

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/16/2018
File #	2018-05658

**IN RE: PETITION FOR VARIANCE BY  
JON GRAYSON CASTRO**

**VW 2018-094**

**NOTICE OF INTENT TO DENY PETITION**

Petitioner, Jon Grayson Castro, filed a petition for a temporary variance from the requirements of Rule 61H1-33.006(2)(a), Florida Administrative Code (FAC), on May 9, 2018. The notice of the petition appeared in the Florida Administrative Register on May 21, 2018, in Volume 44 Number 99; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on June 14, 2018, in Orlando, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel; the Board was represented by Mary Ellen Clark, Senior Assistant Attorney General.

**STATEMENT OF RELEVANT FACTS**

The facts relevant to the petition are as follows:

1. Petitioner is a licensed certified public accountant whose license reverted to delinquent status on January 1, 2018, after he failed to timely submit evidence of completing the required number of continuing professional education (CPE) hours and pay the renewal fee for his CPA license by December 31, 2017. Petitioner states his failure to timely renew was administrative oversight following heavy out-of-town travel.
2. Petitioner applied to reactivate his license in April, 2018, at which time he was notified that his application could not be approved based upon his failure to complete a sufficient number of CPE hours.
3. Rule 61H1-33.006(2)(a), FAC, provides that an applicant for reactivation shall

satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours.

4. Petitioner had completed the number of CPE hours required for his most recent biennium and seeks a temporary variance from Rule 61H1-33.006(2)(a), FAC, to waive the requirement for completing the additional 40 hours of CPE required to reactivate a delinquent license.

**GROUND FOR DENIAL**

The Board determined that the petition for variance should be denied on the following grounds.

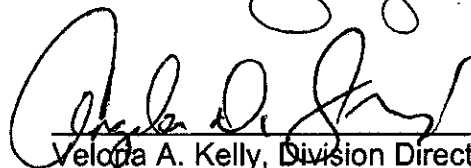
5. Petitioner failed to establish that the purpose of the underlying statutes, Sections 473.312 and 473.313, Florida Statutes, would be met were he to be granted a variance from the rule.

6. Petitioner further failed to establish that the Board's application of Rule 61H1-33.006(2)(a), FAC, to his circumstances would violate principles of fairness and impose a substantial hardship on him.

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

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

**DONE AND ORDERED** this 10 day of July, 2018, by  
the Florida Board of Accountancy.

  
\_\_\_\_\_  
Velofa A. Kelly, Division Director

Jonathan Zachem, Secretary

Rick Scott, Governor

## MEMORANDUM

**TO:** Paul Waters, Deputy Secretary

**FROM:** Veloria A. Kelly, Director /s/ *Veloria A Kelly*

**SUBJECT:** Delegation of Authority

**DATE:** July 7, 2018

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I, Veloria Kelly, hereby delegate to Angela Francis, signature authority in my absence on July 9-13, 2018.

All documents signed on my behalf should have a copy of this Delegation of Authority attached.

**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 76<sup>th</sup> 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), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, 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), Florida Statutes; 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, Florida Statutes, 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 Jon Grayson Castro, 335 Dill Circle, Landrum, SC 29356; and to, Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 16<sup>th</sup> day of July, 2018.

  
Brandon M. Nicks

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<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/9/2018
File #	

**PETITION FOR VARIANCE FROM RULE 61HI-33.006**  
**Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees**

**Petitioner Information:**

Name                    Jon Grayson Castro  
Address Phone        335 Dill Circle, Landrum, SC 29356  
Number  
Application            864-680-2307  
Number                 AC 22602

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BY: .....

**VW 2018-094**

**Attorney Information:**

Not Applicable

**Applicable Portions of the rules: 61HI-33.006(a) Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.**

- (1) Each Florida certified public accountant who has requested inactive status or became delinquent, as distinguished from a Florida certified public accountant whose certificate or license has been suspended, who desires to become an active Florida certified public accountant, i.e., engage or reengage in the practice of public accounting in Florida, shall apply for such reactivation by completing and submitting to the Department Form DBPR CPA 5011-1 - Request for Change of Status, hereby incorporated by reference and effective 7-23-06; copies of the form may be obtained from the Board office. However, if a license is delinquent on January 1 for failure to comply with Rule 61HI-33.003, F.A.C., through failure to report compliance with continuing professional education requirements by the immediately prior December 31st, a Florida certified public accountant may reactivate, pursuant to Section 473.311, F.S., by certifying the required hours have been completed, paying the fees required by Rules 61HI-31.003, 31.004 and 31.006, F.A.C., by March 15 of the same year of the delinquency.
- (2) Each such application shall demonstrate successful completion of the required number of continuing professional education hours.
- (a) Florida certified public accountants who have been inactive or delinquent for one reporting period following their most recent current/active license, shall satisfy the requirements of their most recent biennium while active plus 40 additional CPE hours in the following manner:

Accounting/ Auditing	Ethics Behavioral	Total Hours	
At least 20 hours	At least 4 hours	No more than 20 hours	120 Hours

**The citation to the statute the rule is implementing:**

**61HI-33.006(a) Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.**

**Type of Action Requested:**

The petitioner requests that the Board of Accountancy please grant a variance for Rule 61HI- 33.006(a) FAC Inactive or Delinquent Florida Certified Public Accountants Who Desire to Become Active Licensees.

**Specific fact that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:**

**RECEIVED**

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DBPR Agency Clerk

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

**Petitioner Statement:**

The petitioner seeks a permanent variance from Rule 61HI-33.006(a), F.A.C.

The variance from Rule 61HI-33.006(a), F.A.C. I am seeking serve the underlying purpose of the statute by making a distinction between cases where a delinquent Licensee (where delinquency has been due to not completing CPE hours) and cases where petitioner has simply failed to pay for the renewal of their license but has complied with all the CPE requirements when the license was not delinquent.

The only reason I am considered delinquent is that I have failed to pay for the renewal of my license. I completed all my CPE on time (submitted with my renewal application) so I am in technical compliance with Section 473.312 and have never been delinquent during past renewal periods in paying licensing costs or CPE hours.

For the past 20 years I have lived and worked in South Carolina. I have worked as an accounting manager and cfo in private and governmental roles. I have never practiced as a CPA so I have not needed to change my License to South Carolina.

This past year I have worked out of town a lot and my wife pays the bills. I feel like she threw out the renewal notice issued late September mistaking it for just another advertising flyer for CPE or an insurance solicitation from AICPA.

She is a school teacher by profession and did not make the distinction that the one and only renewal notice was not a solicitation.

Since the department of business & professional regulation quit requiring that we turn in our CPE (unless it is asked for) the only notice for payment we get is in September. There is no courtesy late notice for those who have not paid - an unusual business practice. I am in the process of seeing if my bank will draft an auto payment every other year to dbpr so that I am not caught up in this again.

I have paid the additional late fees for reactivation of my License - which is appropriate and common policy for those who are "delinquent" in paying by a deadline.

However, making someone who is in arrears in payments BUT who is NOT delinquent in keeping up with their required CPE take additional CPE is not keeping with the spirit of Section 473.312 and the regulation. The law and regulation seem to be designed to ensure those returning to the practice of Accounting, after an absence, are "up to speed" with all the current pronouncements.

I hope that you will agree and waive the additional CPE requirements for my reactivation.

Graciously submitted in good faith,

Jon Castro