

BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY

MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY,

v.

Richard E. Westbay,

Respondent

Case nos. CPAS-14-0039

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FINAL ORDER

The above-captioned case was heard before the Maryland State Board of Public Accountancy ("the Board") on March 3, 2015. The allegations against Respondent Richard E. Westbay, as set forth in the Board's charge letter dated January 28, 2015, were as follows:

On or about November 5, 2013, you filed an application with the Board by means of the Board's online licensing system for the period beginning on or about November 7, 2013 and ending on or about November 5, 2015. On the renewal application you claimed 80 hours of continuing professional education (CPE) credit earned during the previous license term. Further, on the license renewal application you certified to the accuracy of the information contained in the application. The certification states, in pertinent part:

"I hereby certify, under the penalty of perjury, that the information contained herein is true and correct to the best of my knowledge, information, and belief. . ."

Following the submission of your renewal application, you were notified that your application was selected for audit and that supporting documentation for the CPE hours claimed was required to be received by the Board no later than December 5, 2013. You subsequently submitted documentation to support the 80 CPE hours claimed in the license renewal application. Upon review, it was determined that the 80 CPE hours claimed were not earned until after the date of certification and submission of your

renewal application. Therefore, when you submitted your renewal application, you misrepresented to the Board that you had met the CPE requirements for renewal though, in fact, the requirements were not met.

Based on the above described circumstances, you are charged with violating the following laws of the State of Maryland and provisions of the Code of Maryland Regulations (COMAR)

Business Occupations and Professions Article, Md. Annotated Code of Maryland

Section 2-312. Continuing education

(a) *In general.* - (1) The Board shall adopt regulations that set, in accordance with this section, continuing education requirements as a condition to the renewal of licenses under this subtitle.

(2) A continuing education requirement does not apply to the first renewal of a license.

(3)(i) To qualify for any further renewal of a license under this subtitle, a licensee shall complete, for each 2-year license term, at least 80 hours in programs the Board approves.

Section 2-315. Denials, reprimands, suspensions, and revocations - Grounds; license certificate.

(a) *Grounds.* -

(1) Subject to the hearing provisions of §2-317 of this subtitle, the Board, on the affirmative vote of a majority of its members, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(i) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(xii) violates a rule of professional conduct adopted by the Board.

COMAR 09.24.01.06 Code of Professional Conduct

I. Other Responsibilities and Practices.

(1) A licensee may not commit any act that reflects adversely on the licensee's fitness to engage in the practice of public accountancy.

COMAR 09.24.02.02 Basic Requirement.

A. The applicant shall complete a minimum of 80 hours of acceptable continuing education in each 2-year license term after initial renewal.

B. A minimum of 4 hours of the continuing education for each 2-year license term shall be in professional ethics with no carry forward provision for excess hours.

In its charge letter, the Board informed Mr. Westbay of his right to a hearing on the charges, in accordance with the Business Occupations and Professions Article ("BOP") of the *Annotated Code of Maryland*, §2-317 *et seq.*, the Maryland Administrative Procedure Act as set forth in the State Government Article of the *Annotated Code of Maryland*, Title 10, Subtitle 2, and the Board's hearing rules set forth at COMAR .09.24.01.07. Mr. Westbay was also informed that should the charges be proven, he would be subject to a possible reprimand, suspension or revocation of his license, and/or the imposition of a penalty in the amount of \$5,000.00 per violation. At the March 3, 2015, hearing, Mr. Westbay failed to appear. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

As a preliminary matter, the Board determined that Mr. Westbay had been properly notified of the proceedings. The Notice of Charges and Order for Hearing mailed via Certified Mail to Mr. Westbay at his address of record with the Board, was marked delivered by the United States Postal Service on January 31, 2015, and the Return Receipt bears Mr.

Westbay's signature. Additionally, Notice of Charges and Order for Hearing mailed via first class mail to the same address was not returned to the Board as undeliverable. Accordingly, the hearing proceeded in Mr. Westbay's absence.

FINDINGS OF FACT

After examining all of the evidence, including both the testimony and the documentary evidence submitted at the hearing, and having assessed the demeanor and credibility of those offering testimony, the Board makes the following findings of fact:

1) Richard E. Westbay was first licensed by the Board as a certified public accountant under registration number 24394 on March 28, 1996. Mr. Westbay was licensed from that time until December 31, 1998. Mr. Westbay's was again licensed on April 30, 2001, and has been continuously licensed since that time. Mr. Westbay's license is due to expire on November 10, 2015.

2) By electronic mail dated November 5, 2013, Norbert Fenwick, CPE Auditor for the Board, notified Mr. Westbay that his license had been selected for audit, and that he was to provide specific documentation for the 80 hours of continuing education he claimed in connection with his renewal application submitted on November 5, 2013.

