

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION, BOARD  
OF ACCOUNTANCY,

Petitioner,

vs.

Case No. 15-1569PL

IRENE PICCA,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings (the Division) conducted a duly-noticed disputed-fact hearing pursuant to section 120.57(1), Florida Statutes (2015), on September 1, 2015, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Cristin Erica White, Esquire  
Chevonne Christian, Esquire  
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Professional Regulation  
Office of the General Counsel  
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Tallahassee, Florida 32399-2202

For Respondent: Amie K. Patty, Esquire  
Anderson Law Group  
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13577 Feather Sound Drive  
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STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent violated section 455.227(1)(n), and section 473.323(1)(g) and (l), Florida Statutes (2013), with respect to her actions in connection with the financial affairs of Judith Jamison, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 14, 2014, Petitioner, the Department of Business and Professional Regulation (the Department), filed an Administrative Complaint against Respondent, Irene Picca, asserting that she violated section 455.227(1)(n), and section 473.323(1)(g), (k), and (l). Respondent disputed the allegations in the Administrative Complaint and on March 20, 2015, the case was referred to the Division for assignment of an administrative law judge.

A Notice of Hearing was issued on March 25, 2015, scheduling the hearing for May 27, 2015. At the request of Respondent, the hearing was rescheduled for August 4, 2015. A second request for continuance was denied. However, due to unusual flooding in the Tampa area which prevented Respondent's counsel's ability to attend the hearing, the hearing was rescheduled for September 1, 2015. At hearing, Petitioner presented the testimony of John Gruppioni and Barbara Houston, and Petitioner's Exhibits 1-4, 6, 9-10, 13-16, 19-21, 25-26, and 29-33 were admitted into evidence.

Included in the Petitioner's exhibits are the depositions of Judith Jamison, Jonathan Smith, Esquire, Ian Jamison, Chase Jamison, Daniel Soud, Linda Traylor, and Pamela Duggar. Respondent testified on her own behalf and presented the testimony of John Gruppioni, William Stanwix-Hay, and Steve Rawlins, and Respondent's Exhibits 1 and 2 were admitted into evidence.

Petitioner's Motions for Official Recognition, filed July 2 and July 27, 2015, were granted. Respondent moved to strike Count III of the Administrative Complaint because this count was not approved by the probable cause panel of the Board of Accountancy, and the Department indicated its intention not to proceed with this Charge.

The Transcript of the hearing was filed with the Division on September 14, 2015. At the request of the parties, the deadline for submitting proposed recommended orders was set for November 2, 2015. Petitioner filed a Proposed Recommended Order on October 30, 2015, and Respondent's Proposed Recommended Order was filed November 3, 2015. Both submissions have been carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the evidence and the testimony of witnesses presented, and the entire record in this proceeding, the following findings are made:

1. Petitioner is the state agency charged with the licensing and regulation of the practice of public accountancy pursuant to section 20.165 and chapters 455 and 473, Florida Statutes.

2. At all times relevant to the proceedings in this case, Respondent was licensed as a certified public accountant (CPA) in the State of Florida.

3. Respondent is a native of Naples, Italy, and moved to the United States while a teenager. She received a bachelor's degree in accounting from Jacksonville University in 1992. Respondent received her CPA certification, license number AC 31511, in 1998.

4. Respondent's license is currently active and expires on December 31, 2015.

5. After receiving her CPA license, Respondent worked for the CPA firm of Hunter and Associates for approximately a year. She then moved to a larger firm, Masters, Smith, & Wisby, P.A. (MS&W), in September 2001, until June 2005. She left both firms on good terms with her former employers.

6. While working as a staff accountant for MS&W, Respondent was assigned a new client named Judith Jamison. Respondent was given the task of preparing Ms. Jamison's tax returns. She continued to prepare Ms. Jamison's returns for the 2005 and 2006 calendar years, after leaving the firm's employ.

7. When Respondent first met Ms. Jamison, Ms. Jamison's income was derived from the proceeds of timber rentals from her share of a family inheritance.

8. After Respondent left MS&W, she went to Italy for approximately three months before returning to the United States. Upon her return, she began to receive telephone calls from Ms. Jamison. Initially those calls were in the wake of the death of Ms. Jamison's mother, and it appears that she simply needed someone with whom to confide. Ms. Jamison's telephone calls spanned a period of time in Respondent's life when she was diagnosed with breast cancer, and was receiving treatment for her condition.

9. Ms. Jamison was described by most of the witnesses who testified as being a frail woman who is a loner, and somewhat needy and eccentric. She was also characterized as a bright woman who has a problem with alcohol abuse and is perhaps easily manipulated. The record includes a sworn statement by Ms. Jamison, as well as her deposition taken in this case. Her statements in the two documents are wildly divergent, and the undersigned did not have the opportunity to observe her demeanor and assess her credibility. Therefore, little reliance is placed on her testimony, unless it is corroborated by the testimony of another witness in this case.

10. In March 2007, Ms. Jamison called Respondent and asked for help in removing a man referred to as "Flash" from her residence. Respondent helped Ms. Jamison extricate Flash from her home, and helped her deal with an illness in April 2007.

11. It is clear from the evidence presented at hearing that Respondent and Ms. Jamison established a close friendship during this time. Over the next few years, they spent a great deal of time together, and Respondent frequently helped Ms. Jamison when she was ill, including taking her to the doctor and the hospital when it was necessary. It is equally clear that Respondent grossly abused that friendship.

12. At some point, Respondent was added as an authorized signatory on Ms. Jamison's bank account at Wachovia Bank (account number 1010170548766). Who instigated the addition is not clear from the record, but it can be inferred that Respondent suggested it. Ms. Jamison understood that Respondent, who she considered to be both her friend and her CPA, would be better able to help her pay her bills and manage her money if she had access to the account. Ms. Jamison and Respondent were the only authorized signatories on the account. No CPA who testified, other than Respondent, identified a legitimate reason for a CPA to be an authorized signatory on an individual client's personal bank account. No legitimate reason existed here.

13. In approximately October of 2008, the timberland which provided the rent proceeds for Ms. Jamison's income was sold. As a result of the sale, Ms. Jamison received inheritance funds of approximately 3.9 million dollars. Respondent was aware of the inheritance and introduced Ms. Jamison to Daniel Soud, an investment advisor, to assist Ms. Jamison in investing the funds, and to Tom Watson, Esquire, to handle legal matters related to them. Mr. Watson did not testify. Mr. Soud understood Ms. Jamison to be Respondent's CPA client.

14. At this point, Respondent was representing to others, including Mr. Watson and Mr. Soud, that she was Respondent's CPA. For example, Mr. Watson apparently questioned her role in Ms. Jamison's affairs, and on October 13, 2008, Respondent provided the following response via email to Mr. Watson, and copied to Mr. Soud:

Mr. Watson:

Since early 2002 Ms. Jamison has been my tax client. My services were tax related until March 2007 when she began to need my services at an exceptional rate. Numerous documentation was required to finance her present home, then my services were retained to manage the entire move, manage the process for her Labrador dog's knee surgery (twice) and extricate her from a fraudulent business relationship, manage all that was required to enact repairs and home maintenance, other legal matters in addition to the Atlanta home lawsuit, research and application for any borrowings, and the list goes on for all that has been required to

manage Ms. Jamison's financial related matters. I must mention that I never billed her for any of the nights or 24 hour care I provided through the various crisis, illnesses and three injuries she experienced, all times that has expanded a business relationship to one of deep affection and commitment to her well-being.

It has been a challenge to navigate billing for my services and giving her my time as her closest friend. As her attorney, your question of what makes up the \$80,000.00 I listed as due me is a reasonable question. The answer is that from March 2007 to August 2007 alone (while I was undergoing chemotherapy) I spent from 40 hours a week handling every aspect of her affairs. At my lowest billing rate of \$100.00 (40\*4\*6=960) that calculates to \$96,000.

September 2007-September 2008 incurred average 20 hours per week (80 hrs per mo\*12=960) that calculates to \$96,000.

Thus far that total is \$192,000 of which she has paid \$60,000. I will provide a more detailed accounting if you require it, but the \$80,000 I listed was a deeply discounted amount. It is hard to put a price tag on the safety and protection I have provided Ms. Jamison over the last eighteen months of my services. You may ask Danny Soud how many times he has had to reschedule our appointments due to a new crisis, injury or illness.

