

Table of Contents*

Introduction and Jurisdiction	Pg. 1
Findings of Fact	Pg. 2
Conclusions of Law	Pg. 4
Order	Pg. 6
Consent to Board Decision and Order	Pg. 7
Exhibit A: Relinquishment of Certificate	Pg. 10

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1 **BEFORE THE ARIZONA STATE BOARD OF ACCOUNTANCY**

2
3 In the Matter of Certified Public Accounting)
Certificate No. 4669-R issued to:
4 JAY STEVEN OZER,
5 Respondent
6 _____)

Docket No. 00A-98230B-ACY

**DECISION AND ORDER
(By Consent)**

7
8 **I. INTRODUCTION AND JURISDICTION**

9 1. The Arizona State Board of Accountancy ("Board") is the state agency authorized
10 pursuant to A.R.S. § 32-701 *et seq.* to regulate the profession of Certified Public Accountants in the
11 State of Arizona.

12 2. On December 4, 2000, the Board filed a Notice of Hearing and Public Complaint
13 ("Notice") against Arthur Andersen, LLP ("Andersen"), Certified Public Accountant Jay Steven Ozer
14 ("Respondent"), and others regarding services they provided to the Baptist Foundation of Arizona
15 ("BFA"). The Notice was issued pursuant to A.R.S. § 32-701 *et seq.* and A.R.S. § 41-1061 *et seq.* The
16 Board and Respondent have agreed to a full and final settlement of the matters alleged in the
17 December 4, 2000 Notice as reflected in this Decision and Order By Consent ("Consent Order").
18 Separate consent orders have been entered with the other named respondents under Docket Nos. 00A-
19 98230-ACY; 00A-98230C-ACY and 00A-98230D-ACY.

20 3. Respondent disputes that the Factual Findings set forth below are complete and
21 accurate, denies any wrongdoing with regard to the matters set forth herein, and denies that any
22 violations of professional standards have occurred. The Consent Order represents a compromise of
23 disputed matters and is the result of good faith settlement negotiations regarding issues that are
24 disputed by the parties. The Findings of Fact and Conclusions of Law set forth herein are only for
25 purposes of settlement of this disputed matter, and shall have no application or effect outside any
26 proceedings initiated by the Board, including as evidence from which any liability or wrongdoing

1 could be inferred. The Board has not made a determination on the merits contained herein. This
2 Consent Order is based upon the following Findings of Fact and Conclusions of Law and entered in
3 lieu of an administrative hearing.

4 II. FINDINGS OF FACT

5 4. Respondent is a Certified Public Accountant ("CPA") who holds Arizona Certificate
6 No. 4669-R. This Certificate was issued on June 3, 1985, and was in full force and effect at all
7 material times.

8 5. BFA was an Arizona religious non-profit 501(c)(3) organization that was incorporated
9 in 1948 for the purpose of providing financial support for Southern Baptist causes. BFA was an
10 institution of the Arizona Southern Baptist Convention ("Convention") which elected BFA's Board
11 of Directors. BFA's senior management consisted of William Crotts, President; Thomas Grabinski,
12 Vice President and Legal Counsel; and Donald Deardoff, CPA, Treasurer and Controller. In this
13 Consent Order, "BFA Senior Management" will refer to these three individuals who primarily
14 directed the operations of BFA.

15 6. Since 1984¹, BFA engaged Andersen as its independent auditor. From 1984 to 1997²,
16 Andersen issued unqualified audit opinions on BFA's combined financial statements. Also, during
17 these years, Andersen was engaged by BFA or BFA's attorneys to perform other accounting and
18 auditing, management consulting and tax services. The engagements that are the subject of this
19 Consent Order include: (1) the audits of BFA's 1992-1997 combined financial statements and (2) a
20 special risk assessment review in 1997 and 1998 ("Tax Risk Assessment").

21
22
23
24 ¹When years are used in this Consent Order, the reference is to the calendar year ending December 31 and
the audit performed on that year by Respondent.

