telephone facsimile at (850) 921-6847 this July 11, 2001.

Respectfully submitted,

JON M. PELLETT
Florida Bar Id # 0050679
BARR, MURMAN, TONELLI,
SLOTHER, & SLEET
201 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 209-0214
ATTORNEYS FOR RESPONDENT

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida's Future...
Right Here.
Right Now.

Jeb Bush
Governor

Kim Binkley-Seyer
Secretary

Office of the General Counsel
1940 North Monroe Street
Tallahassee, Florida
32399-0750

VOICE
850.488.0062

FAX
850.414.6749

INTERNET
www.myflorida.com

June 20, 2001

Records Custodian
Internal Revenue Service
7850 SW 6th Court, Room 260
Plantation, FL 33324

Re: DBPR v. Ralph A. Buchman
DOAH Case Number: 01-2329PL

To Whom It May Concern:

Please find enclosed a Subpoena Duces Tecum in regards to the above referenced case.

If you prefer, instead of appearing, to comply with this Subpoena you may mail the requested documents on or before July 30, 2001 to the address shown on the Subpoena.

If you should have any questions regarding this matter, please feel free to contact me at (850) 487-9636.

Sincerely,

Michael D. Kooi
Assistant General Counsel

MDK:jmc

Enclosure

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY,

Petitioner,

vs.

RALPH A. BUCHMAN,

Respondent.

Case No. 01-2329PL

SUBPOENA DUCES TECUM

TO: Records Custodian, Internal Revenue Service
7850 SW 6th Court Room 260
Plantation, Florida 33324

YOU ARE COMMANDED to appear at 1940 North Monroe Street Tallahassee, Florida 32399 to testify at a ~~deposition~~/final hearing (strike one) at 9:00 o'clock a.m., on the 30th day of July, 2001.

YOU ARE FURTHER COMMANDED to have with you at said time and place the following (use additional paper if necessary): Please provide all returns and return information for Ralph A. Buchman, Social Security Number 262-50-8130, of 2301 SE West Street, Port St. Lucie, Florida, 32984. Mr. Buchman's former address is: 2899 SE Italy Street, Port St. Lucie, Florida, 34952.

YOU SHALL RESPOND to this Subpoena as directed unless excused by the party who requested issuance of the Subpoena or by order of this Division.

ISSUED this 18th day of June, 2001, in Tallahassee, Florida.

LARRY J. SARTIN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

THIS SUBPOENA HAS BEEN ISSUED AT THE REQUEST OF:

Michael D. Kooi, (850) 414-6749
Northwood Centre
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399-2202

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida's Future...
Right Here.
Right Now.

Jeb Bush
Governor

Kim Binkley-Seyer
Secretary

Office of the
General Counsel
1940 North Monroe Street
Tallahassee, Florida
32399-2202

VOICE
850.488.0062
FAX
850.414.6749
INTERNET
www.MyFlorida.com

Mr. David Nolan
Regional Office IX – LI
5080 Coconut Creek Parkway, Suite A
Margate, FL 33063-3942

Re: DBPR v. Ralph A. Buchman, DOAH Case Number 01-2329PL

Dear Mr. Nolan:

Enclosed you will find a letter to the Records Custodian of Internal Revenue Service and a Subpoena Duces Tecum in reference to the above case.

Mr. Kooi has asked that I send you this information along with this transmittal letter in order for your office to hand serve this material. After service is completed, please provide our office with an Affidavit of Service.

If you should have any questions regarding this material, please feel free to give either Mr. Kooi or myself a call.

Sincerely,

Jennifer M. Causseaux

Jennifer M. Causseaux
Administrative Assistant to
Michael D. Kooi
Assistant General Counsel

Enclosure(s)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

NOTICE OF OBJECTION UNDER RULE 1.351(B), FRCP

COMES NOW, the RESPONDENT, RALPH A. BUCHMAN, C.P.A., through undersigned counsel, and pursuant to Rule 1.351(b), Florida Rules of Civil Procedure hereby enters his objection to the Notice of Production Non-Party served by Petitioner on July 12, 2001 and giving notice of the intent of the Petitioner to serve a Subpoena Duces Tecum for records without deposition directed to the Internal Revenue Service (IRS). In accordance with the requirements of Rule 1.351(b), Petitioner must proceed by way of deposition under the requirements of Rule 1.310, Florida Rules of Civil Procedure.

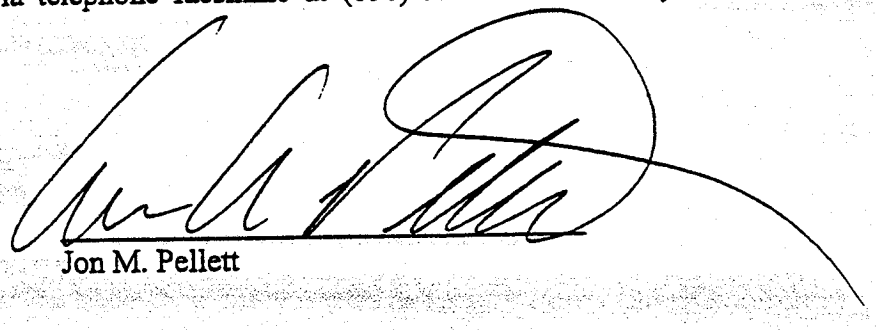
Respectfully submitted,

JON M. PELLETT
Florida Bar Id # 0050679
BARR, MURMAN, TONELLI,
SLOTHER, & SLEET
201 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602
(813) 223-3951

000210

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. mail, postage prepaid, and facsimile to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and in lieu of original filing, a copy has been furnished to the Division of Administrative Hearings via telephone facsimile at (850) 921-6847 this July 17, 2001.



Jon M. Pellett

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMUNICATIONS AND LIAISON

RECEIVED
JUL 12 2001
OFFICE OF GENERAL COUNSEL

July 9, 2001

Michael D. Kooi, Assistant General Counsel
State of Florida
Dept. of Business and Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399-0750

Dear Mr. Kooi:

This is in reference to the subpoena duces tecum for deposition served June 26, 2001, on the Records Custodian, Internal Revenue Service ("Service"). Your requested returns and return information for Ralph A. Buchman, SSN 262-50-8130, Case No. 01-2329PL.

Please be advised that *26 CFR 301.9000-1* requires Service employees to obtain appropriate authorization before they may testify in judicial or administrative proceedings. The responsibility for such approval is delegated to the Commissioner's representative, who rarely gives it when the Service is not directly involved in the case.

You may be able to obtain *documents* pertaining to your client and the other parties in lieu of a personal appearance by our employee. Records kept by the Service include tax returns and return information, the disclosure of which is strictly governed by statute. *Title 26, United States Code, 6103(a)* clearly states that "Returns and return information shall be **confidential...,"** a provision which prevents the Service from disclosing same absent proper consent.

We have enclosed Form 8821, Tax Information Authorization, which may be used for this purpose. Forms may be copied or downloaded from our website at http://www.irs.gov. If you are unable to obtain a voluntary consent, as described in *26 USC 6103(c)*, your alternative is to seek a court order requiring the subject(s) to provide a signed waiver authorizing release of the records. The consent, once obtained, could then be attached to your subpoena.

Since you have not provided the necessary documentation, and for the reasons outlined above, we are unable to comply with your subpoena. Kindly contact *Melanie Romano, Badge No 65-02391,* at *(954) 423-7485/FAX 423-7519,* after reviewing this information. You may write to us at the following address: *Internal Revenue Service, Attn: Disclosure STOP 4030, 7850 SW 6th Ct., Plantation, FL 33324.* Please refer to our file No. **2001-1000.**

EXHIBIT
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I hope this information is helpful to you, and I look forward to your prompt reply.

Sincerely,

Terry Davis
Disclosure Officer

Enclosure (1)

Form **8821**
(Rev. September 1998)
Department of the Treasury
Internal Revenue Service

Tax Information Authorization

▶ IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.

OMB No. 1545-1165
For IRS Use Only
Received by:
Name
Telephone ( )
Function
Date / /

1 Taxpayer information.

Taxpayer name(s) and address (please type or print)	Social security number(s)	Employer identification number
	Daytime telephone number ( )	Plan number (if applicable)

2 Appointee.

Name and address (please type or print)	
	CAF No. ..... Telephone No. ( ) ..... Fax No. ( ) ..... Check if new: Address ☐ Telephone No. ☐

3 Tax matters. The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line.

(a) Type of Tax (Income, Employment, Excise, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters (see instr.)

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) . . . . . ▶ ☐
If you checked this box, skip lines 5 and 6.

5 Disclosure of tax information (you **must** check box 5a or b unless box 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box . . . . . ▶ ☐

b If you do not want any copies of notices or communications sent to your appointee, check this box . . . . . ▶ ☐

6 Retention/revocation of tax information authorizations. This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box . . . . . ▶ ☐
To revoke this tax information authorization, see the instructions on page 2.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature	Date	Signature	Date
Print Name	Title (if applicable)	Print Name	Title (if applicable)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Change To Note. New column (d) is added to line 3 for specific tax matters. Use column (d) to specify tax information that is to be provided by the IRS. See the line 3 instructions on page 2.

Purpose of form. Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods you list on this form.

Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use **Form 2848**, Power of Attorney and Declaration of Representative, instead of Form 8821. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

Taxpayer identification numbers (TINs). TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

Fiduciaries. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. File **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

DOAH Case Number 00-04692
DBPR Case Number 97-01770

Vs.

RALPH A. BUCHMAN,

Respondent.
_____/

RESPONDENT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 28-106.206, Florida Administrative Code, Petitioner, Department of Business and Professional Regulation, Board of Accountancy, is hereby requested and required to designate an officer or agent **to answer under oath, in writing**, and within the time provided by the Florida Rules of Civil Procedure, Rule 1.340, the following interrogatories propounded by the Respondent. In answering these interrogatories, even though the questions will be directed to "you" or to the "Department", furnish ***all information available*** to the Department of Business and Professional Regulation, Board of Accountancy, including but not limited to, information in the possession of the Board of Accountancy Staff Office, the Department's investigators, attorneys and **consultants and experts**, and not merely such information known to your own knowledge. All terms used in these interrogatories are as defined in Chapters 120, 455, and 473, Florida Statutes, as well as, Webster's Unabridged Dictionary unless otherwise stated.

EXHIBIT
Gobbler
17

If you cannot answer the following interrogatories in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information you have concerning the unanswered portion.

1. Please state the name and current position of each person who has reviewed the responses to these interrogatories or who has provided any information in response to these interrogatories.

ANSWER:

See Schedule "A"

2. Based upon the information presently available to Petitioner, please state the name, present business or residence address, occupation or special qualifications of **every** person who will be called as a witness at formal hearing as to any violation charged in the Administrative Complaint and designate the particular act or omission about which the witness has personal knowledge.

ANSWER:

See Schedule "A"

3. Please list the name, current business address, and telephone number of **each** and **every** expert you intend to call at the formal hearing including members of any advisory committee or consultant which the Department has consulted with **prior** to the determination of probable cause.

ANSWER:

See Schedule "A"

(a) Did any of the experts, consultants or advisory committee provide a written report?

(i) If so, please state who has custody of the report.

4. Did the Probable Cause Panel who authorized the filing of an administrative complaint against the Respondent review the entire Department file with respect to this matter including all responses submitted by the Respondent?

ANSWER:

See Schedule "A"

(a) If so, what evidence do you have to demonstrate that the Probable Cause Panel did in fact review the entire Department file?

(b) Who has custody of the actual exhibit including draft recommendation that was given to the Probable Cause Panel for their consideration at the meeting?

(c) Please explain the basis for the Department's recommendation to the Panel that they should find probable cause in this matter.

(d) For each and every allegation of the Administrative Complaint please state what tangible evidence you have to support that allegation of the complaint.

(i) Please identify each and every piece of tangible evidence in your possession that supports your contention that Respondent committed a fraudulent act while holding a certificate to practice public accounting

(ii) Was the Respondent furnished with a copy of this evidence prior to presentation of the case to the probable cause panel for a determination of probable cause?

(1) If not, please explain in detail why the Respondent was not furnished with a copy of this evidence prior to presentation of the case for a determination of probable cause.

5. List the names, addresses and daytime telephone numbers of **all persons who are known to the Department of Business and Professional Regulation,** its agents or attorneys **to have any knowledge regarding the issues raised by the Administrative Complaint** and specify the subject matter about which the witness has knowledge. (Any person listed in other answers to these interrogatories in which all of the information requested above has been provided may be included within the answer to this interrogatory by reference to the appropriate answer number If all of the information requested herein has not been provided in other answers to these interrogatories, please supplement the information accordingly so that a complete response is made concerning each witness].

ANSWER:

See Schedule "A"

6. For each of the penalties listed below and based on the information presently known to the Petitioner, what facts justify Petitioner's request for the imposition of that penalty by the Board of Accountancy.

a) Restriction of Respondent's practice;

b) Imposition of an administrative fine;

c) Issuance of a reprimand;

d) Suspension of Respondent's license;

e) Permanent Revocation of Respondent's license;

f) Placement of Respondent on probation; and

g) Costs of the investigation and prosecution of this case.