The Delaware Irrevocable Trust I proposed to Ms. Jamison was only after conferring with you on her behalf. I am aware of the inherent dangers for Ms. Jamison in setting up such a Trust but believe I am well qualified by trusted service to be the trustee with her eldest son Chase Jamison as successor or replacement Trustee. Please



let me know if you have any other concerns that I may clarify for you.<sup>[1/]</sup> [Emphasis added.]

15. On October 17, 2008, JAJ Partners, LLC, was formed, listing Judith Jamison and Irene Picca as general partners, and Tom Watson, Esquire, as registered agent. Respondent claimed that she simply lent her name to the partnership, but never used it. She also claimed that she did not want to be involved in Ms. Jamison's financial planning. However, her actions tell a different story, and her testimony that she did not want to be involved in Ms. Jamison's financial affairs is rejected as not credible.

16. Soud, Jamison, and Respondent then met to devise an investment strategy for Ms. Jamison. According to Mr. Soud, \$1 million of the inheritance was placed in an annuity designed to grow over time and provide income to Ms. Jamison later on. \$1.5 million of the inheritance was placed in a stock and bond fee-based account with Glenworth Financial. At least some, if not all, of the remaining funds were used to pay inheritance taxes. The plan was to have systematic withdrawals from the Glenworth account and leave the annuity alone for ten years. The Glenworth account was designed based on the risk profile developed for Ms. Jamison, but should have provided income for her for a substantial length of time.

17. Respondent sat in on the meeting to develop the risk profile for Ms. Jamison. The Glenworth Financial account was opened on October 22, 2008, and was in the name of JAJ Partners, LLC, with Ms. Jamison and Respondent listed as the co-owners. None of the funds deposited in the Glenworth Financial accounts or the Wachovia bill-pay account were provided by Respondent, and Respondent claimed at hearing that she did not remember the purpose of the JAJ Partners, LLC, account.

18. While the purported reason for Respondent's ability to access Ms. Jamison's accounts was to help manage her money, Respondent routinely used funds in the account to pay her personal bills. When asked about doing so, she related a story about Ms. Jamison having her telephone account restored when she learned that Respondent was unable to pay it. However, this simple kindness led to Respondent's use of Ms. Jamison's accounts as if the money were her own, despite the reality that she never contributed as much as a dime. Indeed, she stated at hearing, "I was joint on the account. I thought that that was my account, too; I'm joint on it." She used funds from the Wachovia bill-pay account to pay for expenses including her home mortgage, her Comcast cable bill, her electric bill, her AT&T telephone bill, health insurance premiums, dental bills, expensive restaurant charges, hair and nail appointments, and massage appointments. Many of the recurring bills, such as the telephone, health

insurance, and cable bills, were set up to be paid automatically from the bill-pay account, funded solely by Ms. Jamison's money.

19. Respondent acknowledged receiving approximately \$45,102 from Ms. Jamison's funds in 2008. She characterizes these funds as gifts. She also acknowledged receiving approximately \$79,837 from Ms. Jamison in 2009. She characterizes these funds as gifts as well, stating that none of the moneys she received were funds that she was not supposed to have. Respondent claims that the money she received from Ms. Jamison was like the money that Ms. Jamison gave her sons.

20. However, Ms. Jamison did not give her sons the amounts of money that Respondent was taking. Ms. Jamison has two sons, Chase and Ian. Chase is a law enforcement officer with the City of Atlantis Beach, and has been for ten years. He describes his relationship with his mother as strained, and they have limited contact. There was no evidence presented to indicate that Ms. Jamison gave him large amounts of money similar to what Respondent received, or any money at all. During the time relevant to these proceedings, Ian was attending a private college in Orlando, and Ms. Jamison was paying the tuition and his living expenses while he went to school. Respondent was actively involved in those payments, and may have provided to Ian less than his mother intended him to have. Ian now has a full-time job and receives no financial assistance from his mother.

They share a cell phone account, more for convenience than assistance, and Ms. Jamison pays only her proportionate share. Despite Respondent's claims regarding the amount of Ms. Jamison's funds she was accessing for personal use, paying tuition and expenses for one's own child is not considered unusual behavior. Paying similar expenses for one's CPA is far outside the norm.

21. It is unclear how much knowledge Ms. Jamison actually had about Respondent's use of the funds. While she testified that she was unaware of many of the purchases Respondent made, Mr. Soud testified that at times Ms. Jamison would complain to him about Respondent's spending and what she, Ms. Jamison, was paying for, such as helping Irene's mother buy a house, to buying Respondent's son a car, to paying for all of the food for a party at the opening of Respondent's new CPA office. To the extent that she was aware of the withdrawal of funds from her account, she seemed powerless to stop it.

