

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

In the Matter of:
Darvi Rosenberg, CPA
License No. 03105
(Misconduct Allegations)

Docket No.: 21-CPA-0001

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 Darvi Rosenberg, CPA ("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 November 18, 2002. Respondent holds license number 03105. Respondent operates a solo accounting practice in Claremont, New Hampshire. Respondent's license expires on June 30, 2022.
3. In the summer of 2017, Respondent was indicted in Hillsborough County Superior Court – North for Conspiracy to Commit Tax Evasion and Falsifying Physical Evidence, but the charges were dropped. Respondent was indicted again, on the same charges, in Merrimack County Superior Court in October of 2018.
4. In November 2018, the Board became aware of the indictment, filed a complaint against

the Respondent, and commenced an investigation to determine whether the Respondent committed professional misconduct under RSA 309-B: 10 I-a.

5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel could prove that Respondent engaged in professional misconduct, in violation of RSA 309-B:10, I-a(f), by his failure to comply with Ac 504.01(c)(2) by the following facts:

- A. On or about 2005, the Respondent began providing accounting services to Thomas Katsiantonis, a restaurateur who owned and operated businesses in Manchester. Mr. Katsiantonis had an excellent reputation in the community as a successful businessman, a city Alderman, a NH State Representative, and the President of WHIA, a national Greek organization.
- B. Under New Hampshire law, restaurants are required to collect from customers a nine percent (9%) tax on prepared meals referred to as the Meals and Rooms Tax ("M&R") and remit the collected tax to the New Hampshire Department of Revenue Administration ("DRA").
- C. In 2006, the DRA conducted an audit of Mr. Katsiantonis's businesses for the years of 2003 and 2004.
- D. In 2014, the DRA conducted an audit of Mr. Katsiantonis's businesses for the years of 2013 and 2014. The Respondent was Mr. Katsiantonis's accountant during 2013 and 2014 and made a number of submissions and representations to the DRA on behalf of Mr. Katsiantonis during the course of the audit.
- E. During 2014, Mr. Katsiantonis used the following systems in his businesses:
 - i. FoodTec which is a point-of-sale ("POS") software;

- ii. World Pay which is a credit and debit card processing company; and
 - iii. AdvanceMe which is a cash advance lender for merchants.
- F. The 2014 audit revealed that between the years of 2011 and 2017 Mr. Katsiantonis systematically underreported sales primarily by concealing cash transactions allowing Mr. Katsiantonis to retain more than \$441,000.00 in M&R taxes that he had collected from patrons. Additionally, by underreporting his taxable sales, Mr. Katsiantonis also underreported his restaurant's business profits tax by more than \$154,000.00. Respondent was not aware of the underreporting of sales between the years of 2011 and 2017 until he was first indicted in the summer of 2017.
- G. On May 4, 2018, Mr. Katsiantonis pleaded guilty to felony theft and tax evasion in Hillsborough County Superior Court – North. Mr. Katsiantonis admitted to defrauding the DRA by underreporting sales and concealing cash transactions but denied that the Respondent was involved in his unlawful actions, and further denied that Respondent had any knowledge of the fact that he was underreporting income.
- H. On October 26, 2018, Respondent was indicted, for the second time, in the Merrimack County Superior Court for Conspiracy to Commit Tax Evasion and Falsifying Physical Evidence.
- I. The criminal matter is currently scheduled for trial in June 2022.
- J. In his defense and response to the Board, Respondent acknowledged that he did not notice discrepancies in Mr. Katsiantonis's records that led the DRA to

question whether Mr. Katsiantonis had underreported income. Respondent maintained that he did not notice these discrepancies because he was not aware that Mr. Katsiantonis would, or even could, make sales from the POS system disappear. Technical Service from the POS system company represented to Respondent that sale data could not be manipulated. Further, the owner of the company that manufactured the POS system shared this mistaken belief, and attested during the State's investigation that, to his knowledge, sales could not be deleted from the POS system. Mr. Katsiantonis had also represented to Respondent that the vast majority of his business's transactions were conducted online or via phone orders for takeout and/or delivery, and, as such it would not be unusual to have mostly credit card sales as opposed to cash sales. Respondent realized after the indictment, that fatigue as a result of being the sole caregiver for his bedridden mother may have also contributed to his not discovering the discrepancies in the POS tapes.

- K. Respondent admits that he failed to exercise due professional care in the performance of professional services in connection to Mr. Katsiantonis's Businesses by failing to detect discrepancies prior to making submissions to the DRA that should have been apparent given the following warning signs:
- i. Respondent was aware of the 2006 DRA Audit of Mr. Katsiantonis's businesses;
 - ii. Respondent did not use the actual transactions receipts recorded by FoodTec to generate the general ledger and instead relied on Meals Tax

reports submitted to the DRA, statements from World Pay and Advance Me, bank statements, petty cash receipts, and Mr. Katsiantonis's verbal representations to generate the general ledger for Mr. Katsiantonis's Businesses;

- iii. The 2014 bank statements themselves indicate that little cash was being deposited; and
- iv. In 2014 Mr. Katsiantonis's cost-of-sales percentage was significantly higher (approximately fifty (50%)) than the average for similar restaurants (approximately thirty-five percent (35%)).