See Schedule "a"

7. Based upon the facts as are presently known to the Department, from the 1988-1990 disciplinary guidelines of the Board of Accountancy, what discipline does the Department seek to have the Administrative Law Judge recommend to the Board.

ANSWER:

See Schedule "A"

8. Does the Department maintain that there are any facts or circumstances in aggravation of the proposed penalty for this case?

ANSWER:

See Schedule "A"

(a) If so, please state each and every fact or circumstance which the Department maintains constitutes aggravation to be considered by the Administrative Law Judge and/or the Board and with respect to each such fact, please state the following:

(i) The name, addresse, and telephone number of each and every person having personal knowledge of each such fact.

(ii) Describe any documents, papers, or other materials that will be used in support of the each fact or circumstance identified above and identify the custodian of the document, paper or other material by name, address and daytime telephone number.

9. Based upon the information presently available to Petitioner, please identify each and every exhibit that will be offered for admission at the formal hearing or which will be used for some other purpose and with respect to each exhibit please identify the custodian of the exhibit by name, address and daytime telephone number.

See Schedule "A"

ANSWER:

See Schedule "A"

10. For each statement denied in response to Respondent's Request for Admissions, please state all facts which support the basis for your denial.

ANSWER:

See Schedule "A"

11. For each expert you intend to call at the formal hearing, please state the following?

SEe Schedule "A"

(a) The name of such person or persons, the documents reviewed, and the date of his or her review.

(b) Please state the opinions formed and the findings made by the person or persons from his or her review

(c) Whether the expert issued a written report

(i) If so, the date of the report and to whom the report was given

(ii) The number of accountancy cases reviewed by the expert over the last five (5) years

(iv) The experts qualifications, background, education, and training

12. Please state whether this case was forwarded to the Board of Accountancy on or after 1 year from the date of the Department's receipt of the complaint as required by Section 455.225, Florida Statutes and if so, the date of referral of this matter to the Board and the date of the Board meeting where this case was reviewed.

ANSWER:

See Schedule "A"

13. Please state all acts or omissions of the Respondent that you contend constitute a violation of each Count of the Administrative Complaint.

See Schedule "A"

Signed this 6 day of July, 2001.

Agent or officer
Department for Business and
Professional Regulation

STATE OF FLORIDA
COUNTY OF _____

Before me the undersigned authority personally appeared:

_____, a duly appointed agent of the Department of Business and Professional Regulation who is personally known to me or who produced: _____ as identification and who under oath or affirmation states that he/she has read the foregoing responses to interrogatories and the same are true and correct and that his/her signature appears above.

Sworn to or subscribed before me this _____ day of _____, 200__.

_____
NOTARY PUBLIC
My commission expires:

Respectfully submitted,

Jon M. Pellett
Fla. Bar Id # 0050679
BARR, MURMAN, TONELLI, et. al.
201 East Kennedy Blvd. Suite 1750
Tampa, Florida 33602
(813) 223-3951
ATTORNEYS FOR RESPONDENT

SCHEDULE A

1. Michael D. Kooi; Assistant General Counsel

2. **Tom Reilly**, CPA, expert

PO Box 531028,

Orlando, Fla. 32853-1028

Susan Chocola, CPA, expert

1220 Douglas Avenue, Suite 205

Longwood, Fl. 32779

Ralph A. Buchman

Marie Buchman

3. Tom Reilly

PO Box 531028

Orlando, Fl 32853-1028

(407) 894-6803

Susan Chocola

1220 Douglas Avenue, Suite 205

Longwood, Fl 32779

(407) 869-4000

(a) Yes

(i) The Department of Business and Professional Regulation ("The Department").

4. Yes

(a) Evidence is set forth in the transcript of proceedings where Mr. Buchman and counsel were present. Materials are always shipped to panel members before Probable Cause Panel meetings.

(b) The Department.

(c) The report of Tom Reilly.

(d) The report of Tom Reilly.

(i) See response to Public Record Request. Discovery continues.

(ii) No. The Department provided the Respondent with what the panel considered in its determination. Respondent knows what he was provided with.

(1) The Department is not required to provide anything more.

5. See response to answer 2.

6.a) See report of Tom Reilly.

b) See report of Tom Reilly.

c) See report of Tom Reilly.

d) See report of Tom Reilly.

e) See report of Tom Reilly.

f) See report of Tom Reilly.

g) See report of Tom Reilly.

7. The Department has not determined its recommendation at this time.

8. Yes.

(a) Prior disciplinary action by the Department. Case number 0108746.

(i) See report of Tom Reilly. Susan Chocola.

(ii) Department's investigative file, Administrative Complaint, Final Order, Settlement Stipulation. Sarah Wachman is the custodian. 1940 North Monroe Street, Talahassee, FL 32399-2202. (850) 921-8119.

9. The report of Tom Reilly. Any future report of Susan Chocola. Any and all documents relating to the Respondant's tax returns and tax return information from 1988, 1989, 1990.

10. The Department has not received Request for Admissions.

11(a) Tom Reilly and Susan Chocola. Mr. Reilly reviewed the documents attached to his report for several months prior to the issuance of the report. Susan Chocola is reviewing same documents at this time.

11(b) See the report of Tom Reilly.

11(c) Tom Reilly has issued a report and Susan Chocola may be issuing a written report.

(i) See the report. It was given to The Department, the Board of Accountancy, and the Respondant.

(ii) Susan Chocola has reviewed 41 accountancy cases between July 1, 1997 through June 20, 2001. Tom Reilly has reviewed 45 accountancy cases between July 1, 1997 through June 20, 2001. Prior dates are unavailable.

(iii) See attached Curriculum Vitae for Susan Chocola and Tom Reilly.

12. No.

13. See report and Probable Cause testimony of Tom Reilly. Investigation and discovery continue.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DOAH Case Nos. 01-2507PL
01-2329PL
DBPR Case No. 97-01770

RALPH A. BUCHMAN,

Respondent
_____/

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR ORDER COMPELLING CONSENT TO RELEASE OF RECORDS FROM THIRD PARTY FILED

COMES NOW, the PETITIONER, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, and submits this memorandum of law in support of its Motion to Compel Consent to Release of Records From a Third Party:

1. Respondent cannot invoke the Fifth Amendment privilege to justify his refusal to sign a consent directive that would enable the Department to obtain Internal Revenue Service tax records. While the Fifth Amendment protects a person from being a witness against himself, it applies only when the accused is forced to make a "testimonial communication that is incriminating". *Fisher v. United States*, 425 U.S. 391, 408 (1976). The United States Supreme Court has held that because a consent directive is not testimonial in nature, an order compelling a signature of the directive does not violate an individual's Fifth Amendment privilege against self-incrimination. *Doe v. United States*, 487 U.S. 201, 219 (1988).

In *Doe v. United States*, Doe was the target of a federal grand jury investigation into fraudulent manipulation of oil cargoes and receipt of unreported income. *Id.* at 202. Doe was served with a subpoena ordering him to produce records of account transactions at three United States branches of foreign banks. *Id.* at 202-203. Doe disclosed some bank records but invoked the Fifth Amendment privilege against self-incrimination when asked about the location or existence of additional records. *Id.*

The three banks were also served with the subpoenas ordering them to produce account records over which Doe had signatory authority. *Id.* at 203. Pursuant to the government's bank-secrecy laws, which require a customer's consent in order to disclose account records, the banks refused to comply. *Id.* The Government filed a motion with the District Court for the Southern District of Texas requesting an order for Doe to sign a proposed consent directive to the banks releasing the records. *Id.* at 204

The Court of Appeals for the Fifth Circuit held that the Fifth Amendment privilege did not apply as a basis for Doe to not sign the consent directive, because the directive had no testimonial significance. *Id.* at 205. The United States Supreme Court granted certiorari, 484 U.S. 813 (1987), and upheld the Fifth Circuit's ruling. *Id.* at 206. The Court, citing the decision in *Fisher v. United States*, 425 U.S. 391 (1976), stated that "in order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information. Only then is a person compelled to be a 'witness' against himself". *Id.* at 210.

The Court reasoned that because neither the form, nor its signing, communicated any facts, implicit or explicit, or conveyed any information to the Government, the execution of the directive did not have any testimonial significance. *Id.* at 215. The

directive is not an assertion of fact or a disclosure of information because it is simply directing the recipient of the form to do something, and does not reflect Doe's actual intent or state of mind. *Id.* at 216-217. The Court also explained that the directive would only make it possible for the recipient of the communication to comply with the Government's request to produce records. *Id.* at 218. This would be the equivalent to the bank's implicit declaration and not an expression of opinion about the existence of or control over such accounts by Doe. *Id.* Because the consent directive was not testimonial in nature, the Court held that compelling Doe to sign the consent directive did not violate his Fifth Amendment privilege against self-incrimination. *Id.* at 219.

Similar to the consent directive in *Doe*, which did not make any assertions of fact or disclosure of information, the consent directive at issue here does not make any assertions of fact or disclosure of information. The consent directive would have Buchman "direct the United States Internal Revenue Service, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in [its] possession or control which relate to [Buchman's] tax returns and tax return information for the years of 1988, 1989, and 1990 and any and all investigative documentation relating to said returns to any attorney of the Florida Department of Business and Professional Regulation...This direction...shall be construed as consent."

The execution of this consent directive, does not, communicate any factual assertions, implicit or explicit, or convey any information to the Department. Similar to *Doe*, this consent directive does not require Buchman to disclose information or contents in his mind in regard to his tax returns and tax return information. Rather, the directive,

as the directive in *Doe,* shall be construed as consent with respect to Internal Revenue Service laws.

Because Buchman's actual intent, state of mind, factual assertions, and explicit or implicit information are not communicated by signing the consent directive, the directive is not testimonial in nature. Consequently, a court order compelling Buchman to sign the directive does not violate his Fifth Amendment privilege against self-incrimination.

2. Respondent argues that Petitioner has raised no grounds showing exceptional necessity for the disclosure of the IRS records. However, in Mercy Hospital v. Department of Professional Regulation, Board of Medical Examiners, 467 So. 2d 1058 (3rd DCA 1985), the Third DCA upheld an order enforcing a subpoena duces tecum which requested confidential peer review committee records relating to the revocation of the subject physicians' privileges. The Court ruled that the Department had met its burden of showing "exceptional necessity" or "extraordinary circumstances" by recognizing that the Department is "charged with the statutory responsibility of investigating and bringing charges against licensed physicians for possible disciplinary action..." The Court further stated that the interest in protecting the public from treatment by unqualified physicians required the production of the materials in question.

Similarly, the Department's responsibility with regard to Certified Public Accountants outweighs any privacy interest the Respondent may have in the confidentiality of the documents. The Department is charged with the statutory responsibility of protecting the public from unqualified and/or dishonest CPAs. The documents held by the IRS may be critical to the issues in this case and as such, disclosure should be required.

The Court in Mercy Hospital also noted that the hospital's action in suspending the privileges of the two doctors cast "serious doubt on whether [the] physicians have the professional qualifications and competency to continue practicing medicine in Florida." Similarly, the IRS' settlement with Respondent for $122,818.00 in back taxes and tax fraud penalties casts serious doubts on the Respondent's qualifications to practice as a Certified Public Accountant in the state of Florida.

It is difficult to imagine that this settlement was reached if the IRS did not have the documentation to back up its tax fraud claims. Consequently, if the Department is to properly perform its statutory duty to protect the public in this case, there is an exceptional necessity that the IRS files be provided to the Department.

3. The Department has the authority to compel the production of the documents requested pursuant to Rule 28-106.206, *Florida Administrative Code* (2000), which states: "after commencement of a proceeding, parties may obtain disclosure through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure." Rule 1.350, *Florida Rules of Civil Procedure,* states in pertinent part that "any party may request any other party (1) to produce and permit the party making the request...to inspect and copy any designated documents...that are in the possession, custody, or control of the party to whom the request is directed."

Although the documents requested may not currently be in the Respondent's "possession" they are most certainly in his control. Respondent holds the key to

accessing the IRS files that are relevant to this case. All it takes is his signature of consent and the documents can be released by the IRS.

4. Pursuant to *Title 26, United States Code,* §6103(a), the IRS is prohibited by law from divulging the tax returns and tax return information requested without the consent of Buchman. In the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed, may open to inspection or disclose the return. *Title* 26, *United States Code,* §6103(e)(1)(B). Accordingly, the consent to disclosure of Marie Buchman, the subject's wife, is not required. Furthermore, Marie Buchman's privacy interest is outweighed for the same reasons mentioned above with regard to the Respondent.

Michael D. Kooi
Assistant General Counsel
Fla. Bar No.: 0089710
Department of Business and
Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399-2202
Telephone: (850) 487-9636
Facsimile: (850) 414-6749

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and U. S. mail to Mr. Jon M. Pellett, Esquire, Barr, Murman, Tonelli, P.A., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida, 33602-5829, this 8th day of August, 2001.

Michael D. Kooi
Assistant General Counsel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner, DOAH CASE No.: 01-2507PL
01-2329PL

vs.

