

**PUBLIC SESSION MINUTES**  
**North Carolina State Board of CPA Examiners**  
**March 17, 2020**  
**1101 Oberlin Road**  
**Raleigh, NC 27605**

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**MEMBERS ATTENDING:** Arthur M. Winstead, Jr., CPA, President; Michael S. Massey, CPA, Vice President; Gary R. Massey, CPA, Secretary-Treasurer (by telephone); Barton W. Baldwin, CPA (by telephone); Bernita W. Demery, CPA (by telephone); Wanda B. Taylor, Esq.; and Jennifer Van Zant, Esq. (by telephone).

**STAFF ATTENDING:** Robert N. Brooks, Executive Director; David R. Nance, CPA, Deputy Director; Frank Trainor, Esq., Staff Attorney; Lisa R. Hearne, Communications Officer; Buck Winslow, Licensing Manager; and Noel L. Allen, Esq., Legal Counsel.

**GUESTS:** Sharon Bryson, CEO, NCACPA (by telephone) and Mark Soticheck, CPA, COO, NCACPA (by telephone).

**CALL TO ORDER:** President Winstead called the meeting to order at 1:00 p.m.

**MINUTES:** The minutes of the February 17, 2020, meeting were approved as submitted.

**FINANCIAL AND BUDGETARY ITEMS:** The February 2020 financial statements were accepted as submitted.

**ELECTION OF OFFICERS:** Mr. Winstead and Ms. Taylor moved to nominate and elect Michael S. Massey, CPA, for President, Barton W. Baldwin, CPA, for Vice-President, and Gary R. Massey, CPA, for Secretary-Treasurer, effective April 1, 2020. Motion passed with seven (7) affirmative votes and zero (0) negative votes.

**LEGISLATIVE AND RULE-MAKING ITEMS:** Mr. Brooks reviewed the draft rule-making schedule for 2020 as well as drafts of three amended rules and one new rule for possible rule-making in 2020.

**NATIONAL ORGANIZATION ITEMS:** Mr. Brooks provided information from NASBA regarding the closing of the Prometric Test Centers for Uniform CPA Examination candidates from March 17, 2020, through at least April 17, 2020, due to COVID-19. NASBA will extend the Notices to Schedule (NTSs) for all candidates scheduled to sit between April 1, 2020, through June 30, 2020. The Board will identify all candidates who have an open NTSs and credit expiring through June 30, 2020, and review each on a case-by-case basis for a possible extension of the 18-month credit window.

**STATE AND LOCAL ORGANIZATION ITEMS:** The Joint Dinner and breakfast with the NCACPA was canceled due to COVID19. The Issues Forum and NCACPA Board meeting would continue as scheduled via a virtual meeting on March 18, 2020.

Mr. Brooks and Ms. Bryson provided information on the problem of converting canceled CPE group conference events to online CPE event events being eligible for CPE credit due to NASBA's CPE Sponsor Registry rules. In light of COVID19, the NCACPA had asked for a waiver to give credit for these events. The Board provided guidance to Mr. Brooks for assisting the NCACPA with this opportunity with NASBA.

**REPORT OF THE PROFESSIONAL STANDARDS COMMITTEE:** Mr. M. Massey moved, and the Board approved the following recommendations of the Committee:

Case Nos. C2019237-1 and C2019237-2 - Mark T. Hawkins and Hawkins & Hawkins, PC - Approve the signed Consent Order (Appendix I).

Case No. C2019307 - Dylan M. McNiff - Approve the signed Consent Order (Appendix II).

Case No. C2018297 - Leon Little Rives, II -Mr. M. Massey moved, and Ms. Taylor seconded the motion to approve the Emergency Order for Summary Suspension. Motion passed. (Appendix III).

Case Nos. I2012404-1, I2012404-3, C2013084-2, and C2018297 - Leon Little Rives, II - Ms. Taylor moved, and Ms. Demery seconded the motion to approve a Notice of Hearing for July 20, 2020, at 10:00 a.m. Motion passed.