25 ²Andersen was engaged to conduct the 1998 audit, but did not issue an opinion on BFA's combined financial
26 statements. Andersen issued, but later withdrew, unqualified opinions on the separate 1998 financial statements of certain
entities within the BFA combined group. Respondent was the partner in charge of these 1998 engagements.

1 7. For the 1992-1997 audit engagements, Respondent was the Andersen partner with the
2 ultimate responsibility for the conduct of the audits, including reviewing all work performed,
3 resolving all accounting issues, evaluating the results of the audits and forming an opinion in issuing
4 final reports. As the audit partner, Respondent was required to know, understand and consider any
5 other information about BFA gathered in connection with Andersen's Tax Risk Assessment and to
6 determine if such information should be included in or had a material affect on BFA's financial
7 statements.

8 8. BFA's structure included a complex maze of for-profit subsidiary corporations and
9 controlled non-profit affiliates through which it engaged in investment activities and the sale of
10 securities. BFA operated a trust department and was authorized to serve as a non-bank passive trustee
11 for individual retirement accounts ("IRAs"). BFA also managed affiliates and their subsidiaries
12 including Arizona Southern Baptist New Church Ventures, Inc. ("New Church Ventures"), and
13 A.L.O., Inc. ("ALO"). BFA employees sold investment products on behalf of New Church Ventures
14 which included IRAs.

15 9. BFA invested directly in real estate. BFA also raised funds through the sale of
16 securities such as investment agreements ("IAs") and mortgage backed notes ("MBNs") and invested
17 those funds in real estate loans, real property, and operating businesses. BFA's 501(c)(3) tax-exempt
18 status supported the availability of such an exemption. In 1997, the IAs and MBNs were sold through
19 offering circulars and supplements thereto which included BFA's "unaudited" financial statements
20 which were similar to the 1997 financial statements, upon which Andersen opined. Andersen's name
21 did not appear in these offering circulars, but investors may have had access to Andersen's audit
22 reports. BFA claimed to be exempt from Arizona statutes requiring registration of securities.

23 10. BFA and its attorneys claimed that BFA was exempt from Arizona banking
24 regulations. As Andersen acknowledged in the audit work papers, BFA operated in a manner similar
25 to a financial institution in some respects. Respondent planned the audit to consider these
26 similarities.

1 11. Because of its bank-like operations and products, BFA faced several risk factors that
2 affect banks and savings institutions such as liquidity and asset quality. Because of the lack of
3 regulatory oversight of BFA's operations and sales of securities, BFA's offerings were not subject
4 to the same scrutiny as a financial institution's products.

5 12. On August 12, 1999, the Arizona Corporation Commission issued an Order to Cease
6 & Desist and Other Affirmative Action and Consent to Same prohibiting BFA and New Church
7 Ventures from offering to sell or selling securities in violation of the Arizona Securities Act, A.R.S.
8 § 44-1801 *et seq.* Shortly thereafter, on November 11, 1999, BFA filed protection under Chapter 11
9 of the United States Bankruptcy Code.

10 13. BFA's Senior Management was responsible for the preparation of BFA's financial
11 statements in conformity with Generally Accepted Accounting Principles ("GAAP"). GAAP are the
12 conventions, rules and procedures necessary to define accepted accounting practices at a certain time.

13 14. Respondent, on behalf of Andersen, was required to conduct the audits in accordance
14 with Generally Accepted Auditing Standards ("GAAS") and to report compliance with GAAS.
15 GAAS required Respondent to state whether BFA's financial statements were presented in
16 conformity with GAAP and to identify those circumstances in which GAAP had not been observed
17 in BFA's preparation of its financial statements.

18 III. CONCLUSIONS OF LAW

19 15. The Board has personal and subject matter jurisdiction over Respondent pursuant to
20 A.R.S. § 32-701 *et seq.* and A.A.C. R4-1-101 *et seq.* The Board has the authority to discipline
21 Respondent pursuant to A.R.S. §§ 32-741(A)(4); (A)(6) and (A)(9), and 32-742.

