

BEFORE THE ACCOUNTANCY EXAMINING BOARD  
OF THE STATE OF IOWA

**IN THE MATTER OF:**

Michelene Diane Kinning  
CPA Certificate #O07137

Respondent.

Case No. 19-01

**COMBINED STATEMENT OF  
CHARGES, SETTLEMENT  
AGREEMENT, AND ORDER  
ACCEPTING VOLUNTARY  
SURRENDER**

**A. Statement of Charges**

1. The Iowa Accountancy Examining Board (“**Board**”) has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 542 (2019).

2. Michelene Diane Kinning (“**Respondent**”) was issued certificate number O07137 on January 29, 1990. Respondent’s certificate is currently in a lapsed status.

3. On November 21, 2019, Respondent plead guilty to Theft in the First Degree (Class C Felony) in violation of Iowa Code sections 714.1 and 714.2(1). The court accepted Respondent’s guilty plea and sentenced or otherwise ordered Respondent to, among other things:

- a. A ten (10) year suspended prison sentence and two (2) years of probation. During Respondent’s probation, Respondent would be subject to supervision by the Department of Correctional Services (DCS) on terms and conditions of probation as required by DCS under the Intermediate Criminal Sanctions Program pursuant to Iowa Code Chapter 901B.
- b. Make victim restitution in the amount of \$154,402.40. Respondent had in fact made full restitution prior to the time of sentencing, which restitution was accepted by the court, and which was a factor considered by the court in imposing Respondent’s sentence.
- c. Pay a \$1,000 fine plus 35% surcharge.
- d. Participate in and cooperate with a Victim-Offender Reconciliation Program session. This session would allow the victim of Respondent’s crime the opportunity to confront Respondent in a controlled setting with the assistance of a trained facilitator.
- e. Pay other various fines, penalties, and fees.

4. The underlying facts and conduct forming the basis of Respondent’s conviction are that Respondent wrote unauthorized checks to herself while an accountant at Open Bible Churches’ denominational headquarters, beginning in 2010 through 2018, and ultimately misappropriated at least \$154,402.40 through this practice.

5. Based on the foregoing, the Board charges Respondent with:

- a. Conviction of a felony in violation of Iowa Code section 542.10(1)(e) and Iowa Administrative Code rule 193A—14.3(11).
- b. Conviction of a felony related to the profession in violation of Iowa Code sections 542.10(1)(j) and 272C.10(5).
- c. Conviction of any crime, any element of which is dishonesty or fraud, including forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or honesty, in violation of Iowa Code sections 542.5(2) and 542.10(1)(f) and Iowa Administrative Code rule 193A—14.3(11).
- d. Conduct discreditable to the accounting profession in violation of Iowa Code section 542.10(1)(i) and Iowa Administrative Code rule 193A—14.3(12)(a) and (i).
- e. Engaging in unethical conduct or a practice that is harmful or detrimental to the public in violation of Iowa Code section 542.10(1)(j) and 272C.10(3) and Iowa Administrative Code rule 193A—14.3(4).
- f. Lack of proper qualifications, including any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2)“b,” in violation of Iowa Code sections 542.10(1)(d) and 272C.3(2)(b) and Iowa Administrative Code rule 193A—14.3(5)(f).

6. The Board and Respondent have agreed to fully resolve these charges through the following Settlement Agreement, rather than proceed to contested case hearing.

7. Respondent admits the factual allegations underlying this Statement of Charges and that he violated the laws, rules, and standards related hereto.

## **B. Settlement Agreement and Order Accepting Voluntary Surrender**

1. Respondent has a right to a hearing on the charges, but waives Respondent’s right to hearing and all attendant rights, including the right to seek judicial review, by freely and voluntarily entering into this Settlement Agreement. This Settlement Agreement constitutes discipline against Respondent, and is the final agency order in a contested case, pursuant to Iowa Code section 17A.10 and Iowa Administrative Code rule 193—7.4. Respondent acknowledges that Respondent had an opportunity to review this Settlement Agreement with legal counsel before signing it.

