

BEFORE THE STATE OF MARYLAND BOARD OF PUBLIC ACCOUNTANCY

BOARD OF PUBLIC ACCOUNTANCY *

v.

* Agency Case No.: CPAS-2020-0003

VIVAT A. AUBER,
Respondent

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SETTLEMENT AGREEMENT AND CONSENT ORDER

This matter comes before the Maryland Board of Public Accountancy ("Board") as the result of the Board conducting a random audit of Vivat A. Auber's ("Respondent") license renewal application filed with the Board on March 27, 2019, to determine if the Respondent met the Board's license renewal continuing professional education ("CPE") requirements. As a result of the random audit and subsequent investigation, the Board determined that administrative charges against the Respondent were appropriate. On or about January 8, 2020, the Board issued a Notice of Charges and Order for Hearing alleging violations of the Maryland Public Accountancy act. Prior to the scheduled administrative hearing, the parties agreed to enter into this Settlement Agreement and Consent Order ("Consent Order") as full and final resolution of this matter, and agree and stipulate as follows:

1. At all times relevant to the Complaint, the Board had jurisdiction over the Respondent, who holds a license issued by the Board to practice certified public accountancy ("license") under number 01-200374, and the subject matter of this Complaint.
2. The Respondent's current license is due to expire on March 29, 2021.
3. The Code of Maryland Regulations ("COMAR") 09.24.02.03A-C provide:
 - A. An applicant for license renewal shall complete, prior to submitting an application, a minimum of 80 credit hours of qualifying continuing education in each 2-year license term.
 - B. The requirement in §A of this regulation does not apply to the first renewal of a license.
 - C. Professional Ethics.
 - (1) A minimum of 4 credit hours of the continuing education for each 2-year license term shall be in professional ethics.
 - (2) Credit hours in professional ethics in excess of 4 hours in a 2-year license term may not be carried forward to satisfy this requirement.

(3) Credit hours in professional ethics in excess of 4 hours in a 2-year license term may be carried forward to meet the requirement of §A of this regulation.

4. On or about March 27, 2019, the Respondent filed a license renewal application with the Board for the period March 27, 2019, through March 29, 2021, by means of the Board's online licensing system.
5. The Board's license renewal application requires an applicant to certify to the accuracy of the information provided in the application. This certification states, in pertinent part:

"I hereby certify, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge, information, and belief. . ."
6. On the renewal application, the Respondent certified completion of the required 80 hours of CPE's as of the application date. The Board approved the renewal based upon that certification.
7. When the Respondent submitted the license renewal application, the Board initiated a random audit to confirm that the Respondent had completed the CPE requirements. The Board then requested that the Respondent provide documentation for the CPEs that the Respondent had certified completing.
8. In response to the audit, the Respondent provided documentation acceptable to the Board for forty-five and one half (45.5) CPEs. The Respondent had thirteen (13) carry forward CPE credits for a total of fifty-eight and one half (58.5) CPEs, resulting in a deficit of twenty-one and one half (21.5) CPEs.
9. Four (4) of the accepted hours satisfied the ethics requirement.
10. The Respondent agrees and acknowledges that the Respondent violated the Board's CPE requirements by certifying completion without having completed the required CPEs.
11. Based on the aforementioned facts, the Respondent admits to violating Bus. Occ. & Prof. § 2-312(a)(3), 2-315(a)(1)(xii), and COMAR 09.24.01.06(I)(1), 09.24.02.03A, and 09.24.02.05C, which state, in pertinent part:

BOP § 2-312. Continuing education

(a) In general. --

(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 that the Board approves.

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

(a) Grounds. --

(1) Subject to the hearing provisions of Section 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 09.24.01.06 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 09.24.02.03 Basic Requirement.

A. An applicant for license renewal shall complete, prior to submitting an application, a minimum of 80 credit hours of qualifying continuing education in each 2-year license term.

COMAR 09.24.02.05 Controls and Reporting.

C. The Board, at its discretion, may verify the information and documentation supporting the certification of continuing education credit hours reported. Upon request, the individual who reported the continuing education credit hours shall submit to the Board, or its designee, copies of the original documentation.

