

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
MELANIE A. HUMLICEK**

<b>FILED</b>	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	<b>9/29/2011</b>
File #	<b>2011-06699</b>

**ORDER**

Petitioner, Melanie A. Humlicék, filed a petition for a permanent variance from Rule 61H1-27.0041(2), Florida Administrative Code (FAC), on May 27, 2011. The notice of the petition appeared in the Florida Administrative Weekly on July 1, 2011, in Volume 37 Number 26; 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 represented by counsel, Celeste N. Perrino. The Board was represented by Mary Ellen Clark, Assistant Attorney General.

**STATEMENT OF RELEVANT FACTS**

**VW 2011-185**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA) who passed the fourth portion of the CPA examination in August 2010.
2. Section 473.308(4), Florida Statutes (FS), provides that an applicant for licensure must show one year of work experience (applicants who passed the examination on or before June 30, 2010, would be exempt from this requirement). Rule 61H1-27.0041, FAC, specifies the manner in which the one year of work experience must be documented.
3. 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."

4. Petitioner graduated with a Bachelor of Science degree in Accounting from the University of South Florida in April 2004. In November 2004, Petitioner became employed at a CPA firm and worked under the direct supervision of a CPA for 3.5 years. Petitioner returned to school and received her Master in Business Administration from the University of South Florida in December, 2008, after which she left her employment in public accounting.

5. Petitioner seeks a permanent variance from Rule 61H1-27.0041(2), FAC, to the extent necessary for the Board to find that the supervision requirements have been met and that she 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:

6. 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:

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

B. Petitioner passed the 4<sup>th</sup> portion of the CPA examination within approximately two months after the June 30, 2010 deadline.

C. Petitioner has graduated from the University of South Florida with a Bachelor of Science in Accounting and a Master of Business Administration.

7. Petitioner further established that the Board's application of Rule 61H1-27.0041(2), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

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 20<sup>th</sup> 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 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), 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 Melanie A. Humlicek, 1125 21<sup>st</sup> Avenue North, St. Petersburg, Florida 33704, Celeste N. Perrino, Attorney for Petitioner, Bush Ross, P.A., Post Office Box 3913, Tampa, Florida 33601-3913, 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 29<sup>th</sup> day of September, 2011.

*Brandon M. Nichols*

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STATE OF FLORIDA  
BOARD OF ACCOUNTANCY

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/27/2011
File #	

In re:

MELANIE A. HUMLICEK  
1125 21<sup>st</sup> Avenue North  
St. Petersburg, Florida 33704  
(727) 452-6030

MAY 25, 2011

Petitioner

**VW 2011-185**

And

RE RULE 61H1-27.0041

AGENCY FOR THE BOARD OF  
ACCOUNTANCY

Respondent

PETITION FOR PERMANENT WAIVER OR VARIANCE FROM RULE 61H1-27.0041

Comes now, Petitioner MELANIE A. HUMLICEK ("Ms. Humlicek"), by and through the undersigned counsel and pursuant to Florida Statutes §§ 120.542, 120.54, 473.306 and 473.308 as well as Florida Administrative Code Rule 61H1-27.0041, hereby petitions the Florida Board of Accountancy (the "Board") for a permanent waiver or variance from Rule 61H1-27.0041 (the "Rule") and the requirement set forth in the Rule that requires an applicant for licensure to have one year of work experience. In support of this petition, Ms. Humlicek states as follows:

APPLICABLE LAW

1. Accountants are regulated by Florida law pursuant to Chapter 473 of the Florida Statutes. *See, e.g.* Fla. Stat. § 473.301 (2011).
2. The Board and the Division of Certified Public Accounting are charged with applying and enforcing Chapter 473. Fla. Stat §§ 473.303 & 473.3035 (2011).

3. Section 473.308 sets forth certain requirements that must be met by a "person desiring to be licensed as a Florida certified public accountant." Fla. Stat. §473.308(1) (2011).

4. Specifically, that Section provides:

(4)(a) An applicant for licensure after December 31, 2008, must show that he or she has had 1 year of work experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which must be verified by a certified public accountant who is licensed by a state to territory of the United States and who has supervised the applicant. This experience is acceptable if it was gained through employment in government, industry, academia, or public practice; constituted a substantial part of the applicant's duties; and was under the supervision of a certified public accountant licensed by a state or territory of the United States. The board shall adopt rules specifying standards and providing for the review and approval of the work experience required by this section.

(b) However, an applicant who completed the requirements of subsection (3) on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, is exempt from the requirements of this subsection.

The requirement set forth in Section 473.308(4) will be referred to in this Petition as the "Experience Requirement."

5. Therefore, under Florida law, to be licensed by the Board as a certified public accountant (a "CPA"), an applicant must satisfy the Experience Requirement.