RALPH BUCHMAN, C.P.A.,

Respondent
_____/

RESPONSE TO PETITIONER'S MOTION FOR ORDER COMPELLING CONSENT TO RELEASE OF RECORDS FROM THIRD PARTY

COMES NOW, the RESPONDENT, RALPH A. BUCHMAN, C.P.A., by and through his undersigned counsel, and submits this Response to Petitioner's Motion to Compel Consent to Release of Records from the Internal Revenue Service, a third party. Respondent requests that Petitioner's Motion be denied and as grounds would state:

1. Petitioner seeks an Order compelling the Respondent to sign an authorization permitting the Internal Revenue Service (IRS) to release to Petitioner "...tax returns and investigation of said returns for the tax years 1988, 1989, and/or 1990 including, but not limited to, the penalty file and the examination file relative to the investigation...."

2. Petitioner asserts that it sought the IRS records in discovery and that Respondent has objected to their production by the IRS for various reasons, including his Fifth Amendment right to remain silent[1], confidentiality, and the privacy rights of a non-party, Marie C. Buchman.

[1] See e.g., Vining v. Real Estate Commission, 281 So.2d 487 (Fla. 1973); Kozerowitz v. Florida Real Estate Commission, 289 So.2d 391 (Fla. 1974).

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3. The Petitioner has raised no grounds showing exceptional necessity for invading the confidential nature afforded to the information in the possession of the IRS other than to note that it is confidential and it requires Respondent's consent to secure the information. Cf. Rasmussen v. South Florida Blood Service, Inc., 500 So.2d 533 (Fla. 1987)(must show exceptional necessity for information which outweighs individuals' right of privacy); Higgs v. Kampgrounds of America, 526 So.2d 980, 981 (Fla. 3d DCA 1988)(moving party has burden to show exceptional necessity for disclosure of confidential information).

4. Likewise, Petitioner has not provided citation to any statutory authority for it to request an Order compelling Respondent to authorize release of confidential records from a third party, particularly where those records are protected under Federal law and not available to the Petitioner.

5. Respondent and non-party Marie C. Buchman enjoy a strong constitutional right of privacy. Article I, Section 23 of the Florida Constitution. The right of privacy extends to information in the hands of third parties including financial and tax information in the hands of the IRS. See e.g., Berkeley v. Eisen, 699 So.2d 789, 790-792 (Fla. 4th DCA 1997)(Florida recognizes individual's legitimate expectation of privacy in financial information); Higgs at 981 (Before ordering production of financial records of non-party, moving party must show necessity for the information which outweighs the non-party's right to confidentiality of the financial information).

6. Under Title 26 United States Code, Section 6103, absent proper authorization, the IRS is prohibited from providing Petitioner with Respondent and Marie C. Buchman's personal

tax returns and tax return information. Under Section 6103(a), tax returns and tax return information are considered strictly confidential and not subject to disclosure except under very limited circumstances not applicable here.

7. Even where compelled disclosure might be considered, before it can be authorized, an *in camera* inspection of the documents is required. Voytish v. Ozycz, 695 So.2d 1301, 1302 (Fla. 4th DCA 1997).

8. Without knowing the grounds upon which Petitioner asserts that it must obtain compelled consent to release of records from the IRS, Respondent cannot adequately respond to Petitioner's motion. Nonetheless, Respondent is aware that on December 26, 1996, the Board of Accountancy received notification **directly** from the Internal Revenue Service of the entry of a consent decree in the United States Tax Court regarding Respondent and Marie C. Buchman's personal tax returns for years 1988, 1989, and 1990. Attached and incorporated herein by reference as Exhibit "A" is Petitioner's initial investigative report with information received from the IRS.

7. Upon receiving notification from the IRS concerning Respondent's consent decree, Petitioner began an investigation of the Respondent's license for possible violation of the Chapter 473, Florida Statutes. That investigation ultimately included **a review by Petitioner of all records in Respondent's possession** concerning his and his wife's personal tax returns filed for years 1988, 1989, and 1990. After reviewing all of Respondent's available records, of which Petitioner has copies of what it feels are relevant to this proceeding, Petitioner's investigator/CPA consultant **was unable to draw any conclusions relative to the proper or**

improper completion of the Respondent and Marie C. Buchman's U.S. Individual Tax Returns. He reported that the documentation in the possession of the Respondent did not provide him with enough information to determine the reasons and differences for the original and final assessments, other than the broad categories indicated on the assessment notices. Attached as Respondent's Exhibit "B" is an excerpted copy of the Department's expert opinion - report of investigation which is attached without its exhibits.

8. On December 13, 1999, the Probable Cause Panel determined to file an Administrative Complaint against the Respondent's license. During the course of the discussions, the Department's expert noted that pertinent information was not available and that as a result, "...it's very difficult to come to any sort of conclusion." (T. page 8, lines 16-22). In fact, the expert acknowledged that as related to the allegations raised in the Internal Revenue Service's deficiency letter, which he obtained from the Respondent, **he could not identify the specific items the IRS claims was improperly deducted from Respondent's personal tax returns.** (T. pg. 11, lines 10-18). A copy of the transcript of the Panel's determination is attached as Exhibit "C."

9. Although Petitioner had no evidence upon which to base its decision to seek prosecution of the Respondent, it filed an Administrative Complaint against the Respondent's license for a violation of Section 473.323(1)(k), Florida Statutes in connection with the settlement reached with the IRS[2]. A copy of the Administrative Complaint is attached and incorporated by reference as Exhibit "D."

[2] Respondent has raised the deficiencies in the Administrative Complaint in a separate Motion for Attorney's Fees.

10. Petitioner has given notice that it believes that Respondent violated Section 473.323(1)(k), Florida Statutes premised upon the following stated facts:

> Respondent is, and has been at all times material hereto, a certified public account in the State of Florida, having been issued license number AC 0001176.
>
> On March 28, 1995, in the United States Tax Court, Docket No. 27077-93, a decision was entered that there were deficiencies in income tax due from Respondent (and his wife, Marie C. Buchman) for taxable years 1988, 1989, and 1990 in the amounts of $9,812.00, $35, 337.00 and $35, 094.00, respectively.
>
> Due to Respondent's failure to properly report his taxable income for the years 1988, 1989, and 1990, he was assessed with additional penalties for civil fraud and substantial understatement under Internal Revenue Code, Sections 6653, 6663, and 6661.
>
> Respondent entered into an installment payment agreement with the Internal Revenue Service relating to the aforementioned income tax due and penalty assessments totaling $122, 818.00, whereby Respondent agreed to pay $1,500 per month commencing in November 1995.
>
> Pursuant to Section 473.323(1)(k), Florida Statutes, performing any fraudulent act while holding a license to practice public accounting shall constitute grounds for which disciplinary action may be taken.
>
> Based on the foregoing, Respondent is in violation of Section 473.323(1)(k), Florida Statutes; and is therefore subject to disciplinary actions.

See Exhibit "D" at paragraphs 2, and 4 - 8.

11. Petitioner has possession of all relevant information necessary to ascertain the facts as they are alleged in the Administrative Complaint. See Petitioner's Initial Investigative Report attached as Exhibit "A" and its consultant's opinion attached as Exhibit "B." It has been provided with access to all information in possession of the Respondent. There is no exceptional

reason for it to invade the privacy of non-party, Marie C. Buchman, to secure the records it now seeks from the IRS[3].

12. Additionally, Respondent enjoys a right to remain silent in the course of these administrative proceedings. Vining. The compelled authorization for release of information from the IRS would violate Petitioner's right to remain silent. Mertens v. Division of Consumer Services, 596 So.2d 89, 91-92 (Fla. 1st DCA 1992)(act of producing records can implicate the right to remain silent).

13. Respondent's possession of a license to practice public accounting does not authorize the Petitioner access to every record that might exist concerning the Respondent. Nor does it allow the Petitioner the right to invade the privacy of a non-party to these proceedings.

14. There is no meaningful method by which the tax information and returns can be redacted to protect the privacy of Marie C. Buchman.

15. Petitioner's request for an Order Compelling Respondent to sign an authorization for release of the confidential IRS records exceeds the requirements of Rule 1.280, Florida Rules of Civil Procedure governing discovery in civil proceedings, which allows discovery of those matters not privilege relevant to the subject matter of the pending action. It exceeds the grant of authority to the Division of Administrative Hearings and Department of Business and Professional Regulation.

16. Petitioner should not be permitted to proceed on a fishing expedition to secure confidential records from the IRS in the hopes that such records might lead to evidence of a

[3] Under Berkeley v. Eisen, 699 So.2d 789, 791 (Fla. 4th DCA 1997), Petitioner's review of the Respondent's tax records did not constitute a waiver of Marie C. Buchman's right to privacy in the records.

violation of Section 473.323(1)(k), Florida Statutes. Petitioner has spent in excess of four years investigating this matter. Competing privacy issues prevent it from securing the records from the IRS.

Wherefore, Respondent requests that the Motion to Compel his authorization for release of IRS records be denied.

Respectfully submitted,

JON M. PELLETT
Florida Bar Id # 0050679
BARR, MURMAN, TONELLI,
SLOTHER, & SLEET
201 E. Kennedy Blvd. Suite 1700
Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 209-0214
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing with attachments have been furnished by overnight courier, to Michael Kooi, Assistant General Counsel Department of Business & Professional Regulation 1940 North Monroe Street Tallahassee, Florida 32399 Fax (850) 414-6749 and the original and one copy have been furnished to the Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 by overnight courier, this July 23, 2001.

Jon M. Pellett

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles
Governor

Richard T. Farrell
Secretary

INVESTIGATIVE REPORT

Office:	Date of Complaint:	Case Number:
CONSUMER SERVICES	1/2/97	97-01770

Subject:	Complainant:
Buchman, Ralph A 2301 SE West St. Port St. Lucie, FL 34984-5118	Commissioner of Internal Revenue Service

Prefix:	License #:	Profession:	Board:	Report Date:
AC	0001176	Accountant	Accountancy	3/11/97

Period of Investigation:	Type of Report:
1/2/97	Final

Alleged Violation--§§Chapter 473,323(1)(G), F.S.: Fraud, deceit, negligence, incompetency or misconduct in the practice of public accounting.

Synopsis: This investigation is predicated on the receipt of a complaint from the Internal Revenue Service via the Board of Accountancy (Ex.#1) alleging that the Subject failed to pay income taxes for three years in excess of $80,000. Subject was notified of this complaint by a letter dated February 6, 1997 (Ex.#2).

[BPR computer information reflected Subject is licensed to practice accounting in the State of Florida (Ex.#3).]

Subject's attorney responded to letter of February 6, 1997 with one dated February 20, 1997 (Ex.#4). In this letter Subject's attorney admitted Subject had failed to pay taxes in previous years and had been ordered to do so by the United States Tax Court. Case sent to legal.

Related Case:

Investigator/Date:	Approved By/Date:
Hrs. ____	Hrs. ____
3/11/97	Suzanne Lee 3/10/97

Distribution: Legal

EXHIBIT
A

ORIGINAL

UNITED STATES TAX COURT

RECEIVED

DEC 26 1995

BOARD OF ACCOUNTANCY

1/2/97 970770

RALPH BUCHMAN and MARIE C. BUCHMAN,	)
Petitioners,	)
v.	) Docket No. 27077-93
COMMISSIONER OF INTERNAL REVENUE,	)
Respondent.	)

ADM.
RECORDED
CAL. RFD
R.T. JUDGE
FILES

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED AND DECIDED: That there are deficiencies in income tax due from the petitioners for the taxable years 1988, 1989, and 1990 in the amounts of $9,812.00, $35,337.00 and $35,094.00, respectively.

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6653(b)(1) for 1988 in the amount of $4,906.00.

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6661 for 1988 in the amount of $2,453.00.

That there are additions to the tax due from petitioners under the provisions of I.R.C. § 6663 for 1989 and 1990 in the amounts of $17,669.00 and $17,547.00, respectively.

Judge.

Entered: MAR 28 1995

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

REPORT
EXHIBIT # 1
PAGE # 1

SERVED MAR 28 1995

000244

It is further stipulated that, effective upon the entry of the decision by the Court, petitioners waive the restriction contained in I.R.C. § 6213(a) prohibiting assessment and collection of the deficiency (plus statutory interest) until the decision of the Tax Court has become final.

STUART L. BROWN
Chief Counsel
Internal Revenue Service

By:

RONALD J. RUSSO
Counsel for Petitioners
Tax Court Bar No. RR0589
4100 W. Kennedy Blvd.
Suite 304
Tampa, FL 33609
Telephone: (813) 282-1299

WILLIE FORTENBERRY, JR.
Senior Attorney
Tax Court Bar No. FW0152
Box 35027, Federal Building
Suite 564 - Stop C
400 West Bay Street
Jacksonville, FL 32202
Telephone: (904) 232-2788

Date: 3/20/95

Date: 3/20/95

REPORT
EXHIBIT #
PAGE #
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#20 letter to (5)

```
CM14 - Ver 01.32    DPR CONSOLIDATED COMPLAINT MANAGEMENT SYSTEM      02/03/97
Function:(ACID) I >>WARNING<< CONFIDENTIAL INFORMATION >>WARNING<<    17:49:44
>>>-------------------------> COMPLAINT PROFILE <----------------------------<<<
 Case Nbr  CMPLNT NBR  Loc/Stf  OCC PRIMARY SECONDARY REFERRAL ROUTING PRIORITY
 97I01770   9701770    HA 76    AC   31                          4        2

                                                          CURRENT
DATE RECEIVED OTWM-SOURCE INCIDENT DATE  PRIOR HISTORY   STATUS/DATE   WAIVER
    1  2 97     W    01      3 20 95         A            1   2  3 97
DOAH CASE NBR:                            CLOSURE CODE/DATE:
-------------- COMPLAINANT ----------*------------ SUBJECT              -------
SSN: 000 00 0000                     * LICENSE NBR: AC  0001176 STATUS: A
 COMMISSIONER OF INTERNAL REVENUE    * EXPIRATION:  12/31/97    DOB:
                                     * ID:      P       307001   DEA:
                                     * BUCHMAN, RALPH A
                    00000 0000       *   2301 SE WEST ST
BUSINESS PHONE: 000 000 0000         *
HOME PHONE:     000 000 0000         *   PT ST LUCIE     FL  34984 5118
OCCUPATION:                          * BUSINESS PHONE: 000 000 0000
LICENSE NBR:                         * HOME PHONE:     000 000 0000
MQA REPORT:                          *
-------------------------------------------------------------------------------
             NEXT KEY:                                          FASTPATH:

F1-HELP        F3-CMS MENU  F4-EXIT                F10-FORWARD  F12-MAIN MENU
□□,              1 BEST     199.250.21.49
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REPORT
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000246

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CM16 - Ver 01.09          Florida DPR Automated Systems                02/03/97
Function: (CI)      I      COMPLAINT MANAGEMENT SYSTEM                 17:49:48
>>>------------------------> COMPLAINT PROFILE <-----------------------------<<<
    COMPLAINT NBR: 9701770 COMPLAINANT'S NAME:  COMMISSIONER OF INTERNAL REVEN
    Case Nbr: 97I01770      SUBJECT'S NAME:     BUCHMAN, RALPH A
--------------------------------------------------------------------------------
    PATIENT'S NAME:
    ATTORNEY'S NAME:
    ATTORNEY'S PHONE:      000 000 0000
--------------------------------------------------------------------------------
    SITE ADDRESS:

                                                  00000 0000
--------------------------------------------------------------------------------
    COMMENTS:   Page 1    POSSIBLE VIOLATION OF 473.323(1)(G), F.S. PROOF OF
                          FRAUD, DECEIT, NEGLIGENCE, INCOMPETENCY, OR MIS-
     Scroll               CONDUCT IN THE PRACTICE OF PUBLIC ACCOUNTING
F7-Comments Backard       INFORMATION RECEIVED FROM COMMISSION REFLECTS DE-
F8-Comments Forward       FICIENCIES IN INCOME TAX DUE FOR THE TAXABLE YEARS
                          OF 1988, 1989 AND 1990 IN EXCESS OF $80,000. ADDI-
--------------------------------------------------------------------------------
              NEXT KEY:                                        FASTPATH:

F1-HELP   F3-CMS MENU   F4-EXIT   F5-UCF   F10-FORWARD   F11-BACKWARD   F12-MAIN MENU
□□,                 1 BEST       199.250.21.49
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REPORT
EXHIBIT #
PAGE #

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CM16 - Ver 01.09          Florida DPR Automated Systems                 02/03/97
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    Case Nbr: 97I01770      SUBJECT'S NAME:     BUCHMAN, RALPH A
--------------------------------------------------------------------------------
    PATIENT'S NAME:
    ATTORNEY'S NAME:
    ATTORNEY'S PHONE:      000 000 0000
--------------------------------------------------------------------------------
    SITE ADDRESS:

                                                    00000 0000
--------------------------------------------------------------------------------
    COMMENTS:   Page 2    TIONAL INFORMATION HAS BEEN REQUESTED FROM SUBJECT

     Scroll
F7-Comments Backard
F8-Comments Forward

--------------------------------------------------------------------------------
              NEXT KEY:                                          FASTPATH:

F1-HELP   F3-CMS MENU  F4-EXIT F5-UCF  F10-FORWARD  F11-BACKWARD  F12-MAIN MENU
□□,                1 BEST       199.250.21.49
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REPORT EXHIBIT # 1
PAGE # 5

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STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Lawton Chiles
Governor

Richard T. Farrell
Secretary

February 6, 1997

CONFIDENTIAL TO:
Ralph A. Buchman
2301 SE West Street
Pt. St. Lucie, FL 34984-5118

RE: Complaint #97-01770

Dear Mr. Buchman:

The Department of Business and Professional Regulation is required to conduct investigations concerning legally sufficient complaints received alleging violations of the Accountancy Practice Act. Attached for your review is a copy of the complaint or document which was received in this office. Please submit a written response to this complaint within twenty (20) days. Your written response may avert a field investigation.

If this investigation does not result in a finding of probable cause, the matter is closed and remains confidential. At this stage, the investigation is confidential, which means we cannot disclose any further information unless probable cause is found or you submit a written waiver of your right of confidentiality. The Department appreciates your cooperation and understanding in this regard. Thank you for responding, in writing, within the twenty (20) day period.

Sincerely,

Suzanne Lee

Suzanne Lee
Senior Management Analyst II

SL/aj

Enclosure

Return Receipt #P 265 333 222

DIVISION OF REGULATION
CONSUMER SERVICES
NORTHWOOD CENTRE · 1940 NORTH MONROE STREET · TALLAHASSEE, FLORIDA 32399-078
Telephone (904) 488-6602 · Fax (904) 487-9622

REPORT EXHIBIT # PAGE #

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LI10 - Ver 01.11          Florida BPR Automated Systems                  02/01/97
Function: (CI)    I                  LICENSING                         11:45:37
 >>----------------------> LICENSE MASTER (1 OF 5) <----------------------<<
 OCC: AC   LIC NBR: 0001176  LIC TYPE: L   ID NBR:    307001 ID TYPE: P PIN
 NAME:  BUCHMAN, RALPH A                                    DOB:
 OCCUP: CERTIFIED PUBLIC ACCOUNTANT        ORG LIC:
 CLASS:                                    SERIES:
 BUSINESS:
 DBA:
 EFFECTIVE: 01/01/96  EXPIRES: 12/31/97  SPECIALTY:
 ------ PROFILE MAILING ----------------------        LOCATION -------------
  2301 SE WEST ST                          |
                                           |
                                           |
 CITY: PT ST LUCIE          STATE: FL     | CITY:                    STATE:
 COUNTY: ST.LUCIE   ZIP: 34984 - 5118     | COUNTY:          ZIP:       -
 ------------------------------------ STATUS -----------------------------------
 LICENSE:    A  ACTIVE                    MILITARY(Y):       RETURN MAIL:
 PROCESSING: I  ISSUED                    BAD CHECK(Y):      DISPENSING(Y):
 BD ACTION:                               REFUND(Y):         MULTIPLE LIC(Y):
 BD ACTION DATE:                          DATE:
              NEXT KEY:                                        FASTPATH:

F1-HELP        F3-SUB MENU  F4-EXIT  F10-FORWARD                F12-MAIN MENU
□□,                 1 BEST      199.250.21.49
```

REPORT
EXHIBIT #
PAGE #

RONALD J. RUSSO
ATTORNEY AT LAW

TRANSWORLD CENTER • 4100 WEST KENNEDY BOULEVARD • SUITE 304 • TAMPA, FLORIDA 33609
TELEPHONE: (813) 282-1299
FAX: (813) 289-9230

BPR CONSUMER SERVICES
97 FEB 25 PM 12:14

VIA FACSIMILE AND U.S. MAIL

February 20, 1997

Suzanne Lee
State of Florida
Department of Business and Professional Regulation
Consumer Services
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-0782

Re: Complaint #97-01770
Ralph A. Buchman

Dear Suzanne:

This confirms our telephone conference of February 20, 1997, in which I confirmed that I was representing Ralph Buchman at this stage in connection with Complaint #97-01770. As you requested, for purposes of communications with me, Mr. Buchman will waive his confidentiality rights.

As I indicated in our February 20, 1997 telephone conference, all that was forwarded to Mr. Buchman was your February 6, 1997 letter, together with the United States Tax Court decision. No complaint was enclosed with the correspondence.

I look forward to hearing from you upon receipt of this letter, so that we can discuss Mr. Buchman's matter more fully.

Sincerely,

Ronald J. Russo

RJR/ta
cc: Ralph A. Buchman

REPORT
EXHIBIT #
PAGE #
000251

RONALD J. RUSSO
ATTORNEY AT LAW

TRANSWORLD CENTER • 4100 WEST KENNEDY BOULEVARD • SUITE 304 • TAMPA, FLORIDA 33609

TELEPHONE: (813) 282-1299
FAX: (813) 289-9230

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

BPR CONSUMER SERV.
97 FEB 3 PM 12:47

February 27, 1997

Suzanne Lee
State of Florida
Department of Business and Professional Regulation
Consumer Services
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-0782

Re: Complaint #97-01770
Ralph A. Buchman

Dear Ms. Lee:

This confirms our most recent telephone conference in which you requested that I inquire of Mr. Buchman whether he has entered into an installment payment agreement with the Internal Revenue Service relating to his back tax liability for 1988, 1989, and 1990. I have contacted Mr. Buchman, who has represented to me that he has, in fact, entered into such an agreement. In support of this position, I enclose correspondence (and attachments to that correspondence) from Mr. Buchman to me relating to this issue. I believe the enclosures make it clear that Mr. Buchman has been paying $1500 per month for each and every month since November 28, 1995, pursuant to the agreement that was reached with the Internal Revenue Service.

I trust that the enclosures have resolved this issue to your satisfaction. If, however, you need additional information, please feel free to give me a call.

Sincerely,

Ronald J. Russo

RJR/ta
Encls.
cc: Ralph A. Buchman, C.P.A. (w/o encls.)

000252

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY
REPORT OF INVESTIGATION

RECEIVED
MAY 07 1999
BOARD OF ACCOUNTANCY

FILE NO.: 97-01770

SUBJECT: Ralph A. Buchman
2301 S. E. West Street
Port St. Lucie. FL 32984

TELEPHONE: (407) 333-4888

PROFESSIONAL LICENSE NO.: 1176

DATE OF REPORT: Februarv 10. 1999

REPORT PREPARED BY: Thomas F. Reillv
Investigating Officer

REPORT RECEIVED AND REFERRED TO BOARD OF ACCOUNTANCY BY:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DATE:

EXHIBIT
B

CONTENTS

	Section
NATURE OF COMPLAINT	A
BACKGROUND INFORMATION ON LICENSEE	B
REVIEW OF ACCOUNTANTS' REPORT AND FINANCIAL STATEMENTS (OR DOCUMENTS) WHICH FORM THE BASIS OF THE COMPLAINT	C
FINANCIAL STATEMENTS (OR DOCUMENTS) WHICH FORM THE BASIS OF THE COMPLAINT	D
REVIEW OF ADDITIONAL ACCOUNTANTS' REPORT AND FINANCIAL STATEMENTS (OR DOCUMENTS) WHICH WERE PROVIDED VOLUNTARILY BY THE LICENSEE, BUT WERE NOT PART OF THE ORIGINAL COMPLAINT FILED	E
VOLUNTARY STATEMENT FROM LICENSEE	F
EXHIBITS	

NATURE OF COMPLAINT

This investigation is predicated on the receipt of a complaint from the Internal Revenue Service via the Florida Board of Accountancy, alleging that licensee failed to pay income tax for three years in excess of $80,000. See pages A-2 to A-6 for the decision from the United States Tax Court, dated 12/26/95, regarding the unpaid tax assessments and additional penalties for civil fraud and substantial understatement under Internal Revenue Code sections 6653, 6663 and 6661, as well as the IRS assessments (audit statements). The following is a recap of the income taxes and penalties assessed for 1988, 1989 and 1990.

Description	1988	1989	1990
Income tax assessed	$ 9,812	$35,337	$35,094
Penalties:			
Civil fraud IRC 6653(b)(1)	4,906	-	-
Civil fraud IRC 6663	-	17,669	17,547
Substantial understatement IRC 6661	2,453	-	-
Total income taxes and penalties	$17,171	$53,006	$52,641

Licensee entered into an installment payment agreement with the Internal Revenue Service relating to these income tax and penalty assessments totaling $122,818, whereby he agreed to pay $1,500 per month commencing in November 1995.

As a result of the above, licensee may have been in violation of the following Florida Statutes and Rules of the Florida Board of Accountancy:

Florida Statutes

473.323(1)(a) Violation of any provision
(d) Being convicted, or found guilty,... of a crime
(e) Making or filing a false report
(g) Fraud, deceit, negligence, incompetency or misconduct
(h) Violation of any rule
(k) Performance of any fraudulent act

Rules of the Florida Board of Accountancy

61H1-21.002 Integrity and objectivity

000255

BACKGROUND INFORMATION ON LICENSEE

Ralph Buchman graduated from the University of Florida in 1956 with a B.S.B.A. degree, major in accounting. He passed the CPA exam and received his CPA certificate #1176 in 1959. His work experience since graduating college is as follows:

Employment	Title	Years
Large local CPA firm	Staff	1956 – 1957
David Schwartz, CPA	Senior	1957 – 1960
Various local CPA Partnerships	Partner	1960 – 1973
Private industry – a Meat packing concern	Chief financial officer	1973 – 1978
Katz, Daitzman & Gordon, CPAs Berman, Shapiro & Co., CPAs		1978 - 1983
Ralph A. Buchman, CPA	Owner	1983 – 1987
Buchman & Willard, PA	Partner	1988
Ralph A. Buchman, CPA	Owner	1989 – 1991
Buchman & Coon	Partner	1/92 – 10/92
Ralph A. Buchman, CPA	Owner	10/92 – 1994
Buchman & Smith	Partner	1994 – 4/95
Ralph A. Buchman, CPA	Owner	5/95 – Present

The firm consists of one practitioner, one bookkeeper/write-up person and one clerical employee for a total of three. The firm's practice is estimated at 40% write-up/compilations, principally without disclosure and 60% taxation. Licensee primarily devotes his time to the tax area.