**REPORT OF THE PROFESSIONAL EDUCATION AND APPLICATIONS COMMITTEE:** Mr. G. Massey moved, and the Board approved the following recommendations of the Committee:

**Transfer of Grades Applications** - The Committee recommended that the Board approve the following:

Adam David Marthaler  
Michael Shane McCarthy  
Carter Porcher Norris

**Original Certificate Applications** - The Committee recommended that the Board approve the following:

Leslie Cameron Blazeovich  
Madalina Body  
Katie Lynn Bond  
Wendy Alexis Burnes  
JingYuan Chen  
Caroline Elizabeth Clark  
Jonathan James Coleby  
Jake Austin Connor  
Joseph Michael Crouse  
Brian William Donovan  
Angell Wescott Doughtie  
Dylan Conrad Edwards

Alexander Miles Erwin  
Owen James Gaffney, III  
Meredith Kristian Gay  
Nicholas Trenton Gilliam  
Jordan Marcus Gower  
Joy Ruth Hall  
Alison Raye Halter  
Elyse Shizuko Yukiko Hiraoka  
Daniel Shannon Jones  
Tevin Delaney Jones  
Michael Paul Klem  
Justin William Knight

Spencer Harris Lauber  
Janelle Elizabeth Lewis  
Reid Joseph Lichtenberger  
Adam David Marthaler  
Michael Shane McCarthy  
William Ashton McLamb  
Brian Tu Nguyen  
Carter Porcher Norris  
Cheryl Elise Oliver  
Jasmine Ebony Roach

Kornravee Sintavanon  
Timothy Milan Sivacek  
Christopher Evan Snowden  
Tamara Stanic'  
Nicole Marie Storer  
Rachael Renee Taggio  
Casper Hill Timberlake, IV  
Brent Noel Williams, Jr.  
Elizabeth Caroline Zurawel

Staff reviewed and recommended approval of the original application submitted by Jacob Edwin Hoyle. Mr. Hoyle failed to disclose pertinent information with his Exam application but provided it with his certificate application. Staff recommended approval of the application with a one-year probationary period. The Committee recommended that the Board approve staff recommendation.

**Reciprocal Certificate Applications** - The Committee recommended that the Board approve the following:

Joan Elizabeth Atkinson  
Susan Lynn Dalton  
James Andrew Hatfield, Jr.  
Dale-Anne Jekov

Mark Jason Laughner  
Jonathan Ocampo  
Christopher John Pallen  
Eric Reeves

**Temporary Permits** - The Committee recommended that the Board approve the following temporary permits that were approved by the Executive Director:

Megan Wallenhorst Druckrey, T11817  
Danny Lanier, Jr., T11818  
Scott Foster Armstrong, T11819  
Jakub Waldemar Malecki, T11820  
Stephen John Marquardt, T11821  
Jonathan David Austin, T11822  
Nicole Marie Scarborough, T11823  
Dennis Marlowe Vaughn, Jr., T11824  
Gregory Edward Morrow, T11825  
Brian Christopher Laya, T11826  
Elizabeth D. Hattaway, T11827  
Sharon B. Bell, T11828  
Stephen Christopher Arber, T11829

Yijing Teng Wyant, T11830  
Nicole Marie Landes, T11831  
Lauren Ann Nichols, T11832  
Eduard Antony Noriega, T11833  
John Hardin Morris, T11834  
Jian Shen, T11845  
Shawn P. Adamo, T11846  
Calvin Wade Troup, T11847  
Matthew Scott McGuire, T11848  
Ann Sweeney Hawkins, T11849  
Randeep Singh Brar, T11850  
Peter Migui Theuri, T11851

**Reinstatements** - The Committee recommended that the Board approve the following:

James Kerry Aaron, #40141  
Ryan Ritter Dodson, #24326

Dale Kindley Miller, #26819  
Elizabeth Hanlon Sands, #35777

**Reissuance of New Certificate** - The Committee recommended that the Board approve the following applications for reissuance of new certificate:

Allison Watkins Lee, #34403  
Robert Edward Mallernee, #15095

**Firm Registration** - The Committee recommended that the Board approve the professional limited liability company Anna Larson CPA PLLC that was approved by the Executive Director.

**Extension Request** - The Committee recommended that the Board approve Karen A. McKay, #18079, for an extension for completion of CPE until April 1, 2019.

**Letters of Warning** - The Committee recommended that the Board approve the requests to rescind the Letter of Warning issued to the following individuals:

Paul David Johnson, #35815  
Karen A. McKay, #18079

**Examinations** - The Committee recommended that the Board approve the following staff-approved applicants to sit for the Uniform CPA Examination:

