

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
DAVID KEITH BROWN**

---

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/13/2018
File #	2018-10104

**VW 2018-209**

**ORDER DENYING PETITION**

Petitioner, David Keith Brown, filed a petition for a temporary variance from the requirements of Rules 61H1-31.004 and 61H1-31.006, Florida Administrative Code (FAC), on September 14, 2018. The notice of the petition appeared in the Florida Administrative Register on October 4, 2018, in Volume 44 Number 194; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on November 9, 2018, in Tampa, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel; the Board was represented by Rachelle Munson, 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, currently inactive, reverted to delinquent status on January 1, 2018, after he failed to timely pay the renewal fee for his CPA license by December 31, 2017.
2. Petitioner renewed his licensure on August 22, 2018. Petition reflects that Petitioner was the primary caregiver for his elderly parents and did not renew earlier for that reason. Petitioner states that his father became seriously ill and passed away on January 3, 2018.
3. Rule 61H1-31.004, FAC, provides that a delinquent status licensee shall pay a

delinquency fee of \$25.00 when the licensee applies for active or inactive status.

4. Rule 61H1-31.006, FAC, provides in part that [t]he application fee for reactivation of a delinquent status license to active is \$250.00.

5. Petitioner seeks a permanent variance from Rule 61H1-31.004, FAC, to waive the delinquency fee when the licensee applies for active or inactive status.

6. Petitioner seeks a permanent variance from Rule 61H1-31.006, FAC, to waive the application fee for reactivation of a delinquent status license.

### **GROUND FOR DENIAL**

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

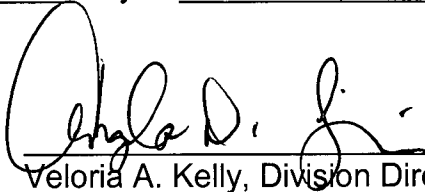
7. Petitioner failed to establish that the purpose of the underlying statutes, Sections 473.305 and 473.313, Florida Statutes, would be met were he to be granted a variance from the rules.

8. Petitioner further failed to establish that the Board's application of Rules 61H1-31.004 and 61H1-31.006, 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 7<sup>th</sup> day of December, 2018, by  
the Florida Board of Accountancy.

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

### **NOTICE TO PETITIONER**

The Petitioner may seek review of this Order, pursuant to Sections 120.569 and 120.57, FS, 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 the Petitioner disputes any material fact upon which the Board's decision is based, Petitioner may request a hearing before an administrative law judge pursuant to Section 120.57(1), FS; the 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 Petitioner does not dispute any material fact, Petitioner may request a hearing before the Board pursuant to Section 120.57(2), FS; the petition must include the information required by Rule 28-106.301, FAC, a copy of which is enclosed. If Petitioner requests a hearing, Petitioner has 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, Petitioner is 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: **David Keith Brown**, 10499 Utopia Circle South, Boynton Beach, Florida 33437; and to: Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloirdalegal.com this 13<sup>th</sup> day of December, 2018.

Brandon M. Nichols

Jonathan Zachem, Secretary

Rick Scott, Governor

## MEMORANDUM

TO: Jonathan Zachem, Secretary  
Reginald Dixon, Chief of Staff

FROM: Paul Waters, Deputy Secretary

SUBJECT: Delegation of Authority

DATE: September 12, 2018



---

I, Paul Waters, hereby delegate to Angela Francis, signature authority on behalf of Director Veloria Kelly due to a medical emergency. All documents signed on Director Kelly's behalf should have a copy of this Delegation of Authority attached.

PW/tr

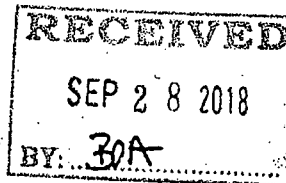
VW 2018-209

**DAVID KEITH BROWN**

*Certified Public Accountant*

10499 Utopia Circle South  
Boynton Beach, Florida 33437  
Telephone (954) 983-2121

September 7, 2018



<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/14/2018
File #	

Florida Board of Accountancy  
Department of Business and Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399

SEP 14 2018

SEP 14 2018  
SEP 14 2018

RE: David Keith Brown

CPA License Number AC0016014

- A) Request to Refund Erroneous Reactivation Fee of \$250.00 (F.A.C. 61 H1.31.006 and Florida Statutes §473.305 and §473.313).
- B) Petition for Waiver or Variance Pursuant to Florida Statutes §120.542:
  - 1) Refund Renewal Delinquency Penalty of \$25.00 (F.A.C. 61-H1.31.004); and
  - 2) Refund Reactivation Penalty of \$250.00 (F.A.C. 61 H1.31.006).