6. The Rule provides, in pertinent part:

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.

7. The education requirements applicable to a Florida CPA are set forth, in part, in Section 473 308. Subsection (3) provides: "an applicant for licensure must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business in the total educational program to the extent specified by the board."

8. The Florida legislature has recognized that "strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances." Fla. Stat. § 120.542(1).

9. As such, the legislature permits an agency to grant a variance or waiver from the strict application of a rule:

when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principals of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principals of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different for the way it affects other similarly situated person who are subject to the rule.

Fla. Stat. § 120.542(1).

APPLICABLE FACTS

10. Ms. Humlicek graduated from the University of South Florida in April of 2004 with a Bachelors of Science in Accounting.

11. In November of 2004, Ms Humlicek was hired by Gregory, Sharer & Stuart, P.A. ("GSS"), a well regarded full service accounting firm in St. Petersburg, Florida. From Ms. Humlicek's initial employment, and throughout the three and a half years she was employed by GSS, Ms. Humlicek provided service and advice involving the use of accounting, attest, compilation and consulting skills.

12 While at GSS, Ms. Humlicek "rendered such services as are customarily performed by a full-time regularly employed professional staff employee of a certified public accountant or firm thereof engaged in the full-time practice of public accounting for at least one year and was supervised by a certified public accountant who was employed on a full-time basis." See Exhibit A.

13. Ms. Humlicek's former supervisor at GSS, Richard H. Caton, CPA (CPA certification number AC0011414), a shareholder at GSS, completed DBPR Form CPA 32 - revised 1009 acknowledging that Ms. Humlicek met this requirement (a copy of which is attached to this Petition as Exhibit A).

14. Ms Humlicek worked for GSS for a total of 188 weeks and worked over forty hours per week for a total of over 7,952 hours of qualified experience.

15. While working full-time, Ms. Humlicek entered the Master of Business Administration program at the University of South Florida. By May of 2008, Ms. Humlicek had completed the education requirement set forth in Florida Statute Section 473.308(3).



16. That same month, Ms. Humlicek voluntarily resigned from GSS to take a position as controller of Oden Hardy Construction, Inc. ("Oden Hardy"), a commercial builder located in Bradenton, Florida. While at Oden Hardy, Ms. Humlicek performed accounting functions including preparing all monthly accounting entries and monthly and annual financial statements, coordination of annual review and tax return with Oden Hardy's outside CPA and supervision and oversight of accounting staff. However, she was not directly supervised by a CPA.

17. In December 2008, Ms. Humlicek was awarded her Master of Business Administration by the University of South Florida.

18. Ms. Humlicek submitted her application to sit for the Florida CPA exam with the goal of becoming licensed by the Board as a Florida CPA.

19. In July of 2009, Ms. Humlicek took her first portion of the CPA exam. Subsequently, she took and passed the next two portions of the CPA exam.

20. In October of 2009, Ms. Humlicek became pregnant with her first child who was due on July 9, 2010.

21. Ms. Humlicek was scheduled to take the last portion of the CPA exam in May of 2010.

22. However, on May 20, 2010, six and a half weeks before her due date, Ms. Humlicek went into early labor. After being hospitalized and stabilizing her health, her doctor ordered her to go on bed rest for the remainder of her pregnancy. A copy of the doctor's prescription for bed rest is attached to this Petition as Exhibit B. She was also advised that she should not take extended car trips or be a great distance from her delivering hospital in the event that her pre-term labor resumed.

23. As a result of that advice, Ms. Humlicek postponed the last portion of her CPA exam until August of 2010.

24. In July of 2010, Ms. Humlicek gave birth to her first child and voluntarily resigned from her employment with Oden Hardy. Since July of 2010, Ms. Humlicek has been a stay-at-home mom.

25. In September 2010, Ms. Humlicek received notice from the Board that she passed that last portion of her CPA exam. Ms. Humlicek scored above average of each portion of the CPA exam in that her lowest score was an eighty-five out of one hundred.

26. In February of 2011, Ms. Humlicek received a notice from the Board that her application was being denied because she did not satisfy the Experience Requirement.

27. In addition to her paid work experience at both GSS and Oden Hardy, Ms. Humlicek has served as the Vice-President of Finance for the Junior League of St. Petersburg Fla., Inc., a Florida non-profit corporation. In that capacity, Ms. Humlicek spends in excess of fifteen hours per week performing accounting services on a volunteer basis. Those accounting services include preparation of an annual budget and monthly and annual financial statements; budget to actual analysis for presentation to the Board of Directors of the corporation; weekly payroll and quarterly preparation of the 941 tax form; annual preparation of W-2s and 1099s; and coordination of the annual audit and 990 with the corporation's outside CPA.