2. Through this Settlement Agreement and Order Accepting Voluntary Surrender, and by filing the above Statement of Charges, the Board accepts the voluntary surrender of Respondent’s certificate to resolve a pending disciplinary contested case as permitted by and in accordance with Iowa Administrative Code rule 193A—16.3(3).

3. Respondent agrees the State’s counsel may present this Settlement Agreement to

the Board and may have ex parte communications with the Board while presenting it.

4. This Settlement Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any future penalty or sanctions to be imposed in the event of any future violations of the laws, rules, or standards administered by the Board.

5. This Settlement Agreement is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22.

6. Failure to comply with the provisions of this Settlement Agreement shall be grounds for further penalties, sanctions, or disciplinary action pursuant to Iowa Code sections 542.14 and 272C.3(2)(a).

7. This Consent Order is subject to approval of the Board:

- a. If the Board fails to approve this Consent Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter;
- b. If the Board approves this Consent Order, it shall fully dispose of all issues in this case.

8. This Settlement Agreement shall not preclude the Board from taking additional action against Respondent should Respondent violate the laws, rules, or standards administered by the Board in the future, including but not limited to should Respondent engage in unlicensed practice following the execution of this Settlement Agreement.

**IT IS THEREFORE ORDERED:**

- A. Respondent shall ~~VOLUNTARILY SURRENDER~~ Respondent's Certified Public Accountant Certificate #O07137 by and effective as of the date of last signature, below. Respondent shall return Respondent's wall certificate and renewal card to the Board office within ten (10) days of the execution of this Settlement Agreement. For the avoidance of doubt, such voluntary surrender shall constitute discipline against Respondent, and shall be treated for all intents and purposes as a **REVOCATION**.
- B. Respondent may not apply to reinstate Respondent's certificate for a period of **at least five (5) years** from the date of last signature, below.
- C. In accordance with Iowa Administrative Code rule 193—7.30(3), within fifteen (15) days of the entry of this Order accepting Respondent's voluntary surrender, Respondent shall notify in writing all current clients of the fact that the license has been voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within thirty (30) days of the entry of this Order, Respondent shall file with the Board copies of the notices sent. Compliance with this requirement shall be a condition for any future application for reinstatement.
- D. Should Respondent apply to reinstate Respondent's certificate in the future in accordance with this Order, such reinstatement shall be governed by and



conducted in accordance with Iowa Administrative Code rule 193A—16.5 (Reinstatement) and Iowa Administrative Code rule 193—7.38 (Reinstatement).

- E. Should the Board grant an application for reinstatement in the future, and reinstate Respondent's certification, any reinstatement order shall, at a minimum, impose the following terms and conditions. In addition to the following minimum terms and conditions, the Board may impose additional terms and conditions as the Board determines is appropriate.
1. Respondent shall be required to notify any future employer within the profession (*i.e.*, CPA or LPA firms) of the existence of this Settlement Agreement and provide them with a copy of the same before accepting any offer of employment.
- F. Nothing in paragraphs D or E, above, shall be construed or interpreted as requiring the Board to grant any future application for reinstatement or as requiring the Board to otherwise reinstate Respondent's certificate at any point in the future.

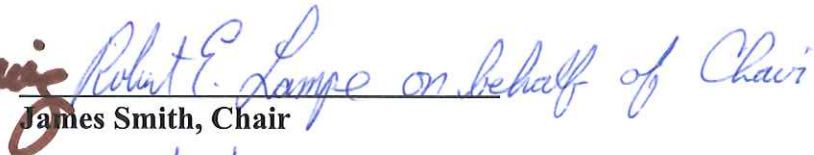
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**AGREED AND ACCEPTED:**

**Respondent**

**Iowa Accountancy Examining Board**





Michelene Diane Kinning

James Smith, Chair

12-30-19

12/31/2019

Date

Date