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 (f), by his failure to comply with Ac 504.01(c)(2) which obligate the Respondent as a licensee of this Board to perform services and responsibilities with due professional care in the performance of professional services.

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 consents to the Board imposing the following sanctions as discipline pursuant to RSA 309-B:10 I.:

- A. The Respondent is **CENSURED** pursuant to Ac 402.05 (a). As part of the censure pursuant to Ac 402.05 (c), the Respondent shall be required to take four (4) hours of **CPE COURSES** as a **CORRECTIVE ACTION** in the topic of ethics each year for the license period beginning July 1, 2021 and ending June 30, 2024 for a total of twelve (12) hours in the topic of ethics for the period. Within thirty (30) days of the

end of reporting year, the Respondent shall notify the Board and provide documentation pursuant to Ac 401.05 demonstrating proof of completion of four (4) hours of CPE courses in the topic of ethics. These CPE course are not in addition to the professional education requirements pursuant to Ac. 403 and may be used to meet the renewal requirement.

B. The Respondent is assessed an **ADMINISTRATIVE FINE** pursuant to Ac 402.06 in the amount of One Thousand Dollars (\$1,000.00) where all but Five Hundred Dollars (\$500.00) is suspended for a period of twenty (20) months from the effective date of this *Settlement Agreement* provided the Respondent does not commit additional misconduct as defined by RSA 309-B:10, I-a. If additional misconduct is committed during the time period, the suspended portion shall be brought forward. If no further misconduct has been committed at the conclusion of the time period, the suspended portion shall terminate permanently. **Five Hundred Dollars (\$500.00) is due and payable** to the Treasurer State of New Hampshire at 25 Capitol St., Room 121, Concord, NH 03301 **within thirty (30) days** of the effective date of this Settlement Agreement and send a mailed a copy of each payment to the Office of Professional Licensure and Certification at 7 Eagle Sq., Concord, NH 03301 ATTN: Collin Phillips, Attorney I and Dawn Couture, Administrator. The payment shall contain the words "Administrative Fine: Board of Accountancy, Docket No. 21-CPA-0001" written on the memorandum line of the payment or in a letter accompanying the payment.

C. According to RSA 309-B:10, III, and Ac 402.06(b)(l), the Respondent agrees to

pay certain **ADMINISTRATIVE COSTS** of the investigation in the amount of Five Thousand Dollars (\$5,000.00). The Administrative Costs shall be paid in **ten (10) monthly payments of Five Hundred Dollars (\$500.00) due and payable** to the Treasurer State of New Hampshire at 25 Capitol St., Room 121, Concord, NH 03301 where the first payment is due **within thirty (30) days** of the effective date of this Settlement Agreement and the remainder due the first of each month thereafter. The Respondent shall also send a mailed a copy of each payment to the Office of Professional Licensure and Certification at 7 Eagle Sq., Concord, NH 03301 ATTN: Collin Phillips, Attorney I and Dawn Couture, Administrator. The payment shall contain the words "Administrative Costs: Board of Accountancy, Docket No. 21-CPA-0001" written on the memorandum line of the payment or in a letter accompanying the payment.

- D. For a continuing period of one (1) year 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.
8. Pursuant to Ac 402.05 (e), failure to take corrective action as required pursuant to a censure shall constitute separate grounds for further disciplinary action.
9. 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.

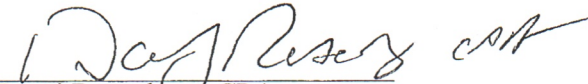
10. The Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 309-B:10, and a separate and sufficient basis for further disciplinary action by the Board.
11. Except as provided herein, this *Settlement Agreement* shall bar 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.
12. This *Settlement Agreement* shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.
13. 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.
14. 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.
15. 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.
16. 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*.
17. 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.

18. The Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
19. 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.
20. 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

Dated: 22, 2021


Darvi Rosenberg, CPA
Respondent

On this 22nd day of November A.D. 2021 personally
appeared the person who subscribe to the following instrument and acknowledged the same as
her/his voluntary act and deed before me.

Alaysia L Sacksouvanh
Justice of the Peace/Notary Public My
commission expires:

Alaysia L Sacksouvanh
Notary Public, State of New Hampshire
My Commission Expires May 02, 2023

FOR THE BOARD

Dated: Dec. 16, 2021

Dawn Carture

Dawn Carture (Printed Name)
NH Office of Professional Licensure and Certification
Authorized Representative of the NH Board of
Accountancy

[end of document]