Shannan Adams	Caroline Cox
Yusif Al-Yemeni	Amanda Crnic
Amy Andrews	Sarah Day
Peter Anzano	Julia Dillard
Sterling Atkinson	Zachary Dougherty
Alanna Aungvibool	Emilee Drake
Joanne Aydain	Stewart Dula
Tasha Barnes	Jessica Earles
Ryan Beckman	Corey Edge
Bradley Bennett	Amber Elgin
William Black	Carlyn Flake
Brittany Blackwell	George Francis
Margaret Bloodworth	Laura Fulp
Letitia Boger	Thomas Galligan
Kristen Boley	Michael Giannuzzi
Seth Brim	Sascha Gibson
Nolan Brown	Mary Gillentine
Zachary Brown	Kyle Gosland
Jack Bruns	Elondia Grant
Laura Bryant	Lauren Greene
Rebecca Carroll	Maxwell Gregory
Chandler Caudill	Cynthia Grose
Peter Cerquone	Aaron Gulibon
Quincei Clark	Madelyn Hayes
Isabella Colasante	Scarlett Heddle
Amanda Corso	Rachael Hendershott
Lynn Couturier	Floyd Henderson

Cameron Hendrickson  
Evan Hill  
Jacob Hopkins  
Michael House  
Isaac Irby  
Hannah Jabusch  
Ibreta Jackson  
Hailee Jarry  
Donna Johnson  
Brenda Jones  
John Kadechka  
Thomas Kessler  
Lorren Kidd  
Georganne Kubic  
Sandra Lafontaine  
Jenna Landis  
Ruby Lansdell  
Melody Leekley  
Steven Leerberg  
Cory Lloyd  
Maineng Lo  
Cristy Love  
John Lucas  
Hunter Lutz  
Michael Madigan  
Robin Mangum  
Catherine Marsh  
Candra Mathis  
Jessica Matthews  
Joseph McCann  
Magdalena McCormack  
Franklin McLaurin  
Crystal McNair  
Andrew Mihok  
Jenneth Mitchell  
Madison Mitchell  
Jack Mock  
Jonathan Mohl  
Stenn Monson  
Robert Morgan  
Dennis Munise  
Emanuel Nasui  
Briggs Neal  
Kerri Nile  
Alicia Oates  
Nathan Olivier  
Samantha Ostmann  
Chandler Page

Sarah Parker  
Taylor Parks  
William Perrault  
Greg Phillips  
Blake Pierce  
Caroline Piper  
Kara Plotner  
Katelyn Prichard  
Brady Proffitt  
Sheetal Puri  
Melissa Ratcliff  
John Reda  
Rachel Regan  
William Rhyne  
Yasmeen Richie  
Sophie Ricks  
Jenna Riglick  
Francisco Rojas-Descalzi  
Sierra Rolon  
Jocelyn Rosario  
Daniel Ruggiero  
Matthew Ryan  
Omar Sadou Mamadou  
Kwabena Sarpong  
Marie Saunders  
Steven Savicki  
Benjamin Sawyer  
Leigh Schmidt  
Daniel Sferruzzo  
Amanda Shaughnessy  
Julie Sherrill  
Allison Shikorsky  
Gary Sigafoos  
Angela Silver  
Evin Sims  
Katherine Sirls  
Christopher Soto  
Benjamin Starr  
Gongtao Sun  
Charnice Taylor  
Cara Tillis  
Joshua Tripp  
Joshua VanWingerden  
Alexis Walker  
Reed Warren  
William Weeks  
Alexander Wetzel  
Sanailer Whidbee

Kerrie Williams  
Jamila Wilson-Davis  
Victoria Winstead  
Tyja Wise

Daniel Wolf  
Nathan Wonsch  
Miranda Wronecki  
Jack Xie

**Firm Renewal and Peer Review Matters** – The firms listed below submitted a renewal or termination notice less than 60 days after the deadline. Staff recommended referral to the Professional Standards Committee. The Committee recommended that the Board approve staff recommendation:

Timothy Spahr, CPA, MBA, CMA, P.L.L.C.  
Timothy David Spahr, #40056  
Catherine W. Johnson, CPA, PC  
Catherine Wilson Johnson, #27544

**REPORT OF THE AUDIT COMMITTEE** – Mr. G. Massey reported that an RFP for the annual Board audit had been advertised for bids, and the Committee had recommended Bernard Robinson & Company, LLP. Mr. G. Massey moved, and the Board approved the recommendation of the Committee.

**EXECUTIVE STAFF AND LEGAL COUNSEL REPORT:** The Executive staff provided the monthly operational metrics and the Executive Staff Report.