3) By facsimile transmission dated November 15, 2013, Mr. Westbay provided documentation for his claimed continuing education. The audit checklist and supporting documentation indicates that all continuing education courses claimed by Mr. Westbay were completed after November 5, 2013, the date he submitted his renewal application. Although the checklist indicates that one course, Professional Ethics, constituting 4 of the

80 hours claimed, was completed on November 5, 2013, Mr. Fenwick contacted the course provider who indicated that the course was actually taken on November 6, 2013.

4) By letter dated April 2, 2009, Mr. Fenwick acknowledged Mr. Westbay's response, notified Mr. Westbay of the requirement in COMAR 09.24.02.04 that documentation of CPE be retained by a licensee for four years from the date of renewal, and directed Mr. Westbay to obtain documentation from the self-study program sponsors and notify the Board within two weeks of his plan to rectify the situation.

5) By letter dated January 29, 2014, Mr. Fenwick notified Mr. Westbay that he had received and reviewed the continuing education documentation submitted by Mr. Westbay, and that, because the claimed continuing education was not earned prior to being reported, the case would be referred to the Board's complaint committee.

6) The Board has received no subsequent communication from Mr. Westbay in connection with this matter.

DISCUSSION

Because Mr. Westbay failed to appear at the hearing, the evidence and testimony presented in support of the charges was uncontroverted. Mr. Westbay certified to the Board under penalty of perjury that he had completed the required 80 hours of continuing education in order to renew his license when he had in fact not completed said continuing education hours. Therefore, as a result of his actions, Mr. Westbay: 1) failed to comply with the 80 hour continuing education requirement set forth in BOP § 2-312(a)(3)(i), and COMAR 09.24.02.02 at the time of his application for license renewal; and 2) fraudulently

or deceptively attempted to obtain a license in violation of BOP § 2-315(a)(1)(i) and COMAR 09.24.01.06I(1).

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Westbay under these circumstances. In addition to the authority granted by BOP § 2-315(a)(1) to reprimand a licensee or suspend or revoke a license, the Board also has the authority under BOP § 2-315(a)(2) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 2-315(a)(2)(ii) provides that the Board shall consider the following factors: 1) the seriousness of the violation; 2) the harm caused by the violation; 3) the good faith of the violator; 4) any history of previous violations by the violator; and 5) any other relevant factors.

With respect to the seriousness of and harm caused by the violation, Mr. Westbay claimed continuing education credits which he had not completed in order to renew his license. The continuing education requirements exist to ensure that licensees maintain a requisite level of competence to justify the public's reliance on the CPA designation. Mr. Westbay sought the benefit of the continued use of the CPA designation in Maryland without putting in the work required to keep it. Additionally the Board relies on the honesty of its licensees with respect to reporting continuing education. The Board does not have the staff and resources to audit every renewal application for continuing education compliance. Mr. Westbay abused the trust placed in him by the Board. The Board thus considers this to be a serious and harmful violation.

With respect to good faith on the part of Mr. Westbay, while he did complete the 80 hours of continuing education required for the renewal of his license, albeit only after he was selected for audit, he did not appear at the hearing to provide any explanation for his actions or acknowledge any wrongdoing. Under the circumstances, the Board chooses to take action to protect the public from any further harm. Although Mr. Westbay has no prior disciplinary history with the Board, this factor is far outweighed by the others, and cannot preclude the imposition of sanctions by the Board.

CONCLUSIONS OF LAW

Based on the Findings of Fact, and using the specialized knowledge, training, and experience of its members, the Maryland State Board of Public Accountancy hereby concludes as a matter of law that the Respondent, Richard E. Westbay, violated Business Occupations and Professions Article, Ann. Code of Maryland, §§ 2-312(a)(3)(i) and 2-315(a)(1)(i), and COMAR 09.24.01.06I(1) and 09.24.02.02.

ORDER

In consideration of the Maryland State Board of Public Accountancy's Findings of Fact and Conclusions of Law in this matter, it is this 7 day of April, 2015,

ORDERED:

1) That Mr. Westbay's license is hereby **SUSPENDED** for a period of 90 days from the date of this order;

2) That Mr. Westbay pay to the Board, within 30 days of the date of this order, a civil monetary penalty in the amount of \$2,500.00 for his violation of BOP §§ 2-312(a)(3)(i)

and 2-315(a)(1)(i) and COMAR 09.24.01.06I(1) and 09.24.02.02; and

3) That the records, files, and documents of the Maryland Board of Public Accountancy reflect this decision.

**MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY**
(BOARD CHAIR'S SIGNATURE APPEARS
ON ORIGINAL ORDER)

By:

Elizabeth S. Gantnier
Chair