22. Respondent seemed to be the person in control, despite the fact that the money belonged to Ms. Jamison. In fact, while Ms. Jamison had several extended family members in the area in addition to her sons, in February 2009, Ms. Jamison signed a nomination of guardianship naming Respondent as her guardian. In her deposition, she could not remember signing the guardianship nomination, as well as many other documents bearing her signature. Ms. Jamison testified that Respondent often gave her

documents to sign. She apparently signed whatever Respondent presented to her. Neither of Ms. Jamison's sons were consulted about the possibility of guardianship, and both found it upsetting when it was later discovered.

23. On December 1, 2009, Ms. Jamison and Respondent signed a withdrawal request to transfer \$275,000 from the Glenworth Financial Account to account number 2000045179978 at a Wachovia Bank location in Jacksonville. Mr. Soud understood the funds were withdrawn in order to fund a mortgage for Respondent's ex-husband. Respondent told him that the mortgage would be paid at eight percent interest. He asked Respondent whether her ex-husband still owed her money from their divorce, and she indicated that he did. Mr. Soud was concerned that this flow of funds from Ms. Jamison's inheritance through the partnership would benefit Respondent directly, but had no authority to stop the transfer, as both Ms. Jamison and Respondent authorized it. Respondent claimed that she did not want Ms. Jamison to fund the mortgage for her ex-husband, but was involved in negotiating the eight percent interest rate on the note. Her testimony regarding her reluctance to be involved is rejected as not credible.

24. In December 2009, Respondent also found a CPA firm client list that she could purchase in order to bring assets into a CPA partnership with CPAs Linda Traylor and Pamela Duggar. She asked Ms. Jamison to give her the money to purchase the client

list and to buy startup supplies, such as computers, software, and furniture. The amount of money used for this purpose was \$185,440.37, all of which came from Ms. Jamison. Respondent started with the firm known as Duggar, Traylor & Picca, beginning January 1, 2010.

25. By 2010, both Mr. Soud and Ms. Jamison's sons were concerned about the amount of money pouring out of Ms. Jamison's accounts. Mr. Soud was especially concerned because the financial planning strategy originally devised after Ms. Jamison received her inheritance depended on keeping spending within certain limits, and it appeared that Ms. Jamison was spending the money at a significantly faster pace. The spending rate was such that her funds would not support her as planned until the annuity funds would be available. Mr. Soud contacted Chase and Ian Jamison to discuss his concerns.

26. Ian Jamison also had become increasingly concerned not only about his mother's finances, but about the control Respondent seemed to have over his mother and her decision-making. There were many instances in which he felt Respondent was limiting his access to his mother, or was attempting to convince her that Ian was the problem as opposed to Respondent. His feelings were based upon multiple instances where he and his mother would speak privately about Respondent's role in Ms. Jamison's life, and Ms. Jamison would seem to understand his

concerns. In a matter of days, her position would change completely, and she would accuse Ian of being the problem. His concerns were also based in part on a conversation he overheard between his mother and Respondent, in which Respondent was crying and claimed that Ian would "ruin everything."

27. In March 2010, he asked for and received permission from his mother to look at her bank records and began to ask questions about many of the expenditures he saw documented in the bank statements. That same month, Respondent's name was removed from Ms. Jamison's bank accounts as an authorized signatory. In response to some of Ian's questions regarding expenditures, Respondent wrote to Ian on March 29, 2010, stating, "As I understand it, your mother, Judith Jamison, agrees that an accounting of her financial status is to be prepared for your review. I will be happy to prepare that for you. As tax season is underway, the earliest I can complete the report will be April 30, 2010. I hope that is acceptable to you." Respondent also canceled the arrangements to have her bills automatically paid out of Ms. Jamison's account, although the two final accounts were not removed until April 6, 2010.

28. About this time, Respondent began to fear that Ian's inquiries could pose problems for her, and Ian freely admitted in his deposition that he threatened her, telling Respondent that she needed to extract herself from his mother's finances and her

life, and that he would come after her with everything he had because she was ruining his mother's life.<sup>2/</sup> As a result, Respondent took several steps that are clearly designed to protect herself as opposed to working for the benefit of Judith Jamison.