**ADJOURNMENT:** Mr. M. Massey and Ms. Taylor moved to adjourn the meeting at 2:14 p.m. Motion passed.

Respectfully submitted:

Attested to by:



Robert N. Brooks  
Executive Director



Arthur M. Winstead, Jr., CPA  
President

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF  
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS  
CASE #s C2019237-1/2

IN THE MATTER OF:  
Mark T. Hawkins, CPA, #22175  
Hawkins & Hawkins, PC, Firm  
Respondents

CONSENT ORDER

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners ("Board") at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N. C. Gen. Stat. § 150B-41, the Board, the Respondent and the Respondent Firm stipulate to the following:

1. Mark T. Hawkins, CPA (hereinafter "Respondent"), is the holder of North Carolina certificate number 22175 as a Certified Public Accountant.
2. Hawkins & Hawkins, PC (hereinafter "Respondent Firm"), is a registered certified public accounting firm in North Carolina. Hereinafter, the Respondent and the Respondent Firm shall collectively be referred to as the "Respondents."
3. The Respondents issued multiple reviews over the past five (5) years. The Respondents are enrolled in the peer review program; however, the Respondent Firm has not provided any information that a peer review has been scheduled.
4. The Respondents failed to furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within eighteen (18) months of the issuance of the first report provided to a client.

RECEIVED

FEB 21 2020

CPA EXAMINERS

5. The Respondents wish to resolve this matter by consent and agree that the Board staff and counsel may discuss this Consent Order with the Board *ex parte*, whether or not the Board accepts this Consent Order as written. The Respondents understand and agree that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.

BASED upon the foregoing, the Board makes the following Conclusions of Law:

1. The Respondents are subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina Administrative Code, including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.
2. The Respondents' failure to timely complete the peer review process constitutes a violation of 21 NCAC 08N .0203(b)(7).
3. The Respondents' failure to furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within eighteen (18) months of the issuance of the first report provided to a client constitutes a violation of 21 NCAC 08M .0105.
4. Per N.C. Gen. Stat. § 93-12(9), and also by virtue of the Respondents' consent to this order, the Respondents are subject to the discipline set forth below.

BASED on the foregoing and in lieu of further proceedings, the Board and the Respondents agree to the following Order:

1. The Respondent Mark T. Hawkins, CPA, is censured.
2. The Respondent Firm may not perform any of the services listed in 21 NCAC 08M .0105(a) until such time that the Respondent Firm provides evidence of its enrollment in peer review and that a peer review has been scheduled, at which time the suspension will be stayed.

RECEIVED

FEB 21 2020

CPA DIVISION



Consent Order - 3  
Mark T. Hawkins, CPA  
Hawkins & Hawkins, PC

3. Upon completion of its peer review, the Respondent Firm shall provide the Board with a complete copy of its Peer Review Report, Letter of Response, and Final Letter of Acceptance for further review and evaluation by the Board.
4. The Respondent Firm shall pay a two thousand dollar (\$2,000) civil penalty to be remitted with this signed Consent Order.

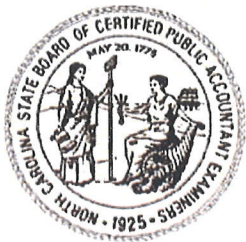
CONSENTED TO THIS THE 17 DAY OF February, 2020  
(Day) (Month) (Year)

Mark T. Hawkins  
Individual authorized to sign on behalf of Respondent Firm

Mark T. Hawkins  
Respondent

APPROVED BY THE BOARD THIS THE 17 DAY OF MARCH, 2020  
(Day) (Month) (Year)

NORTH CAROLINA STATE BOARD OF CERTIFIED  
PUBLIC ACCOUNTANT EXAMINERS



BY: Atthey Winstead  
President

NO BOARD USE

FEB 21 2020

CPA BOARD USE

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF  
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS  
CASE #C2019307

IN THE MATTER OF:  
Dylan Michael McNiff, #41388  
Respondent

CONSENT ORDER

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners ("Board") at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N. C. Gen. Stat. § 150B-41, the Board and Respondent stipulate to the following:

1. Dylan Michael McNiff (hereinafter "Respondent"), was the holder of North Carolina certificate number 41388 as a Certified Public Accountant.
2. The Respondent informed the Board on his 2018-2019 individual certificate Renewal ("Renewal") that between January 1, 2017, and June 30, 2018, he had obtained the requisite forty (40) hours of continuing professional education ("CPE") to meet the 2017 CPE requirements.
3. Based on the Respondent's representation, the Board accepted his Renewal.
4. Board staff requested that the Respondent provide certificates of completion for the CPE reported to meet his 2017 and 2018 requirements.
5. Due to a misunderstanding of the CPE rules, the Respondent failed to complete the ethics course mandated to meet his 2017 CPE requirements that he claimed on his 2018-2019 annual renewal.
6. The Respondent wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Order with the Board *ex parte*, whether or not the Board accepts this Consent Order as written. The Respondent understands and agrees that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF  
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS  
CASE #: C2018297

