

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL *
TAX PREPARERS, *

v. *

Case no. MITP-17-0041

Tawanda Livingston, *

Respondent. *

* * * * *

FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on June 26, 2017. The allegations against Respondent Tawanda Livingston, as set forth in the Board's charge letter dated May 12, 2017, were as follows:

You have never obtained a registration to provide services as an individual tax preparer.

On or about February 10, 2017, a complaint was filed with the Board by the Maryland Office of the Comptroller ("Comptroller") inquiring about your registration status and stating that it had suspended electronic filing privileges for you and multiple other tax preparers in the State due to suspicions regarding the propriety of filed returns. The Comptroller's complaint further advised that, as a professional tax preparer, you began filing Maryland individual tax returns for 2016 on behalf of taxpayers on or about January 24, 2017.

Upon receipt of the Comptroller's complaint and a subsequent Board investigation, it was determined that you provided, attempted to provide, or offered to provide individual tax preparation services to Maryland taxpayers during 2017 while not registered by the Board. From approximately January 24, 2017, through approximately April 7, 2017, you filed at least 116 Maryland individual tax returns (Form 502) for the 2016 tax year. At the times of filing of these returns, you were not registered by the Board to

provide individual tax preparation services in Maryland, and thereby, you were in violation of the Maryland Individual Tax Preparers Act, Title 21-Business Occupations and Professions Article ("BOP"), Annotated Code of Maryland.

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, Ann. Code of Maryland

Section 21-301. Registration required

An individual shall be registered by the Board before the individual may provide individual tax preparation services in the State.

Section 21-401. Practice without registration prohibited.

Except as otherwise provided in this title, a person may not provide, attempt to provide, or offer to provide individual tax preparation services in the State unless registered by the Board.

In its charge letter, the Board informed Ms. Livