

**BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY**

**WEST VIRGINIA BOARD OF ACCOUNTANCY,**

**Complainant,**

**v.**

**Case No. 2008-05**

**DAVID WALLEN, CPA,**

**Respondent.**

**CONSENT DECREE AND ORDER**

Now comes the West Virginia Board of Accountancy (hereinafter "Board") and David Wallen (hereinafter "Respondent"), for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

As reflected in this Consent Decree and Order, the parties have reached an agreement in which Respondent hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree and Order concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

**FINDINGS OF FACT**

1. That Respondent is a licensee of the West Virginia Board of Accountancy, holding License Number WV001167.

2. That on January 12, 2007, the United States Department of the Treasury, Office of Professional Responsibility, Internal Revenue Service (IRS) filed to disbar the Respondent from practice before the IRS. The IRS complaint charged the Respondent with engaging in violation of 31 C.F.R. § 10.0 *et seq.* §10.51 (d) and §10.51 (f). That specifically the Respondent was charged with a wilful failure to file individual Federal income tax returns for the years 2000, 2001, 2002, 2004 and 2005. No claim as to Respondent's failure to pay taxes due was made.

3. The Respondent asserted substantial mitigating circumstances related to his major adverse health and financial situations from 2000 to 2005.

4. That on June 4, 2007, the Respondent entered into a voluntary consent with the IRS to a suspension from practice before the IRS for a period of thirty-six (36) months.

### **CONCLUSION OF LAW**

1. That the Board has jurisdiction to take disciplinary action against the Respondent.

2. That pursuant to West Virginia Code § 30-9-1 *et seq.*, the Board may revoke a license, suspend a license, reprimand a licensee or take other disciplinary action for violation of the rules and regulations of the Board.

3. The Respondent is a licensee of the West Virginia Board of Accountancy and is subject to license requirements of the Board.

4. Based on the information submitted to the Board, there is evidence to

demonstrate that the conduct of the Respondent violates West Virginia Code § 30-9-1 *et seq.*

### CONSENT

1. Respondent has been given the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.
2. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to enter this Consent Decree and Order other than as set forth herein.
3. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.
4. Respondent acknowledges that he is aware that this Consent Decree and Order is a public document, available for inspection at any time by any member of the public under Chapter 29B *et seq.*, of the West Virginia Code, Freedom of Information Act and may be reported to other governmental, professional Boards or organizations.
5. Respondent waives any defense of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed as a condition of this Consent Decree and Order.
6. The Respondent acknowledges that this Consent Decree and Order shall be presented to the Board as soon as practical but no later than next scheduled meeting of the

Board, with a recommendation for approval from Board Counsel.

7. That Respondent consents to the entry of the following Order affecting his license in the State of West Virginia.

8. The Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions.

### **ORDER**

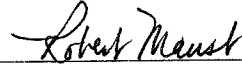
Based on the foregoing Findings of Facts and Conclusions of Law, the West Virginia Board of Accountancy, hereby ORDERS as follows:

1. The Board hereby issues a public reprimand to the Respondent;
2. The Respondent shall take eight (8) hours of Continuing Education in Ethics in addition to the required Continuing Education requirement;
3. The Respondent shall pay a fine of Five Hundred Dollars (\$500.00) to the Board, which payment shall be paid to the Board in full within thirty (30) days of the date of entry of the Consent Order;
4. The Respondent shall additionally reimburse the Board costs associated with this case in the amount of Five Hundred Dollars (\$500.00);
5. All matters in controversy related to the instant complaint are hereby resolved and closed, pending full compliance with the terms mandated herein; and
6. That the Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a violation of this Consent Order, and

that if the Respondent violates any of the terms of this Consent Order, the Board may immediately suspend the Respondent's license.

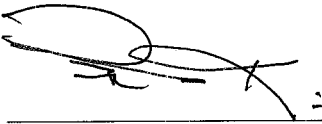
Entered this 21<sup>TH</sup> day of JULY 2008.

West Virginia Board of Accountancy  
By:



Robert Maust  
President

Inspected and Agreed to by:



Robert S. Kiss, Esquire  
BOWLES RICE MCDAVID GRAFF & LOVE, LLP  
Attorneys at Law  
600 Quarrier Street  
Charleston, West Virginia 25325-1386  
Counsel for Respondent



David Wallen, CPA  
Respondent

**West Virginia  
Board of Accountancy**

106 Capitol Street, Suite 100  
Charleston, West Virginia 25301-2610



*Board Members:*  
*Reed Spangler, CPA, CVA - President*  
*James Sturgeon, CPA - Vice-President*  
*Harold Davis, CPA - Secretary*  
*Lee Fisher, Public Member - Assistant Secretary*  
*John S. Bodkin, Jr., CPA*  
*Robert Maust, CPA*  
*Donald B. Nestor, CPA*

Joe Manchin, III, Governor

Jo Ann Walker, Executive Director

January 25, 2009

David G. Wallen, CPA  
P.O. Box 1825  
Beckley, WV 25802-1825

Dear Mr. Wallen:

The West Virginia Board of Accountancy met on Friday, January 23, 2009 and reviewed your file in the matter of Case No: 2008-05.

Noting that the Board has received your CPE report which reflected the securement of eight (8) hours of Continuing Education in Ethics as required in the Consent Decree and Order as well as your check in the amount of \$1,000.00 as payment of fine and costs, the Board, upon motion made, duly seconded and approved, voted to close this file. Motion carried.

This is your Notice of Final Action in this matter.

If you have any questions concerning this matter, please contact the Board's legal counsel, Ms. Darlene Ratliff-Thomas at (304) 558-2021.

Very truly yours,

  
Jo Ann Walker  
WEST VIRGINIA BOARD OF ACCOUNTANCY

cc: file  
A.G. Counsel