#### ANALYSIS

28. Ms. Humlicek should be granted a permanent variance or waiver because the application of the Rule to her unique circumstances creates a substantial hardship and violates the principals of fairness.

29. Ms. Humlicek has satisfied all the requirements of Florida Statute Section 473.308 in that she has passed the CPA examination, completed the education requirements, has at least one year of work experience and has shown that she has good moral character.

30. But for her doctor's requirement that she be put on bed rest, Ms. Humlicek would have passed the licensure examination on or before June 30, 2010 and would have fallen into the express limitation of Section 473.308 found in subsection 4(b).

31. Ms. Humlicek does not comply with the express terms of the Rule because her public accounting experience took place prior to her fulfilling the education requirements.

32. However, Ms. Humlicek has far exceeded the experience that a normal applicant would have under the express terms of the Rule. Having worked in public accounting full-time for four and a half years, Ms. Humlicek has almost four times as much accounting experience as she is expected to have under the Rule. But for the chronological order in which she completed her education and experience requirements, her application would not have been denied.

33. In addition, Ms. Humlicek has gained additional experience, albeit in an unqualified capacity, during her employment with Oden Hardy and through her volunteer work with the Junior League of St Petersburg.

34. As such, Ms. Humlicek has satisfied the intent of the applicable law and is qualified to serve as a CPA in the state of Florida.

35. Requiring Ms. Humlicek to return to the workforce to fulfill the Experience Requirement would serve a substantial hardship of Ms. Humlicek and her family in that she is the sole caretaker for her ten-month old son. Ms. Humlicek delayed starting a family until after she had completed the educational requirements and taken the CPA examination. Her intent has always been to stay home with her young son until he begins elementary school. If she were to

be required to return to the work force, she would have to take on the expense of full-time child care.

36. In addition, with the expectation that Ms. Humlicek would be a stay-at-home mom, Ms. Humlicek's husband accepted a position that, at times, requires him to work longer hours and weekends. If Ms. Humlicek were required to go back to work to fulfill the Experience Requirement, Mr. Humlicek would have to make arrangements with his employer to modify his schedule.

#### ACTION REQUESTED

37. Ms. Humlicek hereby respectfully requests that the Board permanently waive the Experience Requirement of Rule 61H1-27.0041 as it applies to her or, in the alternative, issue a permanent variance based on Ms. Humlicek's particular facts and circumstances.

38. Ms. Humlicek asserts that adhering to the strict terms and requirements of the Rule would violate the principals of fairness and justice and would cause substantial undue hardship on her and her family.

39. Furthermore, applying the Rule to Ms. Humlicek would not further the legislative intent of the applicable statutes in that Ms. Humlicek is already very experienced in the accounting field.

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered by Certified U.S. Mail and Facsimile to the Clerk of the Agency, the Florida Board of Accountancy, Attention: Examination Specialist, 240 NW 76<sup>th</sup> Drive, suite A, Gainesville, Florida 32607; facsimile (352) 333-2508 and the Joint Administrative Procedures Committee, Room 102, Holland Building, Tallahassee, Florida 32399, on this 25th day of May, 2011.

BUSH ROSS, P.A.  
Post Office Box 3913  
Tampa, Florida 33601-3913  
(813) 224-9255 (telephone)  
(813) 223-9620 (telecopy)  
Attorneys for Bank of America, N.A.

A handwritten signature in black ink, appearing to read "C. Perrino", written over a horizontal line.

Celeste N. Perrino  
Florida Bar No. 0044755  
[cperrino@bushross.com](mailto:cperrino@bushross.com)

**EXHIBIT A**

to the

**PETITION FOR PERMANENT WAIVER OR VARIANCE FROM RULE 61H1-27.0041**

**STATE OF FLORIDA**  
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**  
**BOARD OF ACCOUNTANCY**  
 240 N. W. 76th Drive, Suite A  
 Gainesville, Florida 32607

**CERTIFICATION OF WORK EXPERIENCE**

**INSTRUCTION TO EMPLOYEE:** Please sign this statement, forward to employer for completion and return to the Board of Accountancy.

I hereby authorize my employers (past and present) to release to the Florida Board of Accountancy any information, files and/or records as it may deem necessary in the processing of this certification of work experience.

Name of employee Melanie Humlicek  
(PLEASE PRINT OR TYPE)

Address of employee 1125 21st Ave North St Petersburg, FL 33704  
STREET OR P.O. BOX # CITY STATE ZIP

1/6/11 DATE Melanie Humlicek SIGNATURE OF EMPLOYEE

**INSTRUCTIONS TO EMPLOYER:** Please complete, have notarized and forward this Certification of Work Experience form to the Board of Accountancy, 240 N. W. 76th Drive, Suite A, Gainesville, Florida 32607.