Ralph Buchman indicated he underwent an off-site quality review in late 1995 and received an unmodified report. He indicated that he does not perform any audits or reviews of financial statements - only compilations, primarily without disclosure.

Ralph Buchman indicated he sold his practice in January, 1992 to another sole practitioner. His intention was to retire and he moved to Georgia; however, according to Mr. Buchman, the successor accountant did not want to keep the practice going so licensee moved back to Port St. Lucie and resumed his practice in October 1992. In 1994, he went into partnership with Jim Smith. The following year, this partnership was dissolved and licensee has been practicing as a sole practitioner since then.

REVIEW OF ACCOUNTANT'S REPORT AND FINANCIAL STATEMENTS (OR DOCUMENTS) WHICH FORM THE BASIS OF THE COMPLAINT

This investigator met with licensee in his office to review the facts of this case. The meeting was arranged through the law firm of Freeman, Hunter & Malloy; however, no attorneys were present at this meeting – just licensee and myself. Licensee has been represented in this matter by two different law firms:

Attorney	Nature of representation
Ron Russo Freeman, Hunter & Malloy	Negotiation and settlement with IRS Response letter to DBPR re: this complaint

Licensee provided background related to this case.

Licensee claims he received a phone call, sometime in 1991 from Jennifer Stuart, a local IRS agent, indicating that she was to perform an audit of his 1988, 1989 & 1990 U.S. individual income tax returns. He claims she came to his office, reviewed certain documentation and then left. He claims that he did not hear from her for another year to a year and one half. He then received a phone call from her indicating that she was still auditing his returns and wanted to bring in John Morrell, an IRS agent with the Criminal Investigation Division. At that point, licensee indicated he stated that he was contacting an attorney to represent him and that any further contact would be through his attorney. Licensee engaged Ron Russo, an attorney in Tampa to represent him.

Subsequent to that, licensee states that IRS agents came to his office requesting documentation related to those three years. He claims he made copies of thousands of documents for the IRS. These included general ledgers, trial balances, bank statements, vendor invoices and other documents.

In October 1993 licensee received a notice of deficiency from the IRS for the following assessments:

Description	1988	1989	1990
Income tax assessed	$15,613	$48,180	$44,825
Penalties:			
Civil fraud IRC 6653(b)(1)	14,513	-	-
Civil fraud IRC 6663	-	36,135	33,619
Substantial understatement IRC 6661	3,903	-	-
Total income taxes and penalties	$34,029	$84,315	$78,444

Per the above chart, the total income taxes and penalties assessed were $196,788

See Exhibit I for a copy of this notice of deficiency that is recapped above.

000257

The IRS made a number of adjustments to the returns for each year, principally to the Schedule C for licensee's CPA practice. The notice of deficiency indicated that gross receipts from licensee's Schedule C were understated by $2,183 (1988), $69,371 (1989) and, $6,887 (1990). Also, that Schedule C expenses were overstated by $56,833 (1988), $71,662 (1989), and $131,878 (1990).

See Exhibit II for a recap of licensee's Schedule C for his CPA practice for years 1988, 1989 and 1990 along with copies of the actual Schedule Cs. Also included in the joint individual income tax returns for licensee and his wife were additional Schedule Cs for Marie Buchman for 1989 and 1990. See Exhibit III for a recap of each of the years for the combined Schedule Cs. As that schedule shows, licensee paid his wife compensation of $135,671 (1989) and $111,500 (1990) (labeled as commissions on the returns) which was mainly the sole source of income for the wife's Schedule Cs.

Just prior to receiving the assessment, licensee received a letter from the IRS, in September 1993, indicating he was no longer the subject of an investigation by the Criminal Investigation Division for the years 1988, 1989 and 1990. The letter also stated that this did not preclude re-entry by the Criminal Investigation Division into the case. See Exhibit IV.

Licensee claims he did not agree with nor understand the assessment made by the IRS. Upon the advice of his attorney, they were to take this matter to the United States Tax Court. A trial date was scheduled for March 20, 1995. Licensee claims that the day before the trial, upon the advice of the attorney, he settled with the IRS. He states that one of his principal witnesses, his wife, was severely ill, had larengitis and would not be able to testify on his behalf. He therefore decided to settle. He states his attorney, Ron Russo, handled the negotiations and subsequently a settlement was reached with total income taxes and penalties assessed for approximately $122,000. See page A-1 for a recap of the final negotiated settlement. Licensee then entered into an installment payment agreement with the IRS to pay $1,500 per month commencing in November 1995. Licensee claims he made these payments until March 1998 when he filed for Chapter 13 bankruptcy. A new agreement with the IRS was purportedly reached whereby he would pay $1,300 per month commencing in December 1998.

Licensee claims that he had documentation to support the expenditures but that the IRS never met with him to go over this documentation.

LICENSEE'S RECORD KEEPING

Licensee claims his wife was the administrator for the office. She made deposits, prepared and signed checks and coded vendor invoices for general ledger distribution. Licensee states another employee was the bookkeeper who posted to the general ledger accounts in the Certiflex computerized accounting system, based upon his wife's coding distribution. Licensee claims he did not periodically review the general ledger for the activity except for once or twice a year and when he prepared their individual income tax return which included the Schedule Cs. Licensee claims he prepared the Schedule Cs from trial balances generated through the system.

This investigator requested the general ledger and/or trial balance for each of the years in question. Licensee claims he does not have any copies. He states that these were provided to the IRS back in 1993, but he did not keep any hard copies. He states that in August 1997, his firm had a hard drive failure on the computer which contained the information for those years. Thus, he is only able to provide summarized support for certain items on the Schedule Cs. He did; however, attempt to provide documentation to refute the IRS's allegations regarding the underreporting of income and overreporting of expenses. However, due to the nature of this investigation, and the piecemeal manner in which this information was compiled, this investigator is unable to draw any conclusions relative to the proper or improper completion of licensee's U.S. Individual Income Tax Return. As explained in the following Summary, this investigator was unable to obtain any specific information from the licensee or IRS relative to specific items of deficiency other than the broad categories addressed in the deficiency notices. Due to the volume and organization of licensee's information, it is not provided as a part of this investigator's report. However, the documents provided to this investigator are provided along with this report for the panel's review if desired.

SUMMARY

This investigator attempted to but was unable to discuss, with the IRS, the amounts specified in the original notice of deficiency. Thus, I was unable to ascertain the reasons for the specific amounts of the alleged underreporting of income and overstatement of expenses on Schedules Cs. Exhibits V-1 and V-2 reflect the change from the original deficiency notice to the final notice after the negotiated settlement. My review of licensee's documentation did not provide this investigator with enough information to determine the reasons and differences for the original and final assessments, other than the board categories indicated on the assessment notices.

Licensee's response is contained in section F, which includes a letter from his attorney summarizing the response to this complaint.

AGENDA
PROBABLE CAUSE PANEL MEETING
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

CASE NAME: RALPH BUCHMAN

CASE NO.: 97-01700

DATE: December 13, 1999

TIME: 11 a.m. to 11:25 a.m.

PLACE: Marriott Hotel
Tampa International Airport
Tampa, Florida

REPORTED BY: JENNIFER FIGUEROA, RPR
Notary Public
State of Florida at Large

PROBABLE CAUSE HEARING

RECEIVED
APR

CERTIFIED COPY

PAGES 1-22

BAY AREA REPORTING, INC.
SUNTRUST FINANCIAL CENTRE • TAMPA, FLORIDA 33602
401 EAST JACKSON STREET • (813) 229-7207
SUITE 2320 FAX (813) 229-8498

EXHIBIT
C

APPEARANCES:

MONESIA TAYLOR BROWN
Assistant General Counsel
Office of the General Counsel
1940 North Monroe Street
Suite 60
Tallahassee, Florida 32399-2202

Attorney for Department of Business and Professional Regulation

EDWIN A BAYO, ESQUIRE
1842 Vineyard Way
Tallahassee, Florida 32311

Attorney for the Board

BOARD MEMBERS:

STEVEN OSCHER, CHAIRMAN
JOSE RODRIGUEZ, VICE CHAIRMAN
MIRTHA MARTIN
MS. DAVIS
DR. CHARLES CALHOUN
DALE TAYLOR
BYRON SHINN

ALSO PRESENT:

MARTHA WILLIS
JUNE CARROLL
TOM REILLY, CONSULTANT

I N D E X

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E X H I B I T S

(None)

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PROCEEDINGS

THE CHAIRMAN: This is Case No. 97-01700, Ralph A Buchman.

Monesia.

MS. BROWN: This is a case in which the panel considered the matter on November 10th of '97 and requested the assignment of a consultant. We have Mr. Reilly here; and I believe you have his report and have reviewed it, so you're pretty familiar with it. I'll let him talk.

THE CHAIRMAN: Tom.

MR. REILLY: Okay. This investigation was predicated upon receipt of a complaint that the licensee had failed to pay income taxes for three years in excess of $80,000 for 1988, '89 and 1990.

Pages A2 to A6 are the final decision from the United States tax court dated December 26th, 1995, regarding the unpaid tax assessments and additional penalties for civil fraud and substantial understatement under IRS Code Section 6653, 6663 and 6661.

The recap of that is contained on A1. The total -- well, the final assessment and penalties

came to $122,818, and he agreed to pay $1500 a month commencing November 1995.

Page B1 has some background information on Mr. Buchman, and then Page C2 starts the bulk of my report.

I did meet with licensee in his office. The meeting was arranged through the law firm of Freeman, Hunter and Malloy; however, no attorneys were present at the meeting, just Mr. Buchman and myself.

Mr. Buchman has retained two different law firms in regard to this matter. One was Ron Russo from Tampa. He negotiated and settled with the IRS. And then Freeman, Hunter and Malloy handled the response letter to the DBPR regarding his complaint.

He gave me some background information on what happened. Back in 1991 he received a phone call from an IRS agent and said she wanted to perform an audit of '88, '89 and 1990 individual income tax returns. She came to his office, reviewed some documentation and left.

He said he didn't hear from her for another year to a year and a half. Then he received a phone call saying that she was going to bring in

an investigator from the criminal investigation division. At that point he said he wanted to contact an attorney and he would represent him from that point forward; and that's when he engaged Mr. Russo.

Subsequent to that he claims that the IRS came to his office requesting documentation related to those years. He claimed he made copies of thousands of documents for the IRS; these included general ledgers, trial balances, bank statements, vendor invoices and other documents.

In October 1993 he received a deficiency notice for those three years totaling $196,788; and Exhibit 1 in the back of the report contains the recap and the actual assessments by the IRS for each of those years.

The IRS made a number of adjustments, principally to the Schedule C, for his CPA practice. The notice of deficiency indicated gross receipts were deficient by a certain amount each year; also that Schedule C expenses were overstated by a certain amount for each of those years. Exhibit 2 contains a recap of his Schedule C for the CPA practice for those three

years, along with copies of the actual Schedule C's.

Also included in their joint individual return were other Schedule C's for his wife for 1989 and 1990. Exhibit 3 contains a recap of those years -- and we'll go back to that in just a minute -- for the combined Schedule C's. And as that schedule shows, he paid his wife compensation of $135,671 in '89 and $111,500 in 1999 labeled as commissions on the returns, and that was principally her sole source of income for those Schedule C's.

Just prior to receiving that assessment, he was notified that he was no longer the subject of an investigation by the criminal investigation division, but the letter also stated it did not preclude reentry by the CID.

He claims that he does not understand or agree with the assessment made by the IRS. Upon advice of his attorney, they were to take this matter to the United States tax court. Trial date was set for March of 1995 and claims that the day before his wife was extremely ill and, based upon the advice of his attorney, they settled.

The final assessment was, as we went over it in Section A, of $122,000. He entered into an installment agreement of $1500 a month; and then he filed for Chapter 13 bankruptcy in March of 1998, and supposedly a new agreement where he would pay $1300 a month was to commence on December of '98.

He claims he had documentation to support the expenditure, but that the IRS never met with him to go over the documentation.

I discussed the record keeping in the office. His wife was the administrator. She made deposits, prepared and signed checks and coded vendor invoices -- vendor invoices for the general distribution.

He claims that he did not periodically review the general ledger for activity except once or twice a year when he prepared their individual income tax return. He claims he prepared the Schedule C's from trial balances generated through the system.

I requested copies of the general ledger and trial balance for each of the years. He claims he didn't have any copies. He stated those were provided to the IRS back in 1993, but

he did not keep any hard copies. He stated in August '97 his firm had a hard-disk failure on a computer that contained the information for those years, thus he was only able to provide a summarized support for certain items on Schedule C.

