

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
BRIAN SULLIVAN**

FILED	
<small>Department of Business and Professional Regulation</small>	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/29/2011
File #	2011-06701

ORDER

Petitioner, Brian Sullivan, filed a petition for a permanent variance from Rules 61H1-27.0041(1)(b), (c), and (2), Florida Administrative Code (FAC), on July 5, 2011. The notice of the petition appeared in the Florida Administrative Weekly on July 29, 2011, in Volume 37 Number 30; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy held on August 12, 2011, in Tampa, Florida. At the hearing on this matter, Petitioner was present and not represented by counsel. The Board was represented by Mary Ellen Clark, Assistant Attorney General.

STATEMENT OF RELEVANT FACTS

VW 2011-229

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA) by endorsement of his New York license granted in April, 2009. The educational requirements for licensure in New York were not equivalent to those in effect in Florida at that time and Petitioner was required to obtain additional education, which he completed in December, 2010.
2. Section 473.308(4), Florida Statutes (FS), provides that an applicant for licensure must show one year of work experience. Rule 61H1-27.0041, FAC, specifies the manner in which the one year of work experience must be documented.
3. Rule 61H1-27.0041(1)(b), FAC, provides that "supervised" and "supervision"

mean "the subjection of the applicant, during employment, to oversight, guidance and evaluation by a supervisor who had the right to control and direct the applicant as to the result to be accomplished by the work and also as to the means by which the result was to be accomplished."

4. Rule 61H1-27.0041(1)(c), FAC provides that "supervisor" means, "either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB)."

5. Rule 61H1-27.0041(2), FAC, provides in part that "one year of work experience shall be held and understood to mean the rendition of services such as are customarily performed by full-time, regularly employed staff employees of a certified public accountant during the normal workweek as required by the employing certified public accountant, **commencing after the completion of the educational requirements** set forth in subsection 61H1-27.002(3), F.A.C." (emphasis added)

6. Upon graduating with a Bachelor of Science degree in Accounting from the University of Florida in December 1999, Petitioner became employed at a CPA firm and worked under the direct supervision of a CPA for 3.5 years. Petitioner continued his career at three Fortune 500 companies. Petitioner was employed a total of eight and a half years, working under the supervision of CPAs, but all of this experience was obtained before he completed the additional education required for Florida licensure.

7. Petitioner seeks a permanent variance from Rule 61H1-27.0041(1)(b), (c), and (2), FAC, to the extent necessary for the Board to find that the supervision requirements have been met and that he has met the one year work experience

requirement for licensure.

Grounds for Approval

The Board determined that the petition for variance should be granted on the following grounds:

8. Petitioner established that the purpose of the underlying statute, Section 473.308(4)(a), FS, would be met were he to be granted a variance from the rule based upon the following:

Petitioner's experience was obtained under the supervision of a licensed CPA.

9. Petitioner further established that the Board's application of Rules 61H1-27.0041(1)(b), and (2), FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

It is therefore **ORDERED** that the petition be **GRANTED**.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 20th day of September, 2011,
by the Florida Board of Accountancy.



Veloria A. Kelly, Division Director

NOTICE TO APPLICANT

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division Director of the Board, 240 Northwest 76th Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a

hearing before an administrative law judge pursuant to Section 120.57(1), FS; your petition must contain the information required by Rule 28-106.201, FAC, a copy of which is enclosed, including a statement of the material facts which are in dispute. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), FS; your petition must include the information required by Rule 28-106.301, FAC, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

Pursuant to Section 120.573, FS, you are hereby notified that mediation pursuant to that section is not available.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Brian Sullivan, 9604 Royce Drive, Tampa, Florida 33626 and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 21st day of September, 2011.

Brandon M. Nichols

U.S. Postal Service		CERTIFIED MAIL RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com			
OFFICIAL USE			
Postage	\$	Postmark Here	
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		
Sent To <u>Brian Sullivan</u>			
Street, Apt. No., or PO Box No.			
City, State, ZIP+4			
PS Form 3800, August 2006		See Reverse for Instructions	

7009 2820 0000 7447 2366

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/5/2011
File #	

Petition for Variance from Rule 61H1-27.0041

Petitioner information:

Brian Sullivan
9604 Royce Dr.
Tampa, FL 33626

Attorney information:

Not Applicable

Applicable portions of the rule:

61H1-27.0041 (1)(b)(c).(2)

RECEIVED
JUL 05 2011
BOARD OF ACCOUNTANCY

VW 2011-229

61H1-27.0041 One Year of Work Experience.

With the exception of an applicant who completes the requirements of Section 473.308(3), F.S., on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, an applicant must document one year of work experience as follows:

(1) Definitions. Within the context of this rule, the following definitions apply:

(a) "Applicant." An applicant is a person who has met Florida's educational requirements for licensure and intends from the outset of the supervised experience to meet the supervised experience requirement for licensure.

(b) "Supervised" and "supervision" the subjection of the applicant, during employment, to oversight, guidance and evaluation by a supervisor who had the right to control and direct the applicant as to the result to be accomplished by the work and also as to the means by which the result was to be accomplished

(c) "Supervisor." A supervisor is either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB).

(2) One year of work experience shall be held and understood to mean the rendition of services such as are customarily performed by full-time, regularly employed staff employees of a certified public accountant during the normal workweek as required by the employing certified public accountant, commencing after the completion of the educational requirements set forth in subsection 61H1-27.002(3), F.A.C. The experience must either average at least twenty (20) hours a week over no more than one hundred and four (104) weeks or average no more than forty (40) hours a week over no more than fifty-two (52) weeks. Reasonable vacation time and sick leave or other required absences may be permitted. The supervisor, in her or his report to the Department, shall certify that the applicant rendered such services as are customarily performed by full-time, regularly employed staff employees for a minimum of 2,000 hours gained over a period of not less than fifty-two (52) or more than one hundred and four (104) weeks. The sequence of the experience is considered immaterial, that is, whether the experience was secured before or after taking the examination, or partly before the examination and partly after the examination, provided the two periods combined equal at least one year.

The citation to the statute the rule is implementing:

Section 473.308, Licensure

Type of action requested:

The petitioner requests that the Board of Accountancy please grant a variance from 61H1-27.0041 stated above due to the following circumstances.

Specific facts that demonstrate a violation of principles of fairness and substantial hardship that justify a variance for the petitioner:

Upon graduating with my Bachelors of Science in Accounting from the University of Florida in December 1999, I worked at a CPA firm under the direct supervision of a Florida licensed CPA for 3.5 years. After leaving the CPA firm, I continued my career at three Fortune 500 companies. These positions ranged from Supervision of SEC reporting to Division Controller. I have a total of 8.5 years of experience working under the direct supervision of licensed CPA's. Over the past year, I have opened my tax/accounting practice and completed my Master of Accountancy. After applying for licensure, I was informed that my education requirement was met after my years of work experience and therefore my application was denied. Apparently, I met the education requirement to sit for examination after completing my graduate level business law class. Due to being self-employed, having to close my company to work under the direct supervision of a CPA would cause substantial financial hardship.

The reason why the variance requested would serve the purposes of the underlying statute:

The petitioner has met all the education requirements, has passed all sections of the examination and is of good moral character. The petitioner also feels that he has substantially proven himself by performing the services such as are customarily performed by full-time, regularly employed staff of a certified public accountant for 8.5 years. I feel that denying my application due to my 8.5 years of experience being after the missing couple credits was earned is against the spirit of the rule.

Petitioner Statement:

The petitioner requests a permanent variance from Rule 61H1-27.0041.