IN THE MATTER OF:  
Leon Little Rives, II, CPA #29505  
Respondent

EMERGENCY ORDER

Pursuant to N. C. Gen. Stat. § 150B-3(c), the North Carolina State Board of CPA Examiners (hereinafter "Board") finds that there is substantial evidence that Respondent Leon Little Rives, II, CPA (hereinafter "Respondent") has engaged in general and specific conduct demonstrating that he is no longer fit to continue to hold a certificate as a Certified Public Accountant. Specifically, during the period of time in which he has been a licensee and has been engaged in rendering accounting services to the public, there is substantial evidence that Respondent committed each of the following acts or omissions in violation of the North Carolina accountancy laws and rules, 21 NCAC 08N .0201 (Integrity), 21 NCAC 08N .0202 (Deceptive Conduct) and 21 NCAC 08N .0203 (Discreditable Conduct).

1. Respondent is the holder of North Carolina certificate number 29505 as a certified public accountant.
2. The Respondent disclosed that he and his firm, Rives & Associates, LLP ("Firm"), had been sued by Avalon Potts in North Carolina Business Court. Primarily, the lawsuit alleged that the Respondent had acted fraudulently and in breach of his fiduciary duty as an officer and director of Steel Tube, Inc. Other allegations contend that the Firm, through the Respondent, acted negligently and breached its contract in the preparation of Steel Tube's tax returns.
3. The lawsuit was litigated in Business Court and a jury entered a verdict against the Respondent based upon a breach of his fiduciary duty, conversion, and fraud. As a result, the Respondent was held individually liable for a total of \$1,675,846. The judge has upheld the verdict and has rendered a judgment for that amount. The jury also found the Firm to be professionally negligent and entered a \$40,000 judgment against it. Additionally, the jury entered \$300,000 in punitive damages against the Respondent and \$200,000 against the Firm upon evidence it deemed to be clear and convincing as required by N.C. Gen. Stat. §1D-15(c).
4. Based upon the prima facie evidence including the above-described Jury Verdict Sheet, Supplemental Jury Verdict Sheet and Final Judgment and Court Order, attached hereto as Exhibits 1, 2 and 3, respectively. Board finds that public welfare requires emergency

Emergency Order - 2  
Leon Little Rives, II, CPA

action. The Verdicts and Final Judgment were based upon Respondent's relationship with clients and others, the unauthorized conversion of property and fraud. In light of the seriousness of the jury's findings and the judge's verdict establishing the conduct in question, as well as evidence of the imminent danger of continued and irreparable harm to the public, that the public welfare requires this emergency action.

The Board therefore issues this Emergency Order, pursuant to N.C. Gen. Stat. § 150B-3(c), to summarily suspend Respondent's certificate as a Certified Public Accountant. This Order is effective immediately at the time of service of this Order upon Respondent, and shall remain in effect until this proceeding may be concluded pursuant to North Carolina Administrative Procedure Act. A separate Notice of Hearing for this matter, and other related matters will be issued to be held in the Board Office on July 20, 2020.

Adopted by a vote of 7 to 0 by the Board on this the 17 day of March 2020.



NORTH CAROLINA STATE BOARD OF CERTIFIED  
PUBLIC ACCOUNTANT EXAMINERS

BY: *Anthony J. Rives II*  
President

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

IREDELL COUNTY

16 CVS 2877

W. AVALON POTTS, derivatively on  
behalf of Steel Tube, Inc.,

Plaintiff,

v.

KEL, LLC; RIVES & ASSOCIATES,  
LLP;

Defendants,

and

STEEL TUBE, INC.,

Nominal Defendant,

and

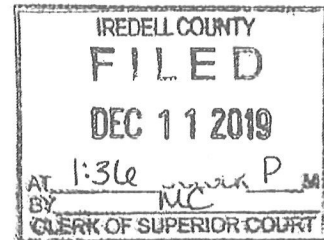
LEON L. RIVES, II,

Defendant/  
Counterclaimant/  
Third-Party Plaintiff,

v.

AVALON1, LLC,

Third-Party Defendant/  
Counterclaimant.



VERDICT SHEET

ISSUE NO. 1: Was Steel Tube damaged by the failure of Rives to discharge his duties  
as a corporate director or officer?

yes (YES/NO)

If you answer this issue "YES," please proceed to Issue No. 2.

If you answer this issue "NO," please proceed to Issue No. 3.

ISSUE NO. 2: Did Rives use his position as officer or director to the detriment of Steel Tube and for his own benefit?

yes  YES  NO

Please proceed to Issue No. 3.

