

**State of New Hampshire
Board of Accountancy
Concord, New Hampshire 03301**

**In the Matter of:
David J. Driscoll, CPA
License No. 00666
(Misconduct Allegations)**

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of accountancy, the New Hampshire Board of Accountancy (“Board”) and David J. Driscoll, CPA (“Mr. Driscoll” or “Respondent”), an accountant licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 309-B:10; RSA 309-B:11; and Board of Accountancy Administrative Rule (“Ac”) 204.01, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by licensed accountants. Pursuant to Ac 204.03(c), the Board may impose disciplinary sanctions pursuant to a settlement agreement.
2. The Board first granted the Respondent a license to practice as an accountant in the State of New Hampshire on June 12, 1974. Respondent holds license number 00666. Respondent practices as a certified public accountant for Driscoll & Company, PLLC in Littleton, New Hampshire.
3. In September 2011, the Board became aware of a lawsuit alleging that the Respondent inaccurately stated financials of the now-bankrupt Isaacson Structural Steel by millions of dollars and misled Passumpsic Savings Bank, the company’s chief lender.

4. The Board commenced an investigation to determine whether the Respondent committed professional misconduct under RSA 309-B:10, I.
5. Based on its investigation, the Board alleges the following facts in support of this Settlement Agreement:
 - A. As of 1999, the Respondent was a trustee in the Isaacson trusts (including the Isaacson Family Trust and the Isaacson Marital Trust). The Respondent was also the accountant for the trusts, the trusts' beneficiaries, and Isaacson Structural Steel.
 - B. As the accountant for Isaacson Structural Steel, the Respondent audited its financials and performed reviews of the company. The Respondent also performed the tax returns and maintained the books for the Isaacson trusts and the trusts' beneficiaries. The Respondent testified that as a trustee of the Isaacson trusts, he understood that he was obligated to monitor the trusts' investments and oversee the trusts' assets.
 - C. Beginning in 2003, the Respondent became a trustee of Passumpsic Savings Bank and its related entity, Passumpsic Bank Corp. Additionally, the Respondent served on both the Audit Committee and the Investment Trust Committee for the Board of Trustees of Passumpsic Savings Bank.
 - D. As the Chairman of the Audit Committee and a trustee of Passumpsic Savings Bank, part of the Respondent's role was to take part in discussions of whether or not to issue loans to entities seeking financing.
 - E. As a result of his roles as (1) a trustee in the Isaacson Trusts, (2) a trustee at Passumpsic Savings Bank, and (3) serving two positions of significant influence

with Passumpsic Savings Bank, while simultaneously performing accounting services for the Isaacson Trusts, the trusts' beneficiaries, and Isaacson Structural Steel, the Respondent had a number of conflicts of interest that compromised his integrity, objectivity and independence.

- F. In 2006, because of cash flow issues at Isaacson Structural Steel and the fact that the Isaacson trusts' income beneficiary was looking to generate more income, one of the other two trustees in the Isaacson trusts made a loan of \$200,000 on August 23, 2006, to Isaacson Structural Steel (the "First Trust Loan") from the Isaacson Family Trust. The Respondent testified that prior to the issuance of the First Trust Loan, he was not informed about the loan, nor did he provide consent for making the loan. While the lack of consent for the First Trust Loan was concerning to the Respondent because he recognized it as being a self-dealing, and not an arm's length, transaction, the Respondent still signed the loan ratification form and failed to express his concerns with the other two trustees or notify the trust beneficiaries about the loan.
- G. As cash flow problems at Isaacson Structural Steel persisted along with continued pressure to provide more income for the Isaacson trusts' income beneficiary, on March 1, 2007, the same trustee who made the First Trust Loan made a second loan, for \$150,000, from the Isaacson Family Trust to Isaacson Structural Steel (the "Second Trust Loan"). Again, the Respondent testified that he was not informed about the loan, nor did he provide consent for making the loan. Like the previous loan, the Second Trust Loan was recognized by the Respondent as being a problematic, self-dealing transaction. However, the Respondent once again

failed to communicate his concerns about the loan to the other two trustees, nor did the Respondent inform the trust beneficiaries about loans. The Respondent testified that he should have resigned as a trustee after the Second Trust Loan.