22 16. Pursuant to A.R.S. § 32-741, after notice and opportunity for hearing, the Board may
23 revoke or suspend Respondent's certificate to practice public accountancy and take other disciplinary
24 action concerning Respondent for engaging in dishonesty, fraud or gross or continuing negligence
25 in the practice of accounting (A.R.S. § 32-741(A)(4)) and for violating any provisions of Title 32,
26

1 Chapter 6, Arizona Revised Statutes (A.R.S. § 32-741(A)(6)). This Consent Order is in lieu of an
2 administrative hearing set for August 19, 2002.

3 17. While Respondent denies that any violations of professional standards have occurred
4 in connection with the engagements in issue, and disputes that the Findings of Fact are accurate and
5 complete, if this matter proceeded to hearing, the State would introduce evidence it contends would
6 show that Respondent's conduct, in connection with the audits and services described in the Findings
7 of Facts, constitutes a failure to comply with applicable professional standards as set forth in A.A.C.
8 R4-1-455.01 and the A.A.C. R4-1-455.03, and violates A.R.S. § 32-746.

9 18. With respect to BFA's disclosure of related parties, BFA's conduct as a non-bank
10 passive trustee of IRAs and noncompliance with Treasury regulations, the State contends that BFA's
11 1992-1994 financial statements were not prepared in conformity with GAAP and Respondent's
12 conduct was not in accordance with GAAS.

13 19. With respect to the following issues, the State contends that BFA's 1995-1997
14 financial statements were not prepared in conformity with GAAP and Respondent's conduct was not
15 in accordance with GAAS:

- 16 a) Disclosures regarding related parties and in particular, ALO and New Church
17 Ventures;
 - 18 b) Recognition of losses on BFA's notes receivable due from ALO and New
19 Church Ventures;
 - 20 c) Overstated gains on year-end transactions with related parties;
 - 21 d) Overstated assets of the Trusts;
 - 22 e) Disclosure of contingency issues regarding BFA's tax exempt status and lack
23 of compliance with state and federal securities laws;
 - 24 f) Disclosure of contingency issues regarding BFA's noncompliance with
25 Treasury regulations pertaining to non-bank passive trustees.
- 26

1 27. Except for the Decision and Order (By Consent) entered in the proceedings entitled
2 In the Matter of Certified Public Accounting Certificate No. 4669-R issued to JAY STEVEN OZER,
3 Respondent, in Docket No. 2002.056-ACY, no other relief will be ordered by the Arizona
4 State Board of Accountancy against Respondent as a result of his professional activities as a Certified
5 Public Accountant through the date of this Order.

6 DATED this 31st day of July 2002.

7 ARIZONA STATE BOARD OF ACCOUNTANCY

8
9 By: _____
10 Florentino J. Gonzales, CPA, President

11 **CONCURRING:**
12 William D. Baker, Esq.
13 Richard M. Gardner, CPA
14 Loretta Peto, CPA
15 Lehman William Williams

16 **CONSENT TO BOARD DECISION AND ORDER**

17 I, Jay Steven Ozer, being duly sworn, state under oath the following:

18 I have read and understand everything contained in the foregoing Findings of Fact,
19 Conclusions of Law and Order. If this Consent Order is approved by the Board, without admitting
20 the allegations contained therein, I agree to its immediate issuance and to be bound by its terms.

21 I am aware of my right to an administrative hearing in this matter and hereby waive the same.
22 I waive all my rights to challenge the foregoing Consent Order on appeal, or otherwise, to the Board
23 or any other court or tribunal. However, nothing in this Consent Order shall preclude me from giving
24 evidence and testimony, if called upon to do so, in any proceeding.

25 I understand that a violation of the Consent Order will constitute grounds for further action.
26 I understand that the Consent Order may be considered in any future disciplinary action against me.
I understand that the Consent Order may be considered by the Board in the event I apply for a new
certificate to practice in Arizona as a CPA.

1 I consent to this Consent Order for the sole purpose of entering into a full and complete
2 settlement of the disputed matters alleged in the December 4, 2002 Notice. In addition, I deny any
3 wrongdoing with regard to the matters set forth herein and deny that any violations of professional
4 standards have occurred, and believe that BFA management deceived the Andersen auditors.

