

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE OR WAIVER BY
JAMES RUDOLPH**

NOTICE OF INTENT TO DENY PETITION **VW 2021-135**

Petitioner, James Rudolph, filed a petition for a permanent variance from the requirements of **Rules 61H1-31.004, 61H1-31.006, and 61H1-33.006(1), (2), Florida Administrative Code (F.A.C.)** on September 2, 2021. The notice of the petition appeared in the Florida Administrative Register on September 20, 2021, in Volume 47 Number 182. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on October 29, 2021, via telephone and video conference. Petitioner was present and was not represented by counsel for the proceeding. The Board was represented by Rachele Munson, Assistant Attorney General. The petition is attached hereto and incorporated by reference.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. Rule 61H1-31.004, F.A.C., provides:

A delinquent status licensee shall pay a delinquency fee of \$25.00 when licensee applies for active or inactive status.

Rule 61H1-31.006, F.A.C., provides:

The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of Rule 61H1-33.006, F.A.C., shall be required for reactivation.

Rule 61H1-33.006(1), (2), F.A.C., in relevant part, provides:

(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, ... shall apply for such reactivation by completing and submitting to the Department Form DBPR CPA 7 – CPA Change of Status Application, ... However, if a license is

delinquent on January 1 for failure to comply with Rule 61H1-33.003, F.A.C., through failure to report compliance with continuing professional education requirements by ... 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 61H1-31.003, 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 as follows:
Accounting/Auditing – At least 30 hours
Ethics – At least 8 hours
Behavioral – No more than 30 hours
Total Hours – 120 hours.

2. Petitioner asserts he was accustomed to receiving a renewal notice by postal mail but, for the first time, he did not receive the renewal notice in 2020 by mail.

3. The Department of Business and Professional Regulation (Department) in 2020 switched to a paperless system and sent renewal notices solely by email to licensees.

4. Petitioner did not maintain a current email address with the Department and admitted that the email address of record for him with the Department was “stale” during the distribution of renewal notices in 2020. Consequently, Petitioner did not receive a renewal notice via email.

5. Petitioner did not renew by the deadline of December 31, 2020, resulting in his license reverting to delinquent on January 5, 2021.

6. Due to the untimely renewal, Petitioner is required to complete 120 Continuing Professional Education (CPE) hours pursuant to Rule 61H1-33.006(2), F.A.C., and any additional hours needed to satisfy rule compliance.

7. Petitioner asserted the Board did not make sufficient effort to inform him of the license renewal information and deadline.

8. Petitioner has an affirmative duty as a licensee to comply with licensure renewal requirements.

9. Petitioner seeks a permanent one-time waiver of the requirements of Rules 61H1-31.004, 31.006, and 33.006(1), (2), F.A.C., to the extent necessary for the Board to allow renewal

without the requisite penalty.

GROUND FOR DENIAL

The Board determined that, based on the requirements of Rules 61H1-31.004, 31.006, and 33.006(1), (2), F.A.C., the petition should be denied on the following grounds:

10. Petitioner failed to establish that the purpose of the underlying statute, Sections 473.305, 473.313, F.S., would be met were he to be granted a variance from Rules 61H1-31.004, 31.006, and 33.006 FAC.

11. Petitioner further failed to establish that the Board's application of Rules 61H1-31.004, 31.006, 33.006(1), (2), F.A.C., given the basis for his delinquency, would violate principles of fairness and impose a substantial hardship on him.

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

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

DONE AND ORDERED this 8th day of November, 2021, by the Florida Board of Accountancy.

FLORIDA BOARD OF ACCOUNTANCY

Roger Scarborough
Roger Scarborough, Division Director ✓
Division of Certified Public Accounting

NOTICE OF RIGHT TO HEARING

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 **James Rudolph**, 2461 West State Road 426, Suite 2001, Oviedo, FL 32765; and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com; Cassandra Fullove, Paralegal, at Cassandra.Fullove@myfloridalegal.com this 17th day of November, 2021.



FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/2/2021
File #	

REC

SEP 02 2021

Florida Division of
Certified Public Accounting

Petition for Waiver of Board of Accountancy Rules

Petitioner Information:

James N. Rudolph
 2461 West State Road 426, Suite 2001
 Oviedo, Florida 32765
 Email: jrudolph@rudolphshiverscpa.com
 Phone: 407-706-6996
 Fax: 407-706-6997

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Applicable Portions of the Rules I am requesting a waiver from:

Rule 61H1-31.004, F.A.C.

A delinquent status licensee shall pay a delinquency fee of \$25 when the licensee applies for active or inactive status.

Rule 61H1-31.006, F.A.C.

The application fee for reactivation of an inactive status license to active status shall be \$250.00; for reactivation of a delinquent status license to active, \$250.00. In all cases completion of the requirements of rule 61H1-33.006, F.A.C. shall be required for reactivation.

Rule 61H1-33.006(1)(2), F.A.C.

(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 7 – CPA Change of Status Application. However, if a license is delinquent on January 1 for failure to comply with rule 61H1-33.003 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 61H1-31.003, 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 as follows:

Accounting/Auditing	Ethics	Behavioral	Total Hours
At Least 30 hours	At least 8 hours	No more than 30 hours	120 Hours

Rule 28-104.002, F.A.C. Petition for variance or waiver, sections (1)-(4).

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Section 473.305, F.S.

Section 473.313, F.S.

Section 120.542 (2), F.S.

Type of Action Requested:

I am requesting the board to grant a waiver from the applicable rules listed above in reactivating my license. I am requesting that my CPA license be reactivated from delinquent status to active.

Specific Facts:

For 26 years, I have been a CPA in good standing with the state of Florida. Since I became a CPA in 1995, every other year I have received a paper reminder that my license was coming up for renewal. And each time I responded by renewing on a timely basis. It is my understanding that within the past 2 years, it was decided that no paper reminders would be sent out, and that renewal reminders would be sent by email only. Additionally, no paper mailing was sent to inform me that the renewal reminder would come only by email. The problem is, the renewal email was sent to a stale email address of mine. So I never received any reminder for me to complete my renewal with the Department of Business and Professional Regulation. It is my understanding that follow up emails were also sent to the stale email address. Despite the fact that "auto response" emails were undoubtedly sent in response to the rejected emails to my old address, no attempt was made to locate me by mail, phone, fax, or my correct email address, which I have had for 8 years now. In short, I simply had no reminder or indication that my renewal was due. I had relied on the paper reminders for 26 years, and was fully expecting a similar reminder this go around. Because of the technological breakdown in communication, and my not being served a proper reminder, my renewal did not happen on a timely basis.

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I feel that it would be unfair under these circumstances to penalize me with the delinquency fees, as well as the requirement to complete 120 hours of CPE. All of my required CPE hours have been met on a timely basis. These penalties would present both a financial and time-consuming hardship that would be unjust under the circumstances. Had I been properly notified of my need to renew my license, it would have happened immediately, as it has every past renewal period. I will take all necessary steps and precautions in the future to make sure that I get notified properly for my license renewals. This will not happen again.

Section 120.542 of the Florida Statutes would be served in granting my request for waiver. I believe that I have demonstrated in my waiver request that strict application of Rules 61H1-31.004, 61H1-31.006, and 61H1-33.006(1)(2) would result in substantial hardship that would violate the principles of fairness. I simply did not have the same opportunity as others, who were properly notified, to renew my license in a timely manner due to not receiving any proper notification.

I am seeking a one-time waiver from the application of these rules.

I appreciate your attention to this matter, and I look forward to resolving this situation as soon as possible.

Sincerely,



James N. Rudolph