- H. In 2008, the Isaacson trusts' income beneficiary died, and, as a result, the trustees no longer needed to generate the same type of income for the new income beneficiaries. However, cash flow problems continued at Isaacson Structural Steel and on May 3, 2010, the same trustee behind the first two loans, made a \$500,000 loan from the Isaacson Marital Trust to Isaacson Structural Steel (the "Third Trust Loan"). Once again, the Respondent testified that he was not informed about the loan, nor did he provide consent for making the loan, which he recognized to be another self-dealing transaction. However, as with the first two loans, the Respondent neglected to inform the trust beneficiaries about the Third Trust Loan.
- I. Each of the three Trust Loans was a self-dealing transaction that came from trusts where the two trustees, other than the Respondent, were principals of the borrower, Isaacson Structural Steel, which would be in the same line as an unsecured creditor with the trusts. This created a creditor relationship between the trustees and Isaacson Structural Steel.
- J. The Respondent maintains that each of the three Trust Loans occurred without his consent or prior knowledge. Upon learning of each of the three Trust Loans, the Respondent never informed the other two trustees that such self-dealing transactions were problematic or that such loans should not continue. The

Respondent also never communicated to the trusts' beneficiaries that such loans were being made from the Isaacson Trusts.

- K. In late September/ early October 2010, the Respondent, along with the other two trustees, signed a wire transfer order to move \$250,000 from the Edward Jones account for the Isaacson Family Trust to Isaacson Structural Steel. The Respondent could not explain why the transfer was made, but recognized that it was his duty to monitor the trust investments, which included the Edward Jones account.
- L. Over his years as the accountant for Isaacson Structural Steel, the Respondent was involved in the company's inventory during the reviews and audits. Per this involvement, the Respondent provided suggestions and/or advice as to how to categorize inventory, change orders and work in process ("WIP"). Among his recommendations was putting period costs as a capital asset. The Respondent was also involved in discussions that concluded with the re-categorization of some change orders into inventory.
- M. When the Respondent conducted the July 2010 review for Isaacson Structural Steel, he had the authority and necessary information to correct inaccurate financials and misstatements regarding the Trust Loans, the loan repayment terms, how much was owed on each loan, and Isaacson Structural Steel's assets and inventory, but the Respondent failed to make those corrections and therefore the review contained incorrect information.
- N. For the October 2010 year-end audit, the Respondent prepared the draft financial statement for Isaacson Structural Steel, which did not indicate that the three Trust

Loans were in default and incorrectly indicated that the three Trust Loans had no repayment dates. The audit included misstated financials and problematic inventory numbers.

- O. Around the time that the Respondent prepared the October 2010 year-end audit, he learned that Isaacson Structural Steel had been bidding on jobs at or below cost. This information was never discussed with the trusts' beneficiaries, Passumpsic Savings Bank, or the other two trustees.
- P. In late December 2010, Passumpsic Savings Bank made a loan of \$2,000,000 to Isaacson Structural Steel (the "Passumpsic Bank Loan"). When the Board met to discuss the Passumpsic Bank Loan to Isaacson Structural Steel, the Respondent was present as a member of the Board of Trustees, but he did not vote and remained silent during the discussions. Although the Respondent had the opportunity to correct misinformation in the Isaacson Structural Steel financials that he had reviewed and the opportunity to provide accurate information to Passumpsic Savings Bank, he did nothing to make sure that Passumpsic Savings Bank received accurate financials and inventory information, or details involving the three outstanding Trust Loans.
- Q. The Respondent testified that by early April 2011, he was aware of discrepancies in Isaacson Structural Steel's change orders, inventory, and WIP, and that the company's financials contained misstatements. However, he maintained that he "had no overt knowledge that there was anything amiss in the work in process or the inventory." Subsequently, the Respondent informed Passumpsic Savings Bank that there was an overstatement in the inventory.