29. First, on April 16, 2010, Respondent wrote a lengthy e-mail to Chase and Ian Jamison, attempting to justify her actions as being taken in an effort to serve as their mother's "unfailing protector." The e-mail is self-serving and only highlights the extent to which she had ingratiated herself into Ms. Jamison's life.

30. Second, Respondent hired a criminal lawyer to advise her (at Ms. Jamison's expense). She took Ms. Jamison to the lawyer, a Mr. Seth Schwartz, to provide a sworn statement indicating that she knew what was going on with her accounts; that she and Respondent were close friends; and that she paid expenses on Respondent's behalf willingly. A cold reading of the transcripts indicates to a reasonable person that Ms. Jamison was erratic at best that day. When asked about the sworn statement in her deposition, she did not remember giving it. Respondent was present in the room while Ms. Jamison gave the statement.

31. Respondent also created invoices under the name of CPA Services-Jax, LLC, for the months of January 2008 through May 2008. The invoices dated January 31, 2008, February 28, 2008,



and March 31, 2008, are identical except for the date on each invoice and provide the following description of services and billed amounts:

Date	Description	Amount
	Monthly financial service in budgeting-maintain vendor accounts-pay bills-maintain bank accounts-research and hire repairmen for home maintenance: conference with financial and legal professionals: 10 hours per week x 4 weeks each month	6,000.00
	Companion care-assistance in shopping-organizing appointments-prescription pick up	2,000.00
Total		\$8,000.00
Payments/Credits		\$0.00
<u>Balance Due</u>		<u>\$8,000.00</u>

32. The invoice for May 31, 2008, is for a total of \$30,800. It includes the same entries as the previous invoices for "monthly financial services," etc., for the months of April and May, and also includes a charge for \$18,800. The description of services for this charge states:

Companion care for wrist fracture on March 31, 2008: taking to Baptist Hospital emergency room-24 hour care for one week before surgery-overseeing JOI set up of surgery and one week bedside care plus ongoing assistance in recovery of 4 weeks with 6 week physical therapy visits through May 2008 (24\*14=336 hrs=40 hrs physical therapy @50.00 per hr).

33. These invoices were never actually sent. Respondent created them on the computers at the offices of Duggar, Traylor & Picca, and showed them to Linda Traylor. Ms. Traylor reminded her that if she invoiced these amounts, she would have to file amended tax returns to account for the additional income received, and pay taxes on these amounts.<sup>3/</sup>

34. Respondent did not wish to incur these costs, so she arranged for Ms. Jamison to retain Mike Jorgensen, Esquire, to prepare a promissory note in the amount of \$185,440.37, representing the "business loan," as well as the preparation of gift tax returns for money used for personal expenses. Mr. Jorgenson was retained on May 28, 2010, and the promissory note was executed most likely in late May 2010, notwithstanding that the undated signature page has typed underneath each signature, "Effective August \_\_\_\_, 2008."

35. While Respondent characterizes the promissory note as evidencing her steadfast intention to pay her dear friend back the money related to the purchase of the business, the language of the promissory note tells a somewhat different story. For example, the note provides that the note and any obligation thereunder is canceled upon the death of Ms. Jamison, and "the unpaid balance is not intended to be offset against any inheritance or devise the lender is leaving to the borrower, if any." The note also provides that the payments are "intended to be contingent."

Further, while not reflected in the actual language of the note, Respondent told Ms. Traylor that the payment terms were going to be interest only, paid annually, and that Ms. Jamison would forgive the interest payments as gifts, meaning that Respondent would actually pay nothing. The note itself provided that Respondent would make annual payments of \$14,836.68, plus interest since the last payment, beginning December 31, 2010, and each year thereafter for 10 years. Respondent did not make the December 31, 2010, payment.

36. Gift tax returns for the tax years 2008 and 2009 were also prepared and presented to Ms. Jamison for signature on July 10, 2010. Ms. Jamison could identify her signature, but really did not know what the forms were for. The gift tax returns were never filed with the IRS.