Due to the nature of the investigation and the piecemeal manner in which this information was compiled, I am not able to draw any conclusions relative to the proper or improper completion of the returns. I was unable to obtain any specific information from the IRS relative to the specific items of deficiency. I tried to contact the IRS but couldn't get anybody to talk to me about the issue.

However, there was -- and I think you have that -- a slew of information that Mr. Buchman presented me when I arrived which purportedly addressed a lot of the items on the return. But, again, without a trial balance and a general ledger tying everything together, it's very difficult to come to any sort of conclusion.

There was a response written by his attorney in Section F. If you want to turn back a couple of pages, Pages F1 through F6 is the

attorney's response, and then Pages F7 to F11 is his wife's response indicating that she was ill and that was one of the reasons that they settled.

The exhibits follow after that. We have the original deficiency assessment by the IRS, Attachment 2 contains the Schedule C for the practices -- or for the practice for each of those years. I want to go back and look at Exhibit 3, which is a combined Schedule C for the three years. Have you found that yet near the back of the report? That's about the fourth page from the back.

In 1988 there was a single Schedule C for the CPA practice. In 1989 there was two schedule C's; one for the practice, and one for Marie Buchman. And as you can see, the sole income is -- primarily the sole income came from the CPA practice. And then in 1990 it was also done the same way. If you eliminate that, you have a combined total which really represents what actually happened in the practice.

Exhibit 4 is the letter from the IRS saying that the criminal investigation division was not going to pursue that avenue. And Exhibit 5 has

Pages 1 and 2 which is an attempt to try and take the original assessment by the IRS in each of the years and back out their adjustment for the final assessment, which is in the right-hand column.

The bottom line is, the taxpayer agreed to a $122,000 assessment including past taxes, civil fraud and substantial understatement.

That concludes my report.

THE CHAIRMAN: Was there any indication that Mr. Buchman was going to attend when you spoke with him last about today's hearing?

MR. REILLY: I presumed he would because the letter from the attorney specifically stated that he wanted to meet with the panel.

THE CHAIRMAN: That's that one from two years ago from Mr. Freeman. Right?

MR. REILLY: Correct.

THE CHAIRMAN: And your office, Monesia, hasn't had any --

MS. BROWN: No, not to my knowledge. But the information that was passed along to me was that he was made aware of the meeting, but I'm not sure in which manner.

THE CHAIRMAN: And you haven't heard anything yourself?

MS. WILLIS: No. He was noticed of the meeting, but we have not received any notification that he would come or that he would not.

DR. CALHOUN: Tom, in your discussions with Mr. Buchman, did you ask him about specific items that are on the return and how they were treated? Such as, for example, the disallowance of all depreciation?

MR. REILLY: Yeah. And what he kept telling me is he didn't know what the specific items were. The IRS had sent him the assessments. After he had provided thousands of copies of invoices and bank statements, they came up with this assessment, and he said he never had a chance to sit down and go over with them and find out what the specific items were. So I don't know what the specific items were myself.

MS. MARTIN: What do you mean by "specific items"? Like using depreciation, as that example, 100 percent was disallowed?

MR. REILLY: Uh-huh.

DR. CALHOUN: If you have any kind of assets that are depreciable assets, then some of it should be allowed.

MR. REILLY: Presumably. I don't have the specific information on what was disallowed, simply broad categories of travel, professional fees, depreciation. But I don't know exactly what they disallowed.

DR. CALHOUN: Did you ask him why he would transfer his commissions to his wife in an amount to his wife since it stayed on the Schedule C for payroll tax purposes or -- what was the response to that?

MR. REILLY: He said, "That's the way I decided to handle it."

MS. MARTIN: Is he currently practicing now?

MR. REILLY: Yes, he is.

MS. MARTIN: I mean, not knowing what was allowed or disallowed by the IRS but on the schedules that we have and the details of certain schedules tie into line items on his tax return --

MR. REILLY: Nothing ties in exactly. There were invoices, a quarterly coming to a recap schedule --

MS. MARTIN: Like he has like some spreadsheet forms like for travel and

depreciation and for insurance and interest, but the totals tie in to his tax return.

MR. REILLY: Well, they don't tie in exactly. Maybe one or two. But it's either -- it's either over or under. Sometimes he's got more expenses on a particular category than were actually claimed.

MS. MARTIN: But looking at the detail that he included on some of those schedules, it's evident that some of those items should not have been deducted.

MR. REILLY: Okay.

MS. MARTIN: Did he address anything, or did he say -- you know, did he fill out everything?

MR. REILLY: No. His claim was that everything that he pulled together here was a valid deduction, in his opinion. I did not get into a discussion of individual invoices and whether or not this one was valid or that one was valid. I could have spent days down there going over all the stuff with him.

THE CHAIRMAN: Did I get the impression that the IRS was not very cooperative with you?

MR. REILLY: The IRS wouldn't talk to me

about the case, no. And I tried --

THE CHAIRMAN: And that's after they filed the action?

MR. REILLY: That's correct.

THE CHAIRMAN: Is that typical?

MS. WILLIS: They have a lot of concerns under the privacy act.

MR. REILLY: I tried several avenues, talked to a bunch of CPAs, tried to get -- if they have any contacts within the IRS that I could get hold of. I did talk to somebody over here in Tampa who is a tax attorney. He gave me the name of somebody in Jacksonville, but he said, "I'm not sure he's going to talk to you; but if anybody would, this guy would," and he wouldn't talk to me.

MS. MARTIN: When was the last time that you talked to him?

MR. REILLY: To Mr. Buchman?

MS. MARTIN: Uh-huh.

MR. REILLY: Early 1999, earlier this year.

MS. MARTIN: Has he like followed up? I mean, again, there are a lot of items that look like he should not have been able to deduct it.

But like taking depreciation, for example, it's probably reasonable that he has computers and equipment and desks and a filing cabinet that there should be some depreciation. I mean, has he made any indications that he's going to take this into appeal to try to move forward, especially now under the new kinder and gentler IRS?

MR. REILLY: No. No. He agreed to a settlement, and that was it. He's going to pay based upon an amount apparently now of $1300 a month. As far as I was concerned, he had agreed to the settlement and gave me no indication that he was going to battle this thing any further.

THE CHAIRMAN: Do we have a motion for probable cause?

MS. MARTIN: I move that we find probable cause.

DR. CALHOUN: Second.

THE CHAIRMAN: Okay. And I'll make it unanimous.

I'll assume in the public's interest, Tom, that you didn't do anything while you were there to ask for any other financial information on any of his clients or to review any of his other

work?

MR. REILLY: No. I simply asked for the detail that one would expect to be able to pull together a tax return -- like a trial balance or a general ledger -- to see if there was, you know, some support of a historic nature. But what I got was piecemeal information supporting certain expenditures.

MS. MARTIN: I'd like for us to consider maybe suspending until he appears just to get an idea. What also concerns me is that what he's doing and treating things on his return is also happening in his tax practice.

THE CHAIRMAN: All right. Charles?

DR. CALHOUN: I concur.

MS. MARTIN: Once he does appear he --

THE CHAIRMAN: Do you want to make a recommendation after he -- can we make him come to us so that we can make a determination and a recommendation to the board, or do we suspend him and then let the board, once he appears before the board, make their recommendation of whatever punitive measures?

MS. WILLIS: Since you all are making your recommendation, you can recommend either way.

You can recommend to the board that he be suspended until he appears before the panel, or you can recommend that he be suspended until he appears before the board, whichever.

A lot of times it is easier in a smaller environment to discuss the issues than before the entire board. But it's only a recommendation that Monesia will have to work out and stipulate a settlement anyway.

MS. MARTIN: So we can suspend him and have him come back to probable cause to get more information?

THE CHAIRMAN: Tom, from your comments, is this an aloofness, an arrogance? Is this an indifference that this man is showing, or -- I mean, he's been practicing for a number of years.

MR. REILLY: Uh-huh.

THE CHAIRMAN: Where is he coming from when we tell him that his license is now suspended?

MR. REILLY: I don't know how he's going to react. He has retired several times. If you take a look at V1 --

DR. CALHOUN: Is this the one that went to Georgia and then came back?

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MR. REILLY: -- you can see a succession of partnerships that did not work out for one reason or another. I think there are specific reasons why they did not work out. But he has tried to retire and he comes back into it again. All he has is his tax practice. He doesn't do any more auditing, as far as I know.

He's been investigated a number of years ago on a financial statements problem, put on probation at that time; but I think he's gotten pretty much away from that and simply does tax consulting and tax preparation.

I think he plans on keeping his practice, but I don't know for sure.

THE CHAIRMAN: Again, are we going to get his attention by -- I know you may not know the answer, but --

MR. REILLY: No. I don't think I can give you an answer. I don't know. I'm surprised that he's not here. I thought he would be here to try and demonstrate to you that he has support for the return.

THE CHAIRMAN: Do you want him to be here before he goes to the board?

MS. MARTIN: Yes.

DR. CALHOUN: Yes.

THE CHAIRMAN: That will be unanimous.

MS. BROWN: That he come before the panel and his license be suspended until then?

THE CHAIRMAN: Yes, and license suspended until such time that he comes before the panel.

DR. CALHOUN: I have a question that you might not be able to answer. This letter indicates that they're dropping the criminal investigation, but yet he was still charged and penalized for criminal fraud or civil fraud.

MR. REILLY: Civil fraud, correct. I have a recap of what the difference was between criminal fraud and civil fraud, and it's a matter of degree.

THE CHAIRMAN: Ed?

MR. BAYO: He's doing a great job so far.

THE CHAIRMAN: Huh?

MR. BAYO: He's doing a great job so far.

THE CHAIRMAN: No. I was asking you what the --

MR. BAYO: What the difference is?

THE CHAIRMAN: Yes.

MR. BAYO: What I said, he's doing a good job so far.

THE CHAIRMAN: John Rimes would have gave that answer (indicating).

MR. BAYO: Well, obviously -- and I do -- criminal fraud includes the elements of intention, whereas civil fraud could conceivably be even negligence, you know. Whenever you deal with a criminal violation, you have to have an element of intent that has to be proven, whereas with civil fraud it's not the case.

THE CHAIRMAN: Spoken like John would. Thank you.

MR. REILLY: I downloaded this. "The major difference between civil and criminal fraud is the degree of proof involved. Criminal fraud requires sufficient evidence to prove guilt beyond a reasonable doubt. Evidence of civil fraud need only be clear and convincing."

THE CHAIRMAN: And, Moni, you agree with all of that?

MS. BROWN: I do.

THE CHAIRMAN: Okay. And, Officer, you're in agreement with all that too?

THE POLICE OFFICER: I agree with him (indicating).

THE CHAIRMAN: Okay.

MR. REILLY: The last sentence says, "The civil fraud penalty may be imposed upon a taxpayer even when the taxpayer has not been found guilty in a criminal fraud prosecution. If the taxpayer has been convicted of criminal fraud, a civil court penalty should be asserted."

THE CHAIRMAN: All right. He be suspended until he comes to see us.

MS. BROWN: All right.

THE CHAIRMAN: Happy holidays. We stand adjourned.

(Thereupon, the proceedings were concluded at 11:25 a.m.)

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ORM 2

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, JENNIFER FIGUEROA, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of said proceedings.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 11th day of April, 2000.

JENNIFER FIGUEROA, RPR
Notary Public, State of Florida

Jennifer Figueroa
Notary Public, State of Florida
Commission No. CC 620008
My Comm. Exp. 3/2/2001

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,

Petitioner,

vs. CASE NO. 97-01770

RALPH A. BUCHMAN,

Respondent.
_____/

ADMINISTRATIVE COMPLAINT

COMES NOW the Department of Business and Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the BOARD OF ACCOUNTANCY against RALPH A. BUCHMAN, hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of certified public accounting, pursuant to Section 20.165, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 473, Florida Statutes.

2. Respondent is, and has been at all times material hereto, a certified public accountant in the State of Florida, having been issued license number AC 0001176.

3. Respondent's address of record is 2301 SE West Street, Port St. Lucie, Florida.

4. On March 28, 1995, in United States Tax Court, Docket No. 27077-93, a decision was entered that there were deficiencies in income tax due from Respondent (and his wife, Marie C. Buchman) for the taxable years 1988, 1989 and 1990 in the amounts of $9,812.00, $35,337.00 and $35,094.00, respectively.

EXHIBIT
D

5. Due to Respondent's failure to properly report his taxable income for the years 1988, 1989 and 1990, he was assessed with additional penalties for civil fraud and substantial understatement under Internal Revenue Code, Sections 6653, 6663 and 6661.

6. Respondent entered into an installment payment agreement with the Internal Revenue Service relating to the aforementioned income tax due and penalty assessments totaling $122,818.00, whereby Respondent agreed to pay $1,500.00 per month commencing in November 1995.

7. Pursuant to Section 473.323(1)(k), Florida Statutes, performing any fraudulent act while holding a license to practice public accounting shall constitute grounds for which disciplinary actions may be taken.

8. Based upon the foregoing, Respondent is in violation of Section 473.323(1)(k), Florida Statutes; and is therefore subject to disciplinary actions.