- S. The Respondent never finalized the October 2010 year-end audit. Instead, another accounting firm was brought in to finish the audited financials, and this other accounting firm concluded that Isaacson Structural Steel's assets were overstated by \$14 million. The inventory had to be adjusted by \$10,857,943.
- T. Unlike the Respondent, the other two Isaacson trustees, including the one who made the three trust loans, are not licensees of this Board. One trustee, who was the President of Isaacson Structural Steel, plead guilty in federal court to a conspiracy charge of making false statements to a financial institution. The other trustee, who made the three trust loans, was the Senior Vice-President of Isaacson Structural Steel. He has been indicted in federal court on nine (9) counts alleging that he made false statements to a financial institution.
6. The Board finds and concludes from the above facts that the Respondent is responsible for the acts described above and that, by engaging in such conduct, the Respondent has violated RSA 309-B:10, I-a(e), (f), (g), and (j) by his failure to comply with Ac 502.01(a), (b)(1)(b), and (b)(2); Ac 503.01(a), (b), and (c); Ac 504.01(a) and (c)(1)-(4); Ac 504.02(a)(1); Ac 507.01; ET Section 52; ET Section 53; ET Section 54; ET Section 55; ET Section 56; ET Section 102; and ET Section 191; all of which obligate the Respondent as a licensee of this Board to perform services and responsibilities with independence, integrity, objectivity; maintain an ability to self-govern, a concern for the public trust and interest, the necessary level of due care, an ability to conform to Generally Accepted Accounting Principles ("GAAP"); and prohibit them from committing any act discreditable to the profession.

7. The Respondent acknowledges that the conduct alleged by the Board, if proven, would constitute grounds for the Board to impose disciplinary sanctions against his license in the State of New Hampshire. The Respondent does not admit the facts as alleged by the Board, but has chosen to accept the terms of this Settlement Agreement rather than contest the facts through an adversarial hearing and acknowledges that his simultaneous service as a trustee of the Isaacson trusts and Passumpsic Savings Bank and as an accountant for Isaacson Structural Steel created an impermissible conflict of interest in light of the loans made by the trusts and Passumpsic Savings Bank to Isaacson Structural Steel.
8. The Respondent consents to the Board imposing the following sanctions as discipline:
- A. The Respondent is censured pursuant to Ac 402.05.
 - B. The Respondent is assessed an administrative fine in the amount of Fifteen Thousand Dollars (\$15,000). The Respondent shall pay this fine in six (6) monthly installments of Twenty-Five Hundred Dollar (\$2,500) over the six (6) months following the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 121 South Fruit Street, Concord, New Hampshire 03301. The first installment shall be payable thirty days from the effective date of this *Settlement Agreement*.
 - C. According to RSA 309-B:10, III, and Ac 402.06(b)(1), the Respondent agrees to pay certain administrative costs of the investigation in the amount of Fifteen Thousand Dollars (\$15,000). The Respondent shall pay this amount in full within ninety (90) days of the effective date of this *Settlement Agreement*, as defined

further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 121 South Fruit Street, Concord, New Hampshire 03301.

D. The Respondent shall complete twenty (20) additional hours of Continuing Professional Education ("CPE") credits, split equally between the areas of regulatory ethics, communications, public auditing, and public accounting, to be completed within twelve (12) months of the effective date of this *Settlement Agreement*, as defined further below. These CPE credits shall be completed in the form of a seminar or lecture in accordance with Ac 403.02(g). Proof of completion of these CPE credits shall be filed by the Respondent with the Board within fifteen (15) days of completion. The Respondent has agreed to take the following programs which will satisfy this CPE requirement:

1. The first ethics program offered by the New Hampshire or Vermont CPA Societies;
2. The AICPA course being offered by the NH Society of Certified Public Accountants (NHSCPA) on November 4 and 5, 2015 entitled Accounting and Auditing Update Workshop amounting to sixteen (16) hours which will satisfy the public auditing and public accounting requirement; and
3. The Business Communication program on November 20, 2015 for eight (8) hours.