1. Name of employer Gregory, Sharer & Stuart
2. Location of office in which employee was employed St. Petersburg Florida
3. FULL-TIME EMPLOYMENT From 11-1-04 To 5-28-08  
 Number weeks employed 188 Applicant still employed:  YES  NO  
 Average hours per week employed 40+  
 Total hours employed 7,952.40
4. PART-TIME EMPLOYMENT (Give complete details below Attach additional statement if necessary)  
 Employed from N/A To \_\_\_\_\_  
 Number weeks employed \_\_\_\_\_  
 Average number hours per week employed \_\_\_\_\_  
 Total hours employed \_\_\_\_\_

5. Is there any additional information concerning the good moral character or technical fitness of the employee relative to his/her practice of public accounting that you feel the Board should be informed of?  Yes  No (If "Yes", please attach written explanation.) Good moral character means a "personal history of honesty, fairness, and respect for the rights of others and the laws of this state and nation."

COMPLETE REVERSE SIDE

I, the undersigned, state that the employee named on this certification:

has rendered such services as are customarily performed by a full-time regularly employed professional staff employee of a certified public accountant or firm thereof engaged in the full-time practice of public accounting for at least one year and was supervised (as defined below) by a certified public accountant who was employed on a full-time basis.

has been employed for at least one year by a unit of federal, state or local government in a position which required the use of accounting skills and was supervised (as defined below) by a certified public accountant who was employed by the unit of federal, state or local government on a full-time basis.

has been employed for at least one year in industry and that employment required the use of accounting skills as a substantial part of his/her duties and was supervised (as defined below) by a certified public accountant who was employed on a full-time basis.

has been employed for at least one year by an educational institution in a full-time accounting teaching position and was supervised (as defined below) by a certified public accountant who was employed on a full-time basis.

has been employed for at least five years in public accounting, industry, or by a unit of federal, state, or local government and that employment required the use of accounting skills as a substantial part of his/her duties, after licensure as a CPA or Canadian or Australian Chartered Accountant, under the supervision (as defined below) of a licensed CPA or Canadian or Australian CA.

Supervision, as utilized in Section 473.308(4), F.S., shall be deemed and construed to mean the applicant, during his employment, was subject to oversight, guidance and evaluation by a certified public accountant who has 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.

I state that these statements are true and correct and recognize that providing false information may result in disciplinary action against my license or criminal penalties pursuant to sections 455.2275 and 837.06, Florida Statutes.

Employer's name Richard H. Coton, CPA

Firm name (if applicable) Gregory, Sharer & Stuart, P.A.

Status in firm (if applicable) Shareholder

CPA certificate no. AC 0011414 Date issued 9/23/82 State in which certified Florida

1/28/11  
DATE

Richard H. Coton  
SIGNATURE OF EMPLOYER, PARTNER OR STOCKHOLDER



**EXHIBIT B**

to the

PETITION FOR PERMANENT WAIVER OR VARIANCE FROM RULE 61H1-27.0041.



**BUSH|ROSS**  
ATTORNEYS AT LAW

1801 N Highland Avenue  
Tampa, Florida 33602  
(813) 224-9255 (Phone)  
(813) 225-9620 (Fax)  
www.bushross.com

Mailing Address  
Post Office Box 3918  
Tampa, Florida 33601-3918

CELESTE N PERRINO  
cperrino@bushross.com  
(813) 204-6425 (Direct Line)

May 25, 2011

VIA CERTIFIED MAIL AND FACSIMILE

Clerk of the Agency  
Florida Board of Accountancy  
Attention: Examination Specialist  
240 NW 76<sup>th</sup> Drive, Suite A  
Gainesville, Florida 32607  
Fax: (352) 333-2508

Joint Administrative Procedures Committee  
Room 102  
Holland Building  
Tallahassee, Florida 32399

RECEIVED  
MAY 27 2011

BOARD OF ACCOUNTANCY

Re: Petition for Permanent Variance for Melanie Humlcek  
Our File No.: 013214.00001

Dear Sir or Madam:

On behalf of our client, Ms. Melanie Humlcek, enclosed please find a Petition for Permanent Waiver or Variance From Rule 61H1-27.0041. Pursuant to this petition, we respectfully request that the Board of Accountancy evaluate the merits and fairness of applying Rule 61H1-27.0041 to Ms. Humlcek. Please contact me if we can provide any additional information to assist the Board in its review of this Petition. Thank you for your assistance in this matter.

*As evidence of this filing, please date stamp the enclosed duplicate copy of this letter and return it to me in the enclosed self-addressed stamped envelope.*

Sincerely,



Celeste N. Perrino

Enclosure