WHEREFORE, Petitioner respectfully requests that the Board of Accountancy enter an Order imposing one or more of the following penalties: revocation or suspension of Respondent's license, imposition of probation, imposition of an administrative fine and/or any other relief that the Board deems appropriate.

SIGNED this 18th day of January, 2000.

FILED
Department of Business and Professional Regulation
DEPUTY CLERK

CLERK Brandon M. Nichols
DATE 1-24-2000

Thomas G. Thomas
Chief Attorney

COUNSEL FOR DEPARTMENT:

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MTB/abr
1/10/00

✓PCP: 12/13/99

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DOAH Case Nos. 01-2507PL
DBPR Case Nos. 97-01770

RALPH A. BUCHMAN,

Respondent
_____/

PETITIONER'S MOTION TO COMPEL CONSENT TO RELEASE RECORDS FROM THIRD PARTY

COMES NOW Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through the undersigned attorney, and move this Honorable Court for an order compelling the Respondent, RALPH A. BUCHMAN. to produce a copy of any and all documents in the possession of the Internal Revenue Service regarding Respondent's tax returns and investigation of said returns for the tax years 1988, 1989, and/or 1990, including, but not limited to, the penalty file and the examination file relative to the investigation, and for an order compelling the Respondent to sign a consent to disclosure of the above referenced documentation and in support thereof would show that:

1. Respondent was served with Petitioner's First Request For Production of Documents on June 6, 2001.

2. Respondent responded to the First Request For Production on July 6, 2001, and objected to request number three (3), invoking his Fifth Amendment privilege against self-incrimination, saying that the documents were in possession of a third party

who is not an employee or agent of the Respondent, and stating that the documentation is confidential and privileged and relates to information concerning a third party, Marie Buchman.

3. Respondent's Fifth Amendment rights are not violated by an order requiring him to sign a consent to disclosure of the Internal Revenue Service tax records. Doe v. United States, 487 U.S. 201 (1988); United States v. Ghidoni, 732 F.2d 814 (11th Cir. 1984).

4. Petitioner has been notified and concedes that under *Title* 26, *United States Code,* 6103(a), the IRS is prohibited by law from divulging the documents requested without the consent of the Respondent.

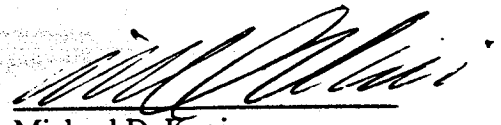
5. Consequently, Respondent is in possession, custody, or control of such documents pursuant to Rule 1.350, Florida Rules of Civil Procedure.

6. Pursuant to 26 USC section 6103(e)(1)(B), in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed, may open to inspection or disclose the return, and therefore the consent to disclosure of Marie Buchman, Respondent's wife, is not required.

7. Counsel for the Petitioner has contacted counsel for the Respondent prior to filing this motion, but the parties were unable to resolve the issues above.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court enter an order compelling the Respondent Ralph A. Buchman to sign the attached Consent Directive and completed IRS form 8821, Tax Information Authorization.

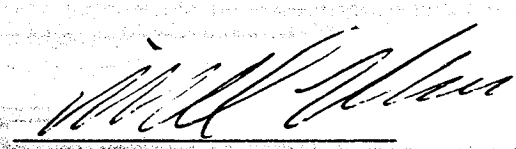
Respectfully Submitted



Michael D. Kooi
Assistant General Counsel
Florida Bar No. 0089710
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202
Phone (850) 448-0062
Facsimile (850) 414-6749

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Response to Respondent's Demand to Produce and in the Alternative a request for Public Records to Jon M. PELLET via U.S. mail at Barr, Murman, Tonelli, et al, 201 East Dennedy Boulevard, Suite 1750, Tampa, Florida, 33602, this 17 day of July, 2001.



Michael D. Kooi
Assistant General Counsel

CONSENT DIRECTIVE

I, RALPH A. BUCHMAN, Social Security Number, 262-50-8130, of the State of Florida and the United States of America, do hereby direct the United States Internal Revenue Service, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to my tax returns and tax return information for the years 1988, 1989, and 1990 and any and all investigative documentation relating to said returns to any attorney of the Florida Department of Business and Professional Regulation, and this shall serve as irrevocable authority for such consent and disclosure. This direction has been executed pursuant to that certain order of the Florida Courts of Administrative Law and DOAH Case Number 01-2507PL, Department of Business and Professional Regulation v. Ralph A. Buchman, dated _____. This direction is intended to apply to the rules of the United States Internal Revenue Code relating to disclosure of personal tax returns. and shall be construed as consent with respect thereto.

_____

RALPH A. BUCHMAN

Form **8821**
(Rev. September 1998)
Department of the Treasury
Internal Revenue Service

Tax Information Authorization

▶ IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.

OMB No. 1545-1165
For IRS Use Only
Received by:
Name
Telephone ( )
Function
Date / /

1 Taxpayer information.

Taxpayer name(s) and address (please type or print)

Ralph A. Buchman
2301 SE West Street
Port St. Lucie, FL 32984

Social security number(s)	Employer identification number
262 : 50 : 8130	:
Daytime telephone number	**Plan number (if applicable)**
( )	

2 Appointee.

Name and address (please type or print)

Michael D. Kooi
Dpt. of Business and Professional Reg.
1940 N. Monroe Street
Tallahassee, FL 32399-2202

CAF No. .....
Telephone No. (850.)487-9636
Fax No. (850.)414-6749
Check if new: Address ☐
Telephone No. ☐

3 Tax matters. The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line.

(a) Type of Tax (Income, Employment, Excise, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters (see instr.)
Income	1040	1988,1989, 1990	Tax return & return inf.

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) . . . . . ▶ ☐
If you checked this box, skip lines 5 and 6.

5 Disclosure of tax information (you **must** check box 5a or b unless box 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box . . . . . ▶ ☒
b If you do not want any copies of notices or communications sent to your appointee, check this box . . . . . ▶ ☐

6 Retention/revocation of tax information authorizations. This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box . . . . . ▶ ☒
To revoke this tax information authorization, see the instructions on page 2.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature	Date	Signature	Date
Ralph A. Buchman			
Print Name	Title (if applicable)	Print Name	Title (if applicable)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Change To Note. New column (d) is added to line 3 for specific tax matters. Use column (d) to specify tax information that is to be provided by the IRS, See the line 3 instructions on page 2.

Purpose of form. Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods you list on this form.

Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use **Form 2848**, Power of Attorney and Declaration of Representative, instead of Form 8821. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

Taxpayer identification numbers (TINs). TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

Fiduciaries. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. File **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

DOAH CASE NOS.: 01-2507PL
01-2329PL
DBPR CASE NO. 97-01770

vs.

RALPH A. BUCHMAN, C.P.A.

Respondent.
_____/

PETIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR STAY OF ORDER COMPELLING PRODUCTION OF DOCUMENTS

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, responds in opposition to Respondent's Motion for Stay of Order on Motion to Compel release of records from third party, pursuant to Rule 28-106.204, Florida Administrative Code (2000).

1. On September 27, 2001, this Court issued an Order on Petitioner's Motion to Compel Consent to Release Records from Third Party (Order).

2. This Order compelled Respondent to produce the documents requested in the third request of Petitioner's First Request for Production of Documents on or before October 19, 2001.

3. Rule 9.130(f), Fla. R. App. P., states that "[i]n the absence of a stay, during the pendency of a review of a non-final order, the lower tribunal may proceed with all matters . . . provided that lower tribunal may not render a final order disposing of the cause pending such review."

4. Rule 9.310, Fla. R. App. P., states that: "A party seeking to stay a . . . non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant modify, or deny such relief."

5. As such, Petitioner opposes Respondent's Motion for stay and asks this Court to continue these proceedings and enforce the Order compelling Respondent to produce the documents requested in the third request of Petitioner's First Request for Production of Documents on or before October 19, 2001.

6. A stay of the Order would further delay Petitioner's attempts to gather information which Petitioner is entitled to have access to.

7. The order compelling Respondent to produce documents is purely a discovery matter that has no bearing on Respondent's liability. Granting a stay in this case would only unnecessarily delay these proceedings and frustrate the purposes of discovery.

8. Respondent states that "there is no information known to the parties that the IRS is about to destroy documents . . . or otherwise render them inaccessible." However, there is no evidence that said documents will not be destroyed either.

9. Granting a Motion for stay could adversely prejudice Petitioner by denying Petitioner access to valuable information should the circumstances change as to the availability of the information sought after.

10. Respondent states that a stay of the Order is necessary to prevent undue harm as privileged and/or confidential documents may be furnished to the other party before the appeal could be accomplished.

11. These bare allegations of potential harm are insufficient to form a basis to grant a Motion for Stay. Since Respondent has failed "to show any imminent harm," a stay should not

be granted." *See Chamber of Commerce of the United States v. Legal Aid Society of Alameda County*, 423 U.S. 1309, 1312 (1975).

WHEREFORE, Petitioner requests that Respondent's Motion for a Stay be denied.

Respectfully submitted,

Michael D. Kooi
Assistant General Counsel
Fla. Bar No.: 0089710
Department of Business and
Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399-2202
Telephone: (850) 487-9636
Facsimile: (850) 414-6749

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was furnished to JON M. PELLETT, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, via certified mail, this 8th day of October 2001.

Michael D. Kooi
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs. DBPR CASE NO.: 1997-01770

RALPH A. BUCHMAN,

Respondent.
_____/

REQUEST FOR FORMAL HEARING

The Respondent, RALPH A. BUCHMAN, by and through his undersigned counsel, having received an Administrative Complaint filed by the Department of Business and Professional Regulation on **January 24, 2000** against Respondent's license, hereby requests that this matter be referred to the Division of Administrative Hearings for assignment of an Administrative Law Judge. As grounds for his request, Respondent would state:

1. The affected agency is the Department of Business and Professional Regulation, whose mailing address is Johns Building, 1940 North Monroe Street, Tallahassee, Florida 32399 and whose file number is as reflected above.

2. Respondent's current address is 2301 S.E. West Street, Port St. Lucie, Florida 34984-5118 and Respondent will be represented by undersigned counsel whose name and address is as listed below. Respondent's interests are substantially affected by the intended agency action in that Petitioner is seeking disciplinary action against the Respondent for the acts or omissions alleged in the Administrative Complaint.

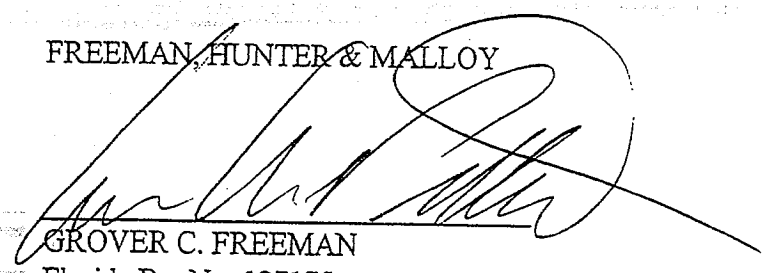
3. Respondent received notice of the intended agency action by U.S. mail within twenty-one days of the date this request was filed with the Petitioner.

4. Respondent disputes all material facts alleged in the Administrative Complaint except those facts pertaining to jurisdiction and licensure. Such dispute, under Part I of Chapter 455, Florida Statutes warrants reversal of the intended agency action or modification of the discipline to be imposed.

5. Respondent requests that the Administrative Complaint be referred to the Division of Administrative Hearings and an Administrative Law Judge assigned to resolve the parties dispute. Respondent requests a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes in which the intended penalty to be imposed in this proceeding either be modified or the action dismissed. The Respondent requests that the formal hearing be held in Port St. Lucie, Florida.

I HEREBY CERTIFY that two true and correct copies of the foregoing have been furnished by U.S. Mail to Monesia Taylor Brown, Esquire, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399 and that the original has been furnished to the Agency Clerk for the Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399 this February 2, 2000.

FREEMAN, HUNTER & MALLOY



GROVER C. FREEMAN
Florida Bar No. 127175
JON M. PELLETT
Florida Bar No. 0050679
201 East Kennedy Boulevard, Suite 1950
Tampa, Florida 33602
(813) 222-8200
ATTORNEYS FOR RESPONDENT

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY, Petitioner, vs. RALPH BUCHMAN, Respondent.	)	DOAH Case No. 00-4692PL 97-01770

INITIAL ORDER

1. This case is assigned to Judge Larry J. Sartin to whom all questions concerning this case should be addressed.

2. The original and one copy of all pleadings and papers shall be filed on 8.5" X 11" paper at the address below and a copy served upon all other parties. Pleadings and papers may be faxed in lieu of original document filing and a copy served upon all other parties. All pleadings and motions must contain the DOAH style and case number.

3. THE AGENCY OR, WHERE THE AGENCY IS NOT A PARTY, THE PETITIONER SHALL COORDINATE WITH ALL PARTIES, AND PROVIDE THE FOLLOWING INFORMATION WITHIN 7 DAYS OF THE DATE OF THIS ORDER:

   a. Any related cases before the Division and, if so, the DOAH case number and/or the Agency case number;
   b. Estimated length of time necessary to conduct the final hearing;
   c. Suggested geographic location for the final hearing;
   d. All dates more than 30 and less than 70 days from the date of this Order on which you are available for the final hearing. If the dates indicated by the parties conflict with the schedule of the assigned Judge, the hearing will be set in accordance with the Judge's schedule.