E. The Respondent shall take and pass, with a grade of 75 or above, the "auditing and attestation," "financial accounting and reporting," and "regulation" sections

of the Uniform Certified Public Accountant Examination and Advisory Grading Service (“examination”) of the American Institute of Certified Public Accountants (“AICPA”) as specified by RSA 309-B:5, IV. The examination shall be administered by the National Association of State Boards of Accountancy (“NASBA”). The Respondent’s performance, conduct, and application for/on the examination shall comply with the rules of Ac 303 and the examination shall be completed within twelve (12) months of the effective date of this Settlement Agreement. Proof of completion shall be submitted to the Board within fifteen (15) days of completion. In the event the Respondent shall not obtain a grade of 75 or greater on all or any portion of the examination, he may retake it so long as he repeats the examination within six months of notice of his unsatisfactory grade(s). The Respondent is required to pass all three sections of the examination set forth in this paragraph within two (2) years of the effective date of this *Settlement Agreement*. Proof of passing each identified section shall be submitted to the Board within fifteen (15) days of the Respondent being notified that he passed each identified section.

F. The Respondent’s license to practice accounting in New Hampshire is placed on probation, pursuant to RSA 309-B:10, I(c), for a period of two (2) years commencing on the effective date of this *Settlement Agreement* with the following restrictions and conditions:

1. The Respondent shall undergo four (4) peer reviews, one every six (6) months, over the course of two (2) years following the effective

date of this *Settlement Agreement*, according to the relevant rules for peer reviews under RSA 309-B:8, VIII.

2. These peer reviews shall be performed by two (2) reviewers preapproved by the Board. One reviewer shall conduct the first two (2) peer reviews and a second reviewer shall conduct the second two (2) peer reviews.
3. The Respondent shall be responsible for all fees or costs incurred for the peer reviews.
4. The Respondent shall be responsible for submitting an Affidavit for Peer Review Form to the Board pursuant to Ac 301.12.
5. Failure to comply with these peer review requirements shall subject the Respondent to further disciplinary action by the Board in accordance with RSA 309-B:10, I.

G. The Board may consider the Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding the Respondent's license.

H. Within ten (10) days of the effective date of this *Settlement Agreement*, as defined further below, the Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom the Respondent performs services as an accountant and to any agency or authority which licenses, certifies or credentials accountants, with which the Respondent is presently affiliated. For the purpose of this *Settlement Agreement* the term employer shall not mean or include clients.

- I. For a continuing period of two (2) years from the effective date of this *Settlement Agreement*, the Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which the Respondent may apply for work as an accountant and to any agency or authority that licenses, certifies or credentials accountants, to which the Respondent may apply for any professional privileges or recognition.
9. Any violation of the terms and conditions of this *Settlement Agreement* during the two (2) year probationary period described above shall permit the Board to issue an order forthwith suspending the Respondent's license for a period of up to two (2) years. In the event that the Respondent contests the factual basis underlying such suspension he may file a petition with the Board within thirty (30) days of the effective date of the suspension. The Board shall then conduct a hearing within thirty (30) days at which the Respondent shall be afforded an opportunity to show cause why the suspension should not be imposed. The Respondent will have all burdens at such a show cause hearing.
10. Pursuant to Ac 402.07(c), any nonpayment of a fine by the Respondent in contravention of this *Settlement Agreement* shall constitute a separate ground for discipline by the board and/or a basis for the Board to pursue a legal action against the Respondent.
11. The Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 309-B:10, and a separate and sufficient basis for further disciplinary action by the Board.
12. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence in the event that similar misconduct is proven against the Respondent in the future. Additionally, the Board may

consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against the Respondent in the future.

13. This *Settlement Agreement* shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.
14. The Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
15. The Board agrees that in return for the Respondent executing this *Settlement Agreement*, the Board will not proceed further with the formal adjudicatory process in this docketed matter.
16. The Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
17. The Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.
18. The Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. The Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* has prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
19. The Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

20. The Respondent certifies that he has read this document titled *Settlement Agreement*. The Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, the Respondent fully understands the nature, quality and dimensions of these rights. The Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.
21. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: 10/19/2015



David J. Driscoll, CPA
Respondent



Jack Crisp, Esq.
Counsel for the Respondent

FOR THE BOARD*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 10/22/15


(Signature)

Louise Lavette
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of
Accountancy

* Board members, recused: Frederick Briggs, CPA
Wayne Geher, CPA
Tanya Richmond,