

**BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY**

MARYLAND STATE BOARD OF  
PUBLIC ACCOUNTANCY,

v.

Stephen E. Smith

Respondent

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Case no. CPAS14-0028

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**FINAL ORDER**

The above-captioned consolidated case was heard before the Maryland State Board of Public Accountancy ("the Board") on September 9, 2014. The allegations against Respondent Stephen E. Smith, as set forth in the Board's charge letter dated August 13, 2014, were as follows:

On or about March 27, 2014, the Board received a complaint filed against you by Margaret E. Twilley. The Board sent a notice of the complaint to you on or about March 28, 2014, by both regular and certified mail, requesting a written response by April 27, 2014. You failed to respond to the Board as requested.

On or about May 7, 2014, the Board sent a second notice of complaint to you by regular and certified mail requesting a written response by May 19, 2014. Again, you failed to respond to the Board as requested.

On or about June 8, 2014, the Board sent a letter to you advising that you had failed to comply with its prior requests for a response to the complaint. To date, no response has been received.

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, Annotated Code of Maryland**

**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:

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

**COMAR 09.24.01.06I**

(5) A licensee shall respond in writing to any communications from the Board requesting a response, within 30 days of the mailing of these communications, by registered or certified mail, to the last address furnished to the Board by the licensee.

In its charge letter, the Board informed Mr. Smith 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, and the Departmental regulations set forth at COMAR 09.01.02. Mr. Smith 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 August 13, 2014, hearing, Mr. Smith 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. Smith had been properly notified of the proceedings. The Notice of Charges and Order for Hearing were mailed via

certified mail and regular mail to Mr. Smith at his address of record with the Board, 70 Cherrywood Ct., Cockeysville, MD 21032. The certified mail notice was returned to the Board marked "unclaimed" and the notice mailed via first class mail to the same address was not returned to the Board as undeliverable. Accordingly, the hearing proceeded in Mr. Smith's absence.

### **FINDINGS OF FACT**

The Board hereby adopts and incorporates into its findings of fact the allegations cited above set forth in the charge letter dated August 13, 2014. In addition, 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 additional finding of fact:

Stephen H. Smith has been continuously licensed by the Board as a certified public accountant under registration number 7372 since 1982. Mr. Smith's license is due to expire on April 18, 2016.

### **DISCUSSION**

Because Mr. Smith failed to appear at the hearing, the evidence and testimony presented in support of the charges was uncontroverted. It is clear that Mr. Smith violated COMAR .09.24.01.06(I)(5) by failing to respond to the Board in writing concerning the complaint filed Ms. Twilley. By violating this provision of the Board's Code of Professional Conduct, Mr. Smith has also violated Business Occupations and Professions Article, Ann.

Code of Maryland ("BOP"), Section 2-315(a)(1)(xii).

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Smith 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.

In this case, Mr. Smith utterly failed in his duty to communicate with the Board. This is a fundamental obligation on the part of a Certified Public Accountant in the State of Maryland. If Mr. Smith had responded to the Board's correspondence, it is possible that the matter could have been resolved without the Board incurring the expense of conducting a formal hearing.

With respect to good faith on the part of Mr. Smith, he simply has shown none. His failure to respond to the Board or appear at the hearing and offer any explanation leaves the Board with little choice but to take immediate, decisive action to protect the public from any further harm. Although Mr. Smith has no prior disciplinary history with the Board, this factor is 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, Stephen E. Smith, violated Business Occupations and Professions Article, Ann. Code of Maryland, Section 2-315(a)(1)(xii) and COMAR .09.24.01.06(I)(5).

### **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<sup>th</sup> day of October, 2014,

#### **ORDERED:**

1) That the license to practice certified public accountancy issued by the Board to Stephen E. Smith, be and hereby is **REVOKED** effective thirty (30) days from the date of this order unless the Respondent obtains a judicial stay of enforcement pursuant to Md. State Gov. Code Ann., §10-226;

2) That Stephen E. Smith immediately cease and desist any representation to the public, by the use of the title "licensed certified public accountant", "certified public accountant", "public accountant", or "auditor", by use of the abbreviation "CPA", by description of services, methods, or procedures, or otherwise, that he is authorized to practice certified public accountancy in Maryland;

3) That Stephen E. Smith immediately cease and desist offering or providing any services that amount to the "practice of certified public accountancy" as that term is


defined in BOP §2-101(f); and

4) 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:

  
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Elizabeth S. Gantnier, CPA  
Chair