   EACH PARTY SHALL INDIVIDUALLY PROVIDE THE FOREGOING INFORMATION IF COORDINATION IS UNSUCCESSFUL.

4. The foregoing information may be provided in accordance with paragraph 2, by e-mail to DOAHClk@mail.state.fl.us, or by telephoning the Judge's secretary. Information provided by e-mail or telephone must be confirmed in writing the same day, in accordance with paragraph 2.

5. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER SHALL WAIVE VENUE RIGHTS; AND THE FINAL HEARING WILL BE SET IN TALLAHASSEE, FLORIDA, AT A DATE, TIME, AND DURATION ESTABLISHED BY THE DIVISION.

Sharyn L. Smith

SHARYN L. SMITH
Chief Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of November, 2000.

SUMMARY OF PROCEDURES

This case has been filed in the Division of Administrative Hearings to conduct an evidentiary hearing governed by Chapter 120, Florida Statutes, and Chapter 28-106, Parts I and II, Florida Administrative Code.

THE PARTIES SHALL TAKE NOTICE THAT:

1. Discovery may be undertaken in the manner provided in the Florida Rules of Civil Procedure and should be initiated immediately if desired. Necessary subpoenas and Orders may be obtained through the assigned Judge. Discovery must be completed 5 days before the date of the final hearing unless an extension of time for good cause is granted.
2. The government agency for whom a hearing is conducted will make arrangements for preserving the testimony at the final hearing.
3. A party may appear personally or be represented by an attorney or other qualified representative, pursuant to Rule 28-106.106, Florida Administrative Code.
4. Rule 28-106.210, Florida Administrative Code, provides that requests for continuances must be made at least 5 days prior to the date of hearing, except in cases of extreme emergency, and will be granted only by Order of the Judge for good cause shown.
5. Parties will promptly notify the assigned Judge in the event of a settlement or other development which might alter the scheduled hearing.
6. The parties are expected to discuss the possibility of settlement, enter into prehearing stipulations of fact and law, identify and limit issues, and exchange exhibit and witness lists prior to the hearing.
7. If all parties agree, this case may proceed as a summary hearing, without discovery, if requested by motion within 15 days from the date of this Order. The Judge will enter a Final Order within 30 days after the hearing.

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Judge's secretary no later than seven days prior to the hearing. The Judge's secretary may be contacted at the address or telephone numbers on page one, via 1-800-955-8770 (Voice), or 1-800-955-8771 (TDD) Florida Relay Service.

COPIES FURNISHED:

David Minacci, Esquire
(850)488-0062

Jon M. Pellett, Esquire
(813)223-3951

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY, Petitioner, vs. RALPH BUCHMAN, Respondent.	)	Case No. 00-4692PL

NOTICE OF HEARING BY VIDEO TELECONFERENCE

A hearing will be held in this case on December 21, 2000, at 9:30 a.m., or as soon thereafter as can be heard by video teleconference at sites in Tampa and Tallahassee, Florida. The Tampa site will be at the Department of Management Services, Video Conference Room, Park Trammel Building, 1313 North Tampa Street. The Tallahassee site will be at the Department of Management Services, Video Room 301, 4030 Esplanade Way. Witnesses, parties, representatives, and/or attorneys may report to either site. The Administrative Law Judge will be at the Tallahassee site. Continuances will be granted only by order of the Administrative Law Judge for good cause shown.

ISSUE: Whether Respondent committed the offenses alleged in an Administrative Complaint issued January 18, 2000.

AUTHORITY: Chapter 120, Florida Statutes; and Chapter 28-106, Parts I and II, Florida Administrative Code.

The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Administrative Law Judge upon request of the parties. All parties have the right to present oral argument and to cross-examine opposing witnesses. All parties have the right to be represented by counsel or other qualified representative, in accordance with Rule 28-106.106, Florida Administrative Code. Failure to appear at this hearing may be grounds for entry of an order of dismissal or recommended order of dismissal, as appropriate.

The agency shall be responsible for making the necessary arrangements for a court reporter. The court reporter will be at the Tampa site.

November 29, 2000

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH CASE NO. 00-4692
DBPR CASE NO. 97-01770

RALPH BUCHMAN,

Respondent.
_____/

PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, by and through its undersigned counsel, pursuant to Rule 1.350, Florida Rules of Civil Procedure, requests Respondent, RALPH BUCHMAN, to produce and permit the inspection, copying, testing, and sampling of the following documents and things within the thirty (30) days as prescribed by Rule 1.350, Fla.R.Civ.P. Responses should be directed to David K. Minacci, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202:

The following definitions shall apply:

A. The term "Petitioner" refers to the DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, Petitioner in this action, and all other persons acting on its behalf.

B. The terms "you" and "yours" mean the Respondent and all other persons acting on his/her behalf, and unless privileged, your attorneys.

C. Your "response" to the following shall include, reflect, and contain the knowledge of all persons referred to in definitions A and B hereof, who are presently acting in the referenced capacity or has acted in such capacity at the time of the incidents alleged in the most recently filed complaint.

D. The term "person" means any individual, corporation, partnership, joint venture, group, association, body politic, government agency, unit or other organization.

E. The term "communication" refers to any transmission or transfer of information of any kind, orally, in writing, or in any other manner at any time or place, and under any circumstances whatsoever.

F. The terms "document" or "documents" as used herein, mean any writing, letter, telegram, memorandum, memorandum of conference or telephone conversation, report, study, list compilation of data, papers, books, records, contracts, pictures, photographs, tapes and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photostatic or other copy, magnetic or recorded, is reproduced. Said terms shall also mean copies thereof.

G. To identify a "document" shall mean to state with respect thereto:

i. The identity of the person who prepared it;

ii. The identity of the person who signed it or in whose name it was issued;

iii. The identity of each person to whom it was addressed or distributed;

iv. The nature or substance of the document with the sufficient particularity to enable it to be identified;

v. Its date, and if it bears no date, the date when it was prepared;

vi. The physical location of the document and the custodian or custodians thereof.

H. To "identify a person" with reference to a natural person, means to give his/her name, last known address, and if employed, the name and address of his/her employer and his/her job title or position. To identify a person who is not an individual, means to state the name and principle office of such person.

I. To "identify an oral communication" or equivalent language, means to state with respect thereto:

i. The identification of each person who was present at the time it was made;

ii. The date and place where such oral communication was made or took place;

iii. Whether the communication was made by face to face contact between the person, by telephone or other means;

iv. The content and substance of what each such person said; and

v. The identification of each document pertaining to each such communication.

Please provide the following:

1. A copy of any report of income tax examination changes for the tax years 1988, 1989, or 1990.

2. A copy of the agreement between yourself and the Internal Revenue Service for the payment of taxes and/or penalties owed for the tax years 1988, 1989, or 1990.

3. A copy of the tax returns filed for you and Marie Buchman for the tax years 1988, 1989, and 1990.

4. A copy of any correspondence between yourself and the Internal Revenue Service relating to deficiencies, taxes, penalties, or interest owed or assessed for the tax years 1988, 1989, or 1990.

5. Copies of any checks or credit card receipts pertaining to the payment of taxes, additional taxes, penalties, interest, or deficiencies for the tax years 1988, 1989, or 1990.

6. A copy of the judgment entered against you by the United States Tax Court for deficiencies in income tax due for the tax years 1998, 1989, and/or 1990.

7. All other documents and communications, as defined above, including affidavits, statements, reports, records, notes, depositions, writings, or other correspondence pertaining to this cause of action.

8. All documents and communications, as defined above, referenced in Respondent's answers to Petitioner's First Set of Interrogatories.

9. A copy of all documents Respondent intends to use at trial, either as exhibits or for impeachment purposes.

10. A copy of your current state license as an accountant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was furnished to JON M. PELLETT, Esq., 201 East Kennedy Boulevard, Suite 1750, Tampa, Florida 33602, via certified mail, this 28th day of November, 2000.

David K. Minacci
Lead Professions Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,

Petitioner,

vs.

DOAH Case No. 00-4692

RALPH BUCHMAN, C.P.A.,

Respondent.
_____/

RESPONDENT'S RESPONSE TO PETITIONER'S REQUEST FOR PRODUCTION

COMES NOW, the Respondent, Ralph A. BUCHMAN, by and through his undersigned counsel, files this his response to the Petitioner's Request for Production and states as follows:

Respondent objects to Petitioner's Request for Production to the extent it seeks to impose obligations not required by Rule 1.370, Florida Rules of Civil Procedure, Rule 28-106.206, Florida Administrative Code, and Sections 120.569 and 120.57, Florida Statutes. In particular, Respondent objects to the format used and the instructions furnished by the Petitioner as the Petitioner seeks to impose obligations not required by the above referenced statutes and rules.

Additionally, Petitioner's Request to Produce seeks to have the Respondent admit the specific allegations of the Administrative Complaint. The Request to Produce as framed constitutes an attempt by the Petitioner to compel the Respondent to impermissibly answer the allegations of the Administrative Complaint. The proceeding initiated by the Petitioner is penal in nature in that it seeks to revoke, suspend, or otherwise discipline Respondent's professional standing, severely impair his professional reputation and his vested right to earn a living in the practice of his profession. The Respondent has a right to remain silent and not to be compelled

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to be a witness against himself by virtue of the guarantees afforded by the Fifth Amendment of the United States Constitution and similar articles of the Florida State Constitution. Respondent asserts his right to remain silent and declines to respond to the Request to Produce #1 through 10 as propounded. Such right has been guaranteed by the Florida Supreme Court in Vining v. Real Estate Commission, 281 So.2d 487 (Fla. 1973); Kozerowitz v. Florida Real Estate Commission, 289 So.2d 391 (Fla. 1974); and affirmed in McDonald v. Department of Professional Regulation, 582 So.2d 660 (5 DCA 1991); Best Pool and Spa Service Co., Inc. V. Romanik, 622 So.2d 65 (4 DCA 1993). The Request to Produce also seeks to invade the privacy of a non-party, Marie Buchman, and to that extent is improper under the Florida Rules of Civil Procedure. Without waiving said objections, Respondent provides the following response:

1. To the extent it is available, see the Department's compiled investigative report and consultant opinion including those documents attached to Respondent's letters dated October 30, 1997 and December 9, 1999.

2. Furnished previously. See number 1 above.

3. See number 1 above.

4. See number 1 above.

5. See number 1 above.

6. See number 1 above.

7. Objection, work product and attorney client privilege. Otherwise, see number 1 above.

8. See number 7 and 1 above.

9. See number 1 above; otherwise undetermined but will be disclosed in accordance with the joint prehearing statement.

10. In possession of the Petitioner. Otherwise, objection it is no burdensome for

000306

Petitioner, the licensing entity for the Respondent, to produce a copy of the Respondent's license as it is for him.

Respectfully Submitted,

JON M. PELLETT
Florida Bar No. 0050679
BARR, MURMAN, TONELLI, SLOTHER & SLEET
201 East Kennedy Boulevard, Suite 1750
Tampa, Florida 33602
Ph (813) 223-3951
ATTORNEYS FOR RESPONDENT

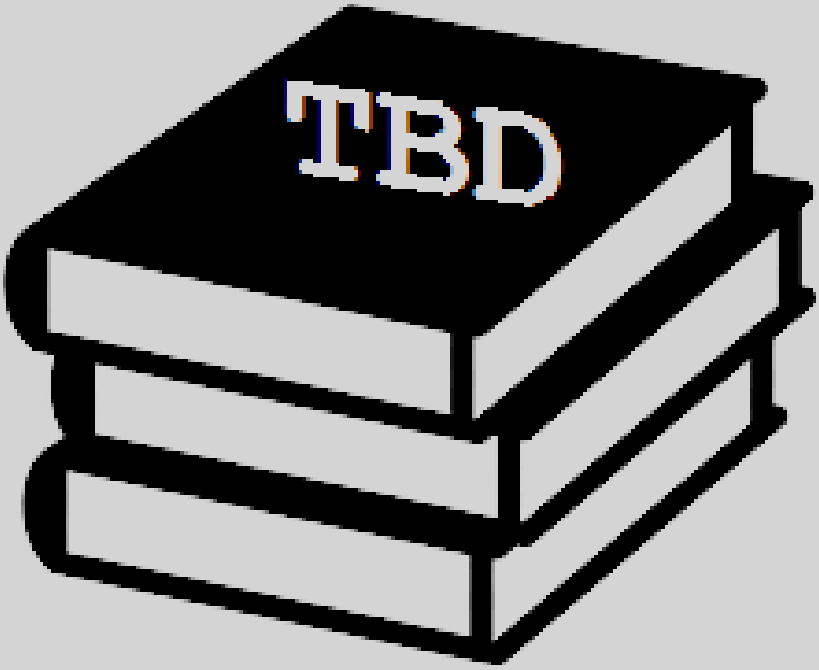
000307

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Request to Produce has been furnished by facsimile and by U.S. mail, postage prepaid, to David K. Minacci, Lead Professions Attorney, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202, facsimile (850) 414-6749 and that in lieu of original filing, one copy has been furnished to the Division of Administrative Hearings at (850) 921-6847, this December 11, 2000

Jon M. Pellett

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