ISSUE NO. 3: Did Rives convert the following property of Steel Tube:

- a) The \$20,000 payment to Roy Lazenby;
- b) The \$7,500 monthly withdrawals or checks written to Rives;
- c) The \$10,500 cashier's check to Rives;
- d) The \$62,875 distribution to Rives; or
- e) The \$4,221 balance in the Wells Fargo account?

yes  YES  NO

If you answer "YES" to one or more of Issues 1, 2, or 3, please proceed to Issue No. 4.  
If you answer "NO" to all of Issues 1, 2, and 3, please proceed to Issue No. 5(a).

ISSUE NO. 4: What amount of damages, if any, is Steel Tube entitled to recover from Rives?

\$1,285,750.<sup>00</sup>

Please proceed to Issue No. 5(a).

ISSUE NO. 5(a): Was Steel Tube damaged by the fraud of Rives?

yes  YES  NO

If you answer this issue "YES," please proceed to Issue No. 5(b).  
If you answer this issue "NO," please proceed to Issue No. 6(a).

ISSUE NO. 5(b): What amount, if any, is Steel Tube entitled to recover from Rives as damages for fraud?

\$ 390,096.<sup>00</sup>

Please proceed to Issue No. 6(a).

ISSUE NO. 6(a): Was Steel Tube damaged by the negligence, if any, of Rives & Associates?

yes  (YES/NO)

If you answer this issue "YES," please proceed to Issue No. 6(b).  
If you answer this issue "NO," please proceed to Issue No. 7(a).

ISSUE NO. 6(b): What amount, if any, is Steel Tube entitled to recover from Rives & Associates's professional negligence?

\$ 40,000.<sup>00</sup>

Please proceed to Issue No. 7(a).

ISSUE NO. 7(a): Did Avalon1 send Rives a reasonable notification of the public sale of Rives's shares of Steel Tube?

yes  (YES/NO)

Please proceed to Issue No. 7(b).

ISSUE NO. 7(b): Did Avalon1 sell Rives's shares in a commercially reasonable manner?

yes ~~(YES)~~ (NO)

If you answer "NO" to either Issue 7(a) or 7(b), please proceed to Issue No. 7(c).  
If you answer "YES" to both Issue 7(a) and 7(b), please stop.

ISSUE NO. 7(c): What amount of deficiency, if any, would have resulted had Avalon1 disposed of Rives's shares in a commercially reasonable manner?

\$ 0.<sup>00</sup>

The jury has considered the issues submitted to it in accordance with the Court's instructions, and the answers written above represent its unanimous verdict.

This 11 day of December, 2019.

  
Foreperson



STATE OF NORTH CAROLINA  
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
16 CVS 2877

W. AVALON POTTS, derivatively on  
behalf of Steel Tube, Inc.,

Plaintiff,

v.

KEL, LLC; RIVES & ASSOCIATES,  
LLP;

Defendants,

and

STEEL TUBE, INC.,

Nominal Defendant,

and

LEON L. RIVES, II,

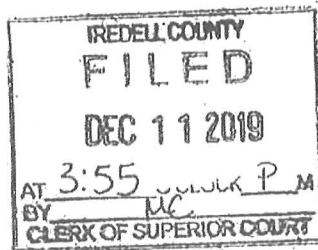
Defendant/  
Counterclaimant/  
Third-Party Plaintiff,

v.

AVALON1, LLC,

Third-Party Defendant/  
Counterclaimant.

SUPPLEMENTAL VERDICT SHEET



SUPPLEMENTAL ISSUE NO. 1: Are Rives and Rives & Associates liable to Steel Tube for punitive damages?

Rives: ~~no~~ (YES) NO yes

Rives & Associates: ~~no~~ (YES) NO yes

If you answer this issue "YES" as to one or both defendants, please proceed to answer Supplemental Issue No. 2 for that defendant or defendants.

If you answer this issue "NO" as to both defendants, please stop.


SUPPLEMENTAL ISSUE NO. 2: What amount of punitive damages, if any, does the jury in its discretion award to Steel Tube?

Rives: \$ 300,000.<sup>00</sup>

Rives & Associates: \$ 200,000.<sup>00</sup>

The jury has considered the issues submitted to it in accordance with the Court's instructions, and the answers written above represent its unanimous verdict.

This 11 day of December, 2019.

  
\_\_\_\_\_  
Foreperson

STATE OF NORTH CAROLINA

IREDELL COUNTY

W. AVALON POTTS, derivatively on  
behalf of Steel Tube, Inc.,

Plaintiff,

v.