SEP 24 2018

Dear Sir:

I hereby respectfully request the Board of Accountancy, Florida Department of Business and Professional Regulation ("Board"), for good cause, to order a refund of the erroneous reactivation penalty of \$250.00 (F.A.C. 61 H1.31.006) I paid. I was not liable to pay that penalty fee to renew my CPA license for the CPA Group 2 license renewal period which commenced on January 1, 2018 and ends December 31, 2019 ("License Period 2018-2019") because my license was not inactive, but active/delinquent, and the reactivation penalty only applies to inactive licenses pursuant to Florida Statutes §473.313, not to active/delinquent licenses.

I also hereby respectfully petition the Board, for good cause, to issue a waiver or variance, pursuant to Florida Statutes §120.542 and any other applicable law, regulation and rule, of the following penalties I paid pertaining to the renewal of my CPA license for License Period 2018-2019 ("2018-2019 Renewal"), and to order a refund of those penalties I paid:

1. Renewal Delinquency Penalty of \$25.00 (F.A.C. 61-H1.31.004); and
2. Reactivation Penalty of \$250.00 (F.A.C. 61 H1.31.006) (if not refunded as requested above) (collectively "2018-2019 Penalty Fees").

Page 2  
Florida Board of Accountancy  
RE: David Keith Brown  
CPA License Number AC0016014  
September 7, 2018

### BACKGROUND

From around 2013 until just recently, I needed to devote a substantial amount of my time and effort as the sole Florida caregiver for my elderly father and mother, who were born in 1925 and 1929, respectively. I have two sisters who live in St. Louis, MO, and Chicago, IL, respectively, but for various reasons they cannot be in Florida for extended periods of time and cannot be timely available whenever emergencies arise.

From around 2013 until just recently, both of my parents began to have serious health issues, which became worse with each succeeding year. Numerous times one or the other or both needed to be taken to doctor appointments, taken to hospital emergency rooms, hospitalized, placed in convalescence/rehabilitation facilities, or receive intensive home care over extended periods. Due to their advanced age and health, they had been unable to completely take care of each other and they required my assistance. As a result, I needed to be on-call 24/7 as their sole local caregiver, and it became impossible for me to devote the time to work as a CPA.

As a result, I put my CPA license in inactive status for the CPA Group 2 license renewal period beginning January 1, 2014 and ending December 31, 2015 ("License Period 2014-2015") and the license period January 1, 2016 to December 31, 2017 ("License Period 2016-2017"). I did not practice and was not employed as a CPA during the License Period 2014-2015 and the License Period 2016-2017 when my CPA license was inactive, and I did not practice and was not employed as a CPA during the License Period 2018-2019 when my CPA license was active/delinquent. Therefore, I fully complied with the requirements of an inactive and an active/delinquent CPA license.

I also placed my Ohio CPA license, which must be kept current because it is my original CPA license, in inactive status for the three (3) year renewal period commencing January 1, 2016 and ending December 31, 2018 because of the above family issues.

A substantial number of continuing professional education ("CPE") I had earned during the prior inactive years would have expired for both Florida and Ohio, therefore, I reactivated my Florida and Ohio licenses in December 2016/January 2017 ("2017 Reactivation"). If not, I would have had to take more CPE courses for the expiring CPE courses to satisfy the CPE requirement for the prior inactive period(s), thus effectively requiring me to have two (2) times the normal required CPE hours.

On or about December 28, 2016, you received my reactivation application for the License Period 2016-2017. I paid all the required fees and I submitted all the required hours of CPE for the 2017 Reactivation, and on or about January 30, 2017 you reactivated my CPA license for the License Period 2016-2017. In your letter to me dated January 30, 2017, a copy of which is attached as Exhibit "A" and made a part hereof, you advised me that I was not required to pay any more fees until December 31, 2017 for the License Period 2018-2019, that I was current through June 30, 2017 for my CPE requirements, and that I was not required to fulfill and report any further CPE hours until June 30, 2019 for the 2020-2021 renewal.

Page 3

Florida Board of Accountancy

RE: David Keith Brown

CPA License Number AC0016014

September 7, 2018

FACTS AND CIRCUMSTANCES BASIS FOR WAIVER OR VARIANCE

On December 15, 2017, my father became seriously ill and we had to rush him to the emergency room. He was admitted to the hospital that night. His illness and hospitalization continued throughout the month of December and the first days of January 2018, and he passed away on January 3, 2018. A copy of my father's death certificate (redacted confidential information) is attached and made a part hereof as Exhibit "B". The funeral was in St. Louis, and I was there for about a week.