37. During 2010 and early 2011, things also were not going well for Respondent professionally. Soon after beginning with the new firm, Respondent was served with a lawsuit, which is unrelated to the facts of this case. This lawsuit was apparently a significant distraction for her, because according to both Linda Traylor and Pamela Duggar, Respondent performed very little accounting work for either the 2010 or 2011 tax seasons.<sup>4/</sup> Both of her partners were perturbed because they were handling the bulk of the tax work that was supposed to be split three ways, and neither was pleased with the quality of the work she did

perform. Moreover, Respondent was harsh with both clients and staff, and both women soon found the working arrangement to be untenable.

38. On approximately April 27, 2011, Ms. Traylor and Ms. Duggar determined that the partnership needed to be dissolved, and notified Respondent accordingly. They devised what they believed to be an equitable distribution of assets, including clients, between themselves and Respondent. While Respondent believes that she was victimized terribly during this parting of the ways, her testimony is not credited, and the details related to the dissolution of the firm are only tangentially relevant to these proceedings.

39. By June 2011, Ms. Jamison stopped accepting Respondent's calls. Apparently, she had begun to realize that she was being manipulated and drained of her finances. The following month, she contacted Duggar and Traylor to handle her accounting affairs.

40. In the meantime, as noted above, Respondent did not make the first payment on the promissory note. On October 18, 2011, Jonathan Smith, Esquire, wrote to Respondent on Ms. Jamison's behalf, and demanded payment on the note in the amount of \$15,578.51. Mr. Smith notified Respondent that she was in default and that she had 15 days from the date of the letter to cure the default, and failure to do so could result in filing

suit against her to obtain a judgment on the note. Respondent did not respond to cure the default, and at some point Ms. Jamison filed suit in the Fourth Judicial Circuit, in and for Duval County, which was docketed as 16-2012-CA-009378.

41. On October 15, 2012, Respondent entered into a Stipulation for Payment with respect to the suit on the promissory note. The Stipulation for Payment provided that she would pay as follows: monthly payments of \$50, beginning on October 15, 2012; an increase to \$200.00 a month on February 15, 2013; an increase to \$500.00 on February 15, 2014; an increase to \$1,000.00 on February 15, 2016; and an increase to \$1,500.00 on February 15, 2017, and thereafter, until all sums under the note, including interest, court costs, and attorney's fees, are paid.

42. Respondent did not make the first payment until January 3, 2013, and Respondent's check was returned for insufficient funds. Ms. Jamison moved for judgment on the note and on January 28, 2013, a Final Judgment was issued against Respondent.

43. The evidence is clear and convincing that Respondent took advantage of a vulnerable client for her personal gain. She ingratiated herself into Ms. Jamison's life and injected herself into her personal finances so as to benefit herself, and quite frankly, spent Ms. Jamison's money as if it were a pot of gold with no bottom. Respondent insisted that during the time she had

access to Ms. Jamison's bank accounts she was acting as her friend, but not as her CPA. However, several people, including Danny Soud, Chase and Ian Jamison, Linda Traylor, and Pamela Duggar, all understood Ms. Jamison to be her client as well as her friend. Further, she described Ms. Jamison as one of her tax clients in the e-mail to Tom Watson, described in paragraph 14.

44. Her claims that she never identified Ms. Jamison as a client when working at Duggar, Traylor and Picca are also rejected. Respondent insisted that the designation "3IP" in billing records for the firm meant that any account so designated was in the "friends and family" category that did not get billed. Contrary to her testimony, the 3IP designation is in the column labeled as indicating the staff member whose work is recorded. Ms. Traylor, whose testimony is credited, indicated that Respondent's staff number for this program was 3IP.

45. Respondent's claim that she was entitled to be compensated for the many personal services that she provided to Ms. Jamison as a friend is likewise rejected. When Chase Jamison confronted her about the amount of money being spent, Respondent told him that she was providing a service to his mother. Respondent told Chase, "I would do things for your mom. I wasn't working for free." Chase was floored, and testified, "I am no expert, but I'm pretty sure accountants aren't that expensive." He was especially astonished at the idea that she was charging

for non-CPA-type services because he believed that Respondent and his mother were friends. As he stated, "I don't understand what services she was rendering other than just trying to be her friend. . . . Even today I still don't understand what - basically [she] felt [she] needed to be paid for being - just being there. I could have gotten someone much cheaper than that." Simply put, friends do not ask for payment for doing those things that friends do for one another.