5 I understand that this Consent Order and the related investigation is a matter of public record.
6 I retired from Andersen in August 2000. Since my retirement, I have not engaged in auditing or tax
7 preparation services for which I require my CPA license. I have not engaged in any business
8 consulting services for over one year from today's date. I have no clients to notify of the
9 relinquishment of my certificate.

10 By my signature, I verify that I have read and understand everything contained in the
11 foregoing Consent Order.

12 Dated this 9th day of August 2002.

Back To Top

13
14 
15 Jay Steven Ozer

16 SWORN AND SUBSCRIBED BEFORE ME, this 9th day of August 2002, to certify
17 which ~~witness my hand and seal of office.~~



17 
18 Notary Public in and for the State of Arizona

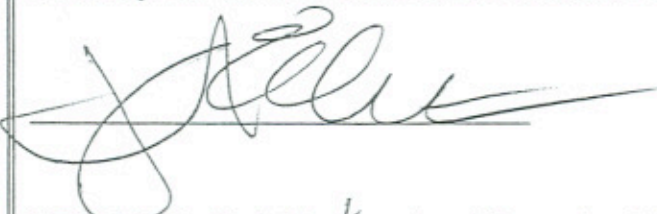
19 Copy of the foregoing mailed September
20 Certified Mail this 16 day of ~~August~~ 2002, to:

Certified Mail No.
7000 1670 0006 4388 6701

21 Richard E. Drooyan, Esq.
22 Brad D. Brian, Esq.
23 Marc A. Becker, Esq.
24 Tung Yin, Esq.
25 Munger, Tolles & Olson
26 355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071
Attorneys for Jay Steven Ozer

1 Copy of the foregoing mailed
this 16th day of August 2002 to:

2 Felecia A. Rotellini, Chief Counsel
3 Joel P. Nordquist, Assistant Attorney General
4 Accountancy Enforcement Unit, LES/Civil Division
5 Arizona Attorney General Office
6 1275 W. Washington
7 Phoenix, Arizona 85007
8 **Attorneys for Arizona State Board of Accountancy**

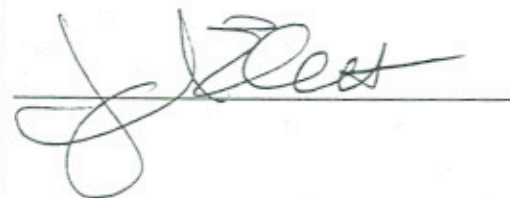
9 

10 ORIGINAL filed this 16 day of September 2002 with:

11 Arizona State Board of Accountancy
12 100 N. 15th Avenue, Suite 165
13 Phoenix, AZ 85007

14 Copy of the foregoing mailed
15 this 16 day of September 2002 to:

16 Cliff Varnell, Director
17 Office of Administrative Hearings
18 1400 W. Washington, Suite 101
19 Phoenix, AZ 85007

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[Back To Top](#)

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BEFORE THE ARIZONA STATE BOARD OF ACCOUNTANCY

In The Matter of Certified Public)
Accountant Certificate No. 4669-R,)
Issued To:)
JAY STEVEN OZER,)
Respondent)

No. 00A-98230B-ACY
No. 2002.056-ACY

RELINQUISHMENT OF CERTIFICATE

Pursuant to paragraph 22 of the Decision and Order by Consent in 00A-98230B-ACY and paragraph 19 of the Decision and Order By Consent in No. 2002.056-ACY, I, Jay Steven Ozer, acknowledge that disciplinary proceedings have been initiated against me pursuant to Title 32, Chapter 6, Article 3, Arizona Revised Statutes, and I relinquish my right to practice accounting as a certified public accountant in the State of Arizona. I understand that if I choose to apply for a new certificate, I must meet all requirements for initial certification pursuant to Section 32-721, Arizona Revised Statutes. I further understand that, in deciding whether to issue a new certificate to me, the board will consider all disciplinary actions currently pending against me including Board File No. 2001.138 and any other matters it determines to be appropriate.

DATED this 9th day of August 2002.



Jay Steven Ozer

EXHIBIT "A" TO DECISION AND ORDER

Back To Top