Commencing December 15, 2017 and until about two weeks after my father's death, I spent a substantial amount of my time at the hospital, and my wife and I moved to my mother's house to assist her and to do the shopping and other chores in and around her house. Every day or two I would go to my house, which is about fifteen (15) minutes away from my parents' house, to get my mail, etc.

Because of the above situation, I was totally distracted and disorganized from December 15, 2017 until at least the end of January 2018, and the emotional strain caused by my father's last illness and death totally disrupted my life. I have excellent credit and I have almost never paid a bill late. During that period, I barely remembered to pay my household bills timely; and, in fact, I paid some of them late and I would have paid more of them late if they were not setup on automatic payments. Unfortunately, one of those bills that I overlooked paying timely was my Florida CPA renewal fee because the renewal notice was not with the current mail since it was received prior to December 2018. I had planned to pay the fee timely in December before the final due date of December 31, 2017, however, it was overlooked and did not get paid timely.

I obtained my Florida CPA license in 1985. In fact, until this instance I do not remember ever paying any license fee late, including fees for my Florida CPA, real estate salesperson/broker and insurance agent licenses and my Ohio and Pennsylvania professional licenses.

It was not until the end of March 2018 when I was timely renewing my Florida real estate license that I saw on your website that my Florida CPA license was "active/delinquent", not "active/current". I initially mistakenly confused it with the reactivation/renewal of my Ohio CPA license, which was not due for renewal until December 31, 2018, and I mistakenly thought that I did not have to pay a license fee for the License Period 2018-2019. But, in March 2018 you brought it to my attention that the license fee was in fact due by December 31, 2017, and I retrieved the Florida license reactivation documentation and the license renewal notice and refreshed my memory.

I am now sixty-seven (67) years old and I only work part-time because I have my own personal health issues and because I only want and need to work part-time to supplement my retirement income and to keep me occupied and not idle. I anticipate my income from being employed in the future as a CPA will be very limited, and I do not believe that I will receive any non-salary benefits from my part-time employment. Therefore, I will not be receiving the salary and benefits that a CPA receives as a full-time employee because s/he has an active CPA license.

Furthermore, my current primary sources of income are from my monthly Social Security and some other very limited retirement income which barely cover my frugal monthly living expenses, and my liquid retirement funds are critically small.

I needed to have my Florida CPA license non-delinquent and active to begin looking for employment as a CPA. However, being required to pay the 2018-2019 Penalty Fees to reactivate my CPA license most definitely imposed a substantial financial hardship upon me. I had to pay the 2018-2019 Penalty Fees out of my very limited liquid retirement funds.

#### LEGAL BASIS FOR RELIEF REQUESTED

First, I believe that I was erroneously required to pay the reactivation fee of F.A.C. Rule 61H1.31.006. My license was not "inactive/delinquent" at January 1, 2018, it was "active/delinquent".

In your letter to me dated January 30, 2017 (Exhibit "A") you stated:

"Your reestablishment period begins on July 1, 2017 and ends June 30, 2019. Between these dates, you will need to complete 80 total hours of continuing professional education (CPE) credits with 20 hours in accounting and auditing and four (4) in board approved ethics. No more than 20 hours may be in behavioral subject."

Thus, at December 31, 2017, I had no requirement to report any more CPE, and no further CPE reporting was required until June 30, 2019. As a result, you classified my CPA license as "active/delinquent", not "inactive/delinquent" when I did not timely pay the 2018-2019 Renewal fees.

Furthermore, you did not require me to file DBPR Form CPA-7, CPA Change of Status Application, which you require for CPA license "reactivations". That form requires the reporting of previously unreported required CPE to reactivate a CPA license, which was inapplicable in my situation.

You only required me to pay the "delinquent" fees to make my CPA license active/current.

Prior to paying the \$250.00 reactivation fee, I requested that it be removed, but I was told that no one except the Board had the authority to remove it, and I had to pay it to make my CPA license "active/current" so that I could start to look for work as a CPA.