46. While not an expert witness, Chase Jamison's testimony crystalized the crux of Petitioner's case against Respondent: he felt that Respondent failed to maintain good moral character because she knew that Ms. Jamison had issues to deal with, and that in that circumstance an accountant should be even more diligent to make sure everything is dealt with properly. Instead, Respondent exploited those vulnerabilities for her own benefit. Chase believes, correctly, that a CPA has a fiduciary duty to his or her client to make sure that expenditures are properly accounted for, especially when the CPA understands the client's financial status. That certainly did not happen here.

47. Chase Jamison's lay opinion is consistent with the expert opinion of Barbara Houston, CPA, who testified that Ms. Jamison was justified in considering Irene Picca to be her CPA throughout their relationship; that Respondent owed no less of a duty to Ms. Jamison than she owed to any other client simply

because she and Ms. Jamison became friends; that Respondent exhibited significant influence over Ms. Jamison for the purpose of personal financial gain; and that her actions evidenced a failure to maintain good moral character. Ms. Houston's opinion is accepted as credible.

#### CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

49. This is a proceeding in which Petitioner seeks to revoke Respondent's license as a certified public accountant. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

50. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the



mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005).

"Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous."

Westinghouse Elect. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991). Moreover, the allegations against Respondent must be measured against the law in effect at the time of the commission of the acts alleged to warrant imposition of discipline.

McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013). Therefore, notwithstanding the Administrative Complaint's reference to the 2013 codification of the Florida Statutes, the appropriate codification against which Respondent's conduct must be measured would be the statutes in effect from 2008 to 2012.

51. In Count One of the Administrative Complaint, Petitioner charges that Respondent violated section 455.227(1)(n), by "exercising influence over Ms. Jamison while Ms. Jamison was a client for the purpose of financial gain relating to the payment of the Respondent's personal affairs." Section 455.227(1)(n), Florida Statutes (2011) did not change

since 2007 in any manner relevant to the allegations in this proceeding and provided:

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

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(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or third party.

52. Section 455.227(2) authorizes disciplinary penalties including suspension or permanent revocation of a license; restriction of practice; administrative fines up to \$5,000 for each count or offense; issuance of a reprimand; probation, with conditions specified by the applicable board; and corrective action. The board is also authorized pursuant to section 455.227(3)(a) to impose investigative costs.

53. The Department has proven Count One by clear and convincing evidence. Respondent met Ms. Jamison through her work for her as a CPA, and she continued to prepare income tax returns for her. Ms. Jamison repeatedly referred to Respondent as her CPA, and Respondent identified herself in that capacity when dealing with professionals such as Danny Soud and Tom Watson handling Ms. Jamison's affairs. Her former partners also understood Ms. Jamison to be her client, and the firm's computer billing records clearly reference her in that manner.

54. The evidence is equally clear that Respondent exercised undue influence over Ms. Jamison for her own financial gain. She gained access to her bank accounts and had herself nominated as a personal guardian for her. She controlled many of her social situations and interfered with her relationships with her children. The evidence is clear and convincing that Respondent exercised her influence for the purpose of personal benefit, and benefit she did.

55. Count Two of the Administrative Complaint charges Respondent with a violation of section 473.323(1)(g), by committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of accounting. Count Four charges a violation of section 473.323(1)(l), by failing to maintain good moral character as provided in section 473.308 or using practice privileges pursuant to section 473.3141.<sup>5/</sup>

56. In 2007, section 473.323 provided in pertinent part:

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

\* \* \*

(g) Committing an act of fraud or deceit, or of negligence, incompetency or misconduct, in the practice of public accounting.

\* \* \*

(l) Failing to maintain a good moral character as provided in section 473.308.

57. Section 473.308(6) provided:

(a) "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

58. In 2009, section 473.323(1)(1) was amended to state "failing to maintain a good moral character as provided in s. 473.308 while applying for licensure, or while licensed in this state or using practice privileges pursuant to s. 473.3141." § 22, ch. 2009-54, Laws of Fla. The definition of good moral character in section 473.308 remained the same. This change in the language makes no difference in the application of the subsection as alleged in this case.

59. With respect to Count Two, the Administrative Complaint alleges that Respondent's conduct violates section 473.323(1)(g) "by committing multiple acts of misconduct in the practice of public accountancy by withdrawing in excess of \$310,000 over the aforementioned period of years from Ms. Jamison's account for the Respondent's own personal use while the Respondent had a professional relationship with Ms. Jamison."

