

BEFORE THE STATE BOARD OF PUBLIC ACCOUNTANCY

STATE BOARD OF PUBLIC ACCOUNTANCY *

V. *

R. Kert Shipway, CPA * Case No. 18-CPA-2023
Albright, Crumbacker, Moul, & Itell, LLC *
1110 Professional Court *
Hagerstown, Maryland 21740, *
Respondent *

* * * * *

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the State of Maryland Board of Public Accountancy (“Board”) as the result of a complaint filed on or about October 11, 2022 by Teresa Fleming (“Complainant”) against R. Kert Shipway (“Respondent”). Based upon its review of the complaint and the response thereto, the Board determined that administrative charges against the Respondent are appropriate and an administrative hearing on those charges should be held. To resolve this complaint, the Board and the Respondent have agreed to enter into this Consent Order and Settlement Agreement to provide for the imposition of disciplinary measures, which are fair and equitable in these circumstances and consistent with the best interest of the people of the State of Maryland.

The Board and the Respondent agree and stipulate as follows:

1. At all times relevant to the matters set forth in this Consent Order and Settlement Agreement, the Board had jurisdiction over the subject matter and the Respondent, who holds license registration number 01-22905.

2. In 2021, the Respondent prepared 2020 Federal and State Income Tax Returns for Teresa Fleming (“Complainant”) and her husband, Jason Trippett, identifying the couple’s filing status as “married filing jointly,” which included IRS Form 8879.

3. IRS Form 8879 constitutes a declaration document and signature authorization for an e-filed return filed by an electronic return originator (ERO). The General Instructions for IRS Form 8879 (Rev. 01-2021) provides under the heading “Important Notes from EROs” that “Enter the taxpayer’s PIN(s) on the input screen only if the taxpayer has authorized you to do so. If married filing jointly, it is acceptable for one spouse to authorize you to enter his or her PIN, and for the other spouse to enter his or her own PIN. It isn’t acceptable for a taxpayer to select or enter the PIN of an absent spouse.” Further, Internal Revenue Service guidance related to IRS Form 8879 provides “a return isn’t considered valid unless it is signed. Both spouses must sign if the return is filed jointly.”

4. The Complainant and Mr. Trippett separated in September 2021.

5. The Respondent e-filed the couple's 2020 Federal Tax Return on or about October 14, 2021 without obtaining the Complainant's signature on IRS Form 8879, which directing the IRS to deposit the full refund due to the couple into Mr. Trippett's individual bank account.

6. The Complainant did not authorize Mr. Trippett or anyone else to sign IRS Form 8879 on her behalf.

7. The Respondent admits that by failing to obtain the Complainant's signature on IRS Form 8879 in accordance with the IRS's General Instructions and related guidance requiring that both spouses sign an income tax return filed jointly, the Respondent violated, and is subject to, BOP §2-315(a)(1)(xii) and Code of Maryland Regulations ("COMAR") 09.24.01.06G(4), which provide:

§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.

(2)(i) Instead of or in addition to reprimanding the licensee or suspending or revoking a license under this subsection, the Board may impose a penalty not exceeding \$5000 for each violation.

(ii) To determine the amount of the penalty imposed under this subsection, the Board shall consider:

1. The seriousness of the violation;
2. The harm caused by the violation;
3. The good faith of the licensee; and
4. Any history of prior violations by the licensee.

**Code of Maryland Regulations
Title 09. Department of Labor
Subtitle 24. Board of Public Accountancy
Chapter 01. General Regulations
.06 Code of Professional Conduct**

G. Competence and Technical Standards.

* * *

(4) A licensee in the performance of accounting and review services or management advisory services, consulting, financial planning, or tax services

shall conform to the professional standards applicable to these services at the time the services are performed.

* * *

6. The Respondent consents to the entry of an Order that by his acts and omissions described above he violated BOP §2-315(a)(1)(xii) and COMAR 09.24.01.06G(4).

7. As sanction for the violation, the Respondent agrees to pay a civil penalty in the amount of TWO HUNDRED AND FIFTY DOLLARS (\$250) by check or money order payable to the Board no later than Friday, September 8, 2023. The Respondent further agrees that should the Respondent fail to pay the civil penalty by Friday, September 8, 2023, the Board shall automatically suspend the Respondents license, which shall remain suspended until such time as the civil penalty has been paid in full.

8. By entering this Consent Order to resolve the complaint in this matter, the Respondent expressly waives the right to have the charges reduced to writing, an administrative hearing on the charges, the making of findings of fact and conclusions of law, all further proceedings before the Board to which the Respondent may be entitled, and any rights to appeal from this Order to any court of competent jurisdiction.

9. The Respondent enters this Consent Order knowingly, voluntarily, and willingly and acknowledges the Respondent had the opportunity to seek the advice of counsel of the Respondent's own choosing at the Respondent's expense.

10. The Board agrees to accept this Consent Order as the full and final settlement of Case No. 18-CPA-2023.

BASED ON THE AGREEMENTS AND STIPULATIONS IN THE CONSENT ORDER AND SETTLEMENT AGREEMENT, IT IS THIS ___ DAY OF _____, 2023, BY THE STATE BOARD OF PUBLIC ACCOUNTANCY:

ORDERED that this Consent Order and Settlement Agreement fully and finally resolves the complaint filed by the Complainant Teresa Fleming in Case No. 18-RE-2023, and it is further

ORDERED that by failing to obtain the Complainant's signature on IRS Form 8879 in accordance with the IRS's General Instructions and related guidance requiring that both spouses sign an income tax return filed jointly, the Respondent violated BOP §2-315(a)(1)(xii) and COMAR 09.24.01.06G(4), and it is further,

ORDERED that as a sanction for the violations, the Board imposes on the Respondent a civil penalty of Two Hundred and Fifty Dollars (\$250), which the Respondent shall pay no later than Friday, September 8, 2023, and it is further

ORDERED that should the Respondent fail to pay the civil penalty by Friday, September 8, 2023, the Board shall automatically suspend the Respondents license, which shall remain suspended until such time as the civil penalty has been paid in full, and it is further

ORDERED that the Commission's records and publications reflect the violation and the civil penalty imposed on the Respondent.

**STATE BOARD OF PUBLIC
ACCOUNTANCY**

**SIGNATURE APPEARS
ON ORIGINAL DOCUMENT**

By: _____
Chair

AGREED:

8/28/2023
Date

**SIGNATURE APPEARS
ON ORIGINAL DOCUMENT**

R. Kert Shipway, Respondent