KEL, LLC; RIVES & ASSOCIATES,  
LLP;

Defendants,

and

STEEL TUBE, INC.,

Nominal Defendant,

and

LEON L. RIVES, II,

Defendant/  
Counterclaimant/  
Third-Party Plaintiff,

v.

AVALON1, LLC,

Third-Party Defendant/  
Counterclaimant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
16 CVS 2877

**FINAL JUDGMENT**

**THIS CASE** was designated a mandatory complex business case by Order of the Chief Justice of the North Carolina Supreme Court pursuant to N.C.G.S. § 7A-45.4(a)(1) and assigned to the undersigned Special Superior Court Judge for Complex Business Cases.

This case was tried from December 2, 2019 through December 11, 2019, in the Superior Court of Iredell County. The claims of Plaintiff Avalon Potts, brought

derivatively on behalf of Steel Tube, Inc., for breach of fiduciary duty, constructive fraud, conversion, and fraud against Defendant Leon L. Rives II and for professional negligence against Defendant Rives & Associates, LLP were tried to the jury. In addition, the claim of Counterclaimant Avalon1, LLC for deficiency under Article 9 of the North Carolina Uniform Commercial Code was tried to the jury. Finally, the issue of punitive damages against Rives and Rives & Associates was bifurcated pursuant to N.C.G.S. § 1D-30 and was tried to the jury following the jury's verdict finding both Defendants liable for compensatory damages.

At trial, the Court directed a verdict for Potts on Rives's counterclaims for breach of fiduciary duty, declaratory judgment, and quantum meruit, and directed a verdict for Avalon1 on Rives's claim for surplus under Article 9 of the North Carolina Uniform Commercial Code. In addition, the Court directed a verdict at trial for Rives and Rives & Associates on Potts's derivative claims for civil conspiracy and facilitation of fraud. The Court denied all other motions for directed verdict.

On December 11, 2019, the jury returned its verdict on the issues of liability and compensatory damages submitted as follows:

1. Was Steel Tube damaged by the failure of Rives to discharge his duties as a corporate director or officer?

Yes.

2. Did Rives use his position as officer or director to the detriment of Steel Tube and for his own benefit?

Yes.

3. Did Rives convert the following property of Steel Tube:

- a. The \$20,000 payment to Roy Lazenby;
- b. The \$7,500 monthly withdrawals or checks written to Rives;
- c. The \$10,500 cashier's check to Rives;
- d. The \$62,875 distribution to Rives; or
- e. The \$4,221 balance in the Wells Fargo account?

Yes.

4. What amount of damages, if any, is Steel Tube entitled to recover from Rives?

\$1,285,750

5. Was Steel Tube damaged by the fraud of Rives?

Yes.

6. What amount, if any, is Steel Tube entitled to recover from Rives as damages for fraud?

\$390,096

7. Was Steel Tube damaged by the negligence, if any, of Rives & Associates?

Yes.

8. What amount, if any, is Steel Tube entitled to recover from Rives & Associate's professional negligence?

\$40,000

9. Did Avalon1 send Rives a reasonable notification of the public sale of Rives's shares of Steel Tube?

Yes.

10. Did Avalon1 sell Rives's shares in a commercially reasonable manner?

Yes.

Subsequently, on December 11, 2019, the jury returned its verdict on the bifurcated issues of punitive damages submitted as follows:

1. Are Rives and Rives & Associates liable to Steel Tube for punitive damages?

Rives: Yes.

Rives & Associates: Yes.

2. What amount of punitive damages, if any, does the jury in its discretion award to Steel Tube?

Rives: \$300,000

Rives & Associates: \$200,000

The amount of punitive damages awarded by the jury is within the statutory limit provided in N.C.G.S. § 1D-25. The amount awarded against Rives does not exceed three times the amount of compensatory damages awarded, the amount awarded against Rives & Associates does not exceed \$250,000, and the total amount awarded to Steel Tube does not exceed three times the amount of total compensatory damages awarded.

Given the jury's verdict finding that Avalon1 provided notice and sold Rives's shares of Steel Tube in a commercially reasonable manner, the issue regarding the amount of deficiency owed by Rives to Avalon1 was not submitted to the jury, but was rather stipulated by the parties to be \$278,000. Given the jury's affirmative answers

on the issues related to commercial reasonableness of the sale, the Court finds, based on the stipulation of the parties, that Avalon1 is entitled to recover from Rives a deficiency in the amount of \$278,000.