60. The Department has proven the violation alleged in Count Two by clear and convincing evidence. It is noted that while the Administrative Complaint alleged, and the Department demonstrated, that Respondent used over \$310,000 of Ms. Jamison's money for her own purposes, a much lower monetary figure also

would have sufficed to demonstrate a violation. The fact that the amount is over \$310,000 simply shocks the conscience of the factfinder, and Respondent's protestations that she believed she was entitled to these funds is astounding.

61. Moreover, any attempt to claim that Respondent was entitled to use of the funds because of the many personal services she provided to Ms. Jamison is completely without merit. One does not expect payment to perform acts of friendship. Moreover, there is not a scintilla of credible evidence that Respondent ever discussed with Ms. Jamison an intention to charge her for services other than preparing her taxes. Any client, even those considered to be friends, are entitled to be informed of the intention to charge for services and the rate to be charged prior to the service being performed. Here, Respondent simply used her friendship as a vehicle for raiding Ms. Jamison's bank accounts.

62. Finally, Count Four alleges that Respondent violated section 473.323(1)(1), by "engaging in withdrawals from Ms. Jamison's account for the Respondent's own personal use while holding a license to practice public accounting in the State of Florida (license number AC31511) and by aiding Ms. Jamison in the retroactive execution of the previously referenced promissory note and federal gift tax returns and accompanying Quickbooks

statements and thus demonstrating a lack of honesty, fairness, and respect for the rights of others.”

63. The Department did not prove that Respondent “aided” Ms. Jamison in the retroactive execution of the promissory note and federal gift tax returns and Quickbook statements. The more compelling evidence demonstrated that Respondent initiated, rather than aided, those activities. Respondent can only be found guilty of those allegations specifically referenced in the Administrative Complaint. Trevisani v. Dep’t of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); see also, Christian v. Dep’t of Health, 161 So. 3d 416, 417 (Fla. 2d DCA 2014); Ghani v. Dep’t of Health, 714 So. 2d 1113, 1114-15 (Fla. 1st DCA 1998).

However, the Department did prove by clear and convincing evidence that Respondent made numerous withdrawals from Ms. Jamison’s account for Respondent’s own personal use while holding a license to practice public accounting. Her wanton use of a client’s funds, as if they were her own, clearly demonstrates a lack of honesty, fairness and respect for the rights of others, thereby failing to maintain a good moral character. Count Four has been proven by clear and convincing evidence.

64. The Board of Accountancy has adopted disciplinary guidelines that identify the range of penalties normally imposed for violations of chapters 455 and 473, and rules adopted

pursuant to these statutory provisions. For each of the violations charged, the maximum penalty includes revocation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Accountancy enter a final order finding that Respondent committed the violations alleged in Counts One, Two, and Four of the Administrative Complaint. It is further recommended that the Board revoke Respondent's license to practice public accountancy.

DONE AND ENTERED this 31st day of December, 2015, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of December, 2015.

ENDNOTES

<sup>1/</sup> The Delaware Irrevocable Trust was never formed. Reference to it is included, however, to illustrate just how enmeshed Respondent was in Ms. Jamison's finances, and how much control she was exerting or attempting to exert over Ms. Jamison's funds.

<sup>2/</sup> Respondent claims that Ian was simply interested in preserving the funds for his own benefit, saying, for example, he had only called during his college days when he wanted to go on a trip or buy a new surfboard. However, Danny Soud testified that he shared Ian's concerns, as did Ian's brother Chase. Respondent's characterization of Ian's motives is specifically rejected.

<sup>3/</sup> Ms. Traylor had met Respondent socially before the beginning of the partnership. She first met Ms. Jamison through Respondent in 2009. She observed that Respondent had significant influence over Ms. Jamison: for example, when they first met, Respondent brought Ms. Jamison to an event and then stayed with her during the event, so that no one could approach Ms. Jamison without Respondent being there.

<sup>4/</sup> Her lack of involvement in the firm's workload is especially ironic, given her March 29, 2010, letter to Ian Jamison that because of tax season, the earliest she could complete any accounting of his mother's funds would be April 30, 2010. The more likely need for delay was for Respondent to devise a strategy to justify her actions.

<sup>5/</sup> In that Count Three was stricken from the Administrative Complaint at hearing, no further discussion of this Count is necessary.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.