

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

7  
8 DECISION AND ORDER  
(By Consent)

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11 I. INTRODUCTION AND JURISDICTION

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

15 2. On December 4, 2000, the Board filed a Notice of Hearing and Public Complaint  
16 ("Notice") against Arthur Andersen, LLP ("Andersen"), Certified Public Accountant Jay Steven Ozer  
17 ("Respondent"), and others regarding services they provided to the Baptist Foundation of Arizona  
18 ("BFA"). The Notice was issued pursuant to A.R.S. § 32-701 *et seq.* and A.R.S. § 41-1061 *et seq.* The  
19 Board and Respondent have agreed to a full and final settlement of the matters alleged in the  
20 December 4, 2000 Notice as reflected in this Decision and Order By Consent ("Consent Order").  
21 Separate consent orders have been entered with the other named respondents under Docket Nos. 00A-  
22 98230-ACY; 00A-98230C-ACY and 00A-98230D-ACY.

23 3. Respondent disputes that the Factual Findings set forth below are complete and  
24 accurate, denies any wrongdoing with regard to the matters set forth herein, and denies that any  
25 violations of professional standards have occurred. The Consent Order represents a compromise of  
26 disputed matters and is the result of good faith settlement negotiations regarding issues that are  
disputed by the parties. The Findings of Fact and Conclusions of Law set forth herein are only for  
purposes of settlement of this disputed matter, and shall have no application or effect outside any  
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 1984<sup>1</sup>, BFA engaged Andersen as its independent auditor. From 1984 to 1997<sup>2</sup>,  
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").  
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23 <sup>1</sup>When years are used in this Consent Order, the reference is to the calendar year ending December 31 and  
24 the audit performed on that year by Respondent.

25 <sup>2</sup>Andersen 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.
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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.

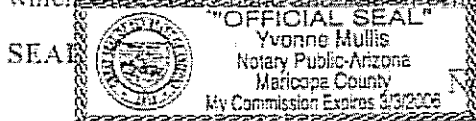
5 I understand that this Consent Order and the related investigation is a matter of public record.  
6 I retired from Andersen in August 2000. Since my retirement, I have not engaged in auditing or tax  
7 preparation services for which I require my CPA license. I have not engaged in any business  
8 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 9<sup>th</sup> day of August 2002.

13  
14   
15 Jay Steven Ozer

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



18   
19 Yvonne Mullis  
Notary Public in and for the State of Arizona

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

Certified Mail No.  
7000 1670 0006 4388 6701

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

1 Copy of the foregoing mailed  
this 16 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 ORIGINAL filed this 16 day of September 2002 with:  
10 Arizona State Board of Accountancy  
11 100 N. 15<sup>th</sup> Avenue, Suite 165  
12 Phoenix, AZ 85007

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

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

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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 9<sup>th</sup> day of August 2002.

  
Jay Steven Ozer

EXHIBIT "A" TO DECISION AND ORDER