None of the provisions of Florida Statutes §473.313, Inactive Status, the underlying enabling statute regarding inactive licenses and reactivations, are applicable to me:

- 1) Florida Statutes §473.313(1). This provision is not applicable since I did not request that my license to be made inactive for the License Period 2018-2019, thus it was active in all of 2018 and I did not need to reactive it for the 2018-2019 Renewal (i.e. it was "active/delinquent", not "inactive/delinquent");



- 2) Florida Statutes §473.313(2). This provision is not applicable since I did not request that my license be made inactive for the License Period 2018-2019, and I timely completed and reported to the Board all the required CPE under Florida Statutes §473.312 for the 2018-2019 Renewal prior to December 31, 2017 as part of the 2017 Reactivation, thus, my license was not inactive (i.e. it was "active/delinquent", not "inactive/delinquent");
- 3) Florida Statutes §473.313(3). This provision is not applicable since I timely completed and reported to the Board all the required CPE under Florida Statutes §473.312 for the 2018-2019 Renewal prior to December 31, 2017 as part of the 2017 Reactivation, thus, my license was not inactive (i.e. it was "active/delinquent", not "inactive/delinquent");
- 4) Florida Statutes §473.313(4). This provision is not applicable since I timely completed and reported to the Board all the required CPE under Florida Statutes §473.312 for the 2018-2019 Renewal prior to December 31, 2017 as part of the 2017 Reactivation, thus, my license was not inactive (i.e. it was "active/delinquent", not "inactive/delinquent"); and
- 5) Florida Statutes §473.313(5). This provision is not applicable since my license was not null and void for the License Period 2018-2019, it was "active/delinquent".

The reactivation fee of Florida Statutes §473.305 appears to only authorize a fee for Florida Statutes §473.33 reactivations, and other than that relationship to Florida Statutes §473.33, it is not applicable.

None of the provisions of Florida Statutes pertaining to license reactivations are applicable in my case, and, accordingly, I was not liable to pay the \$250.00 F.A.C. Rule 61H1.31.006 reactivation fee. I should have only been required to pay the F.A.C. Rule 61H1.31.003 and Clay Scholarship fees for the 2018-2019 Renewal fees, and the delinquency penalty of F.A.C. Rule 61H1.31.004 if the Board does not issue a waiver or a variance of that penalty. Therefore, the \$250.00 penalty I erroneously paid should be refunded to me.

Second, because of the above described distractions and strain caused by the illness and imminent death of my father and other related facts and circumstances which occurred when the 2018-2019 Renewal license fee was due (collectively "Facts and Circumstances"), I believe that I have good cause to request the waiver or variance of the strict application of F.A.C. Rules 61H1.31.004 and 61H1.31.006. The strict application of said Rules by the Board imposes significant financial and other hardships, does not serve the purposes of the underlying enabling statutes, would be unreasonable, would be unfair, and leads to unintended results in my particular instance due to those Facts and Circumstances.

Page 6

Florida Board of Accountancy

RE: David Keith Brown

CPA License Number AC0016014

September 7, 2018

Furthermore, because of those Facts and Circumstances, I believe that the strict application of F.A.C. Rules 61H1.31.004 and 61H1.31.006 would violate the principles of fairness since the purpose of those Rules are to penalize a person who negligently disregards the Rules, not to penalize a person who experiences an extraordinary event that causes the failure to strictly comply with the Rules.

Therefore, I believe that those Facts and Circumstances was such an extraordinary event, that those Facts and Circumstances sufficiently satisfy the requirements of Florida Statutes §120.542 and any other applicable law, regulation and rule for me to be entitled to receive a waiver or variance from the strict requirements of F.A.C. Rules 61H1.31.004 and 61H1.31.006, and that the granting of the variance or waiver requested herein would serve the purposes of the underlying enabling statutes in this instance.

RELIEF REQUESTED

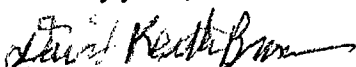
WHEREFORE, pursuant to Florida Statutes §120.542 and any other applicable law, regulation and rule, I hereby respectfully request the Florida Board of Accountancy, Department of Business and Professional Regulation:

- 1) To Order the refund of the erroneous F.A.C. 61H1.31.006 \$250.00 reactivation penalty I paid for the 2018-2019 Renewal since I am not liable for same pursuant to the provisions of Florida Statutes §473.305 or §473.313 (the underlying enabling statutes);
- 2) To Grant and Issue a waiver or a variance from the requirement to pay the F.A.C. Rule 61H1.31.004 \$25.00 delinquency penalty for the 2018-2019 Renewal, and to order the refund of the \$25.00 I paid; and
- 3) If the Board does not order a refund as requested in Relief Requested Paragraph 1, then to Grant and Issue a waiver or a variance from the requirement to pay the F.A.C. Rule 61H1.31.006 \$250.00 reactivation penalty for the 2018-2019 Renewal, and to order the refund of the \$250.00 I paid.

I hereby certify under penalty of perjury that the foregoing is complete, true and correct to the best of my knowledge and belief.

If you have any questions or need any additional information, please do not hesitate to contact me. Thank you.

Sincerely yours,



David Keith Brown  
Certified Public Accountant

via: U.S. Certified Mail – Return Receipt Requested

Enclosures