12. Pursuant to BOP § 2-315(a)(2)(i), "[i]nstead of or in addition to reprimanding a licensee or suspending or revoking a license under this subsection, the Board may impose a penalty not exceeding \$ 5,000 for each violation."
13. Based on the aforementioned violations, and the Board having considered the circumstances of the Respondent's failure and other good and valid causes, the Board and the Respondent agree to the following sanctions:

- a. The Respondent shall pay a civil monetary penalty made payable to the "Maryland Board of Public Accountancy" in the amount of FIVE HUNDRED DOLLARS (\$500) by certified check, cashier's check, or money order in the following manner:
 - i. a first payment of Three Hundred Dollars (\$300) is acknowledged as received;
 - ii. a second payment of One Hundred Dollars (\$100) shall be due on or before July 1, 2020; and
 - iii. a third and final payment of One Hundred Dollars (\$100) shall be due on or before August 1, 2020; and
 - b. The Board shall accept and apply twenty-one and one half (21.5) CPE credits hours of the forty-six (46) CPEs completed by the Respondent subsequent to the renewal as satisfying the CPE requirement for this renewal period only. The Respondent shall not use or attempt to use, and the Board shall not accept, any of those CPEs for any future license renewal.
14. The Respondent agrees that if the Respondent fails to comply with the terms of this Consent Order, the Respondent's license will immediately and automatically be suspended without a hearing on the suspension, and that the suspension will continue until the Board determines that the Respondent has evidenced compliance with the Consent Order's terms.
 15. The Respondent shall abide by the provisions of the Maryland Public Accountancy Act and related regulations with regard to all pertinent future activities.
 16. The Respondent, by entering into this Consent Order, expressly waives the right to an administrative hearing on the charges and the making of Findings of Fact and Conclusions of Law, and any and all further proceedings before the Board to which the Respondent may otherwise be entitled in this matter, and any rights to appeal from this Consent Order.
 17. The Respondent acknowledges and agrees that this Consent Order shall constitute a Final Order of the Board and shall be enforceable as such.
 18. The Respondent acknowledges and agrees that the Respondent is entering this Consent Order freely, voluntarily, and after having had the opportunity to seek advice of counsel.
 19. The Parties acknowledge and agree that this Consent Order will serve as the final resolution of Complaint No. CPAS-2020-0003, serve as the Final Order in this matter, be a part of the Respondent's record that is maintained by the Board, and

that the Board's records and publications will reflect the terms of the Consent Order.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS _____ DAY OF _____, 2020, BY THE STATE BOARD OF PUBLIC ACCOUNTANCY HEREBY:

- I. **ORDERED**, that the Respondent violated Bus. Occ. & Prof. § 2-312(a)(3), 2-315(a)(1)(xii), and COMAR 09.24.01.06(I)(1), 09.24.02.03A, and 09.24.02.05C; and it is further
- II. **ORDERED**, that the Respondent shall pay a civil monetary penalty in the amount of FIVE HUNDRED DOLLARS (\$500) in accordance with the schedule set forth in Paragraph 13a of this Consent Order; and it is further
- III. **ORDERED**, that the Board accepts twenty-one and one half (21.5) CPE credit hours completed by the Respondent subsequent to the renewal as satisfying the CPE requirement for this renewal period only. The Respondent shall not use or attempt to use, and the Board shall not accept, any of those CPEs for any future license renewal; and it is further
- IV. **ORDERED**, that if the Respondent fails to comply with the terms of this Consent Order the Respondent's license will immediately and automatically be suspended without a hearing on the suspension, and that the suspension will continue until the Board determines that the Respondent has evidenced compliance with the Consent Order's terms; and it is further
- V. **ORDERED**, that unless otherwise specified in this Consent Order, each provision herein shall remain in effect and enforceable as herein agreed unless the Board in writing stays, modifies, terminates, or suspends it; and it is further
- VI. **ORDERED**, that this document shall constitute a Final Order of the Board, and the Board may consider this Settlement Agreement and Consent Order and the facts set forth herein in connection with, and in deciding, any subsequent action or proceeding before the Board, and that this Settlement Agreement and Consent Order may, if relevant, be admitted into evidence in any matter before the Board, its designee, and/or any court; and it is further
- VII. **ORDERED**, that the Board's records and publications shall reflect that the Respondent and the Board resolved this matter through this Settlement Agreement and Consent Order.

AGREED:

Vivat A Auber
VIVAT A AUBER
Respondent

June 25, 2020
Date

James E. Marshall Jr
JAMES E. MARSHALL, JR., CPA, Chair
Maryland Board of Public Accountancy

7/24/20
Date