**IT IS THEREFORE ORDERED**, based on the verdict of the jury:

- a. That judgment is entered for Steel Tube as to the claims for breach of fiduciary duty, constructive fraud, conversion, and fraud against Rives in the total amount of \$1,675,846 plus prejudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date this action was commenced, November 29, 2016, through the date of entry of this judgment, plus postjudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date of entry of this judgment until the judgment is satisfied.
- b. That judgment is entered for Steel Tube as to the claim for professional negligence against Rives & Associates in the total amount of \$40,000 plus prejudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date this action was commenced against Rives & Associates, February 22, 2017, through the date of entry of this judgment, plus postjudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date of entry of this judgment until the judgment is satisfied.
- c. That judgment is entered for Avalon1 as to its counterclaim for deficiency against Rives in the total amount of \$278,000 plus

prejudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date this counterclaim was asserted in this action, October 30, 2017, through the date of entry of this judgment, plus postjudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date of entry of this judgment until the judgment is satisfied.

- d. That judgment is entered for Steel Tube as to punitive damages against Rives in the total amount of \$300,000 plus postjudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date of entry of this judgment until the judgment is satisfied.
- e. That judgment is entered for Steel Tube as to punitive damages against Rives & Associates in the total amount of \$200,000 plus postjudgment interest pursuant to N.C.G.S. § 24-5(b) at the legal rate of 8% per annum from the date of entry of this judgment until the judgment is satisfied.
- f. That judgment is entered for Potts as to Rives's claims for breach of fiduciary duty, declaratory judgment, and quantum meruit, and those claims are **DISMISSED WITH PREJUDICE**.
- g. That judgment is entered for Avalon1 as to Rives's claim for surplus under Article 9 of the North Carolina Uniform Commercial Code, and that claim is **DISMISSED WITH PREJUDICE**.
- h. That judgment is entered for Rives and Rives & Associates as to the claims of Potts, brought derivatively on behalf of Steel Tube, for civil



conspiracy and facilitation of fraud, and that those claims are  
**DISMISSED WITH PREJUDICE.**

The Court shall address the taxation of costs as may be filed based on this judgment upon separate application by the parties.

**SO ORDERED**, this the 8th day of January, 2020.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases

Consent Order - 2  
Dylan Michael McNiff

BASED upon the foregoing, the Board makes the following Conclusions of Law:

1. The Respondent is subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina Administrative Code, including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.
2. The Respondent's actions as set out above constitute violations of 21 NCAC 08N .0202(a), .0202(b)(3), and .0202(b)(4).
3. Per N.C. Gen. Stat. § 93-12(9) and also by virtue of the Respondent's consent to this order, the Respondent is subject to the discipline set forth below.

BASED on the foregoing and in lieu of further proceedings, the Board and the Respondent agree to the following Order:

1. The Respondent's failure to provide adequate documentation of CPE renders the Renewal insufficient and untimely. The Respondent's failure to adequately renew his certificate results in a forfeiture pursuant to N.C. Gen. Stat. § 93-12(15).
2. The Respondent must return his certificate to the Board within fifteen (15) days of his receipt of the Board's notification of its approval of this Consent Order.
3. The Respondent may apply for the reissuance of his certificate after one (1) year from the date the Board approves this Consent Order as long as the civil penalty required in number five (5) of this Order has been timely received by the Board.
4. The Respondent may apply to return his certificate to active status by submission and approval of a reissuance application which includes:
  - a. Application form,
  - b. Payment of the application fee,
  - c. Three (3) moral character affidavits, and
  - d. Forty (40) hours of CPE in the twelve (12) months preceding the application including an eight (8) hour accountancy law course as offered by the North Carolina Association of CPAs.
5. The Respondent shall pay a one thousand dollar (\$1,000) civil penalty, to be remitted to the Board prior to submitting a reissuance application.

Consent Order - 3  
Dylan Michael McNiff

6. The Respondent agrees that failure to timely comply with any terms of this agreement and Consent Order shall be deemed sufficient grounds for revocation of his certificate.

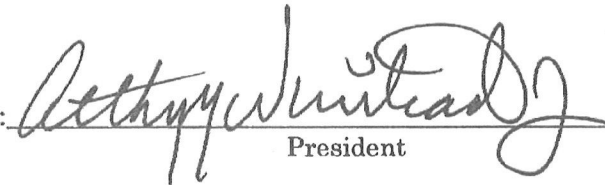
CONSENTED TO THIS THE 4<sup>th</sup> DAY OF February, 2020  
(Day) (Month) (Year)

  
Respondent

APPROVED BY THE BOARD THIS THE 17 DAY OF MARCH 2020  
(Day) (Month) (Year)

NORTH CAROLINA STATE BOARD OF CERTIFIED  
PUBLIC ACCOUNTANT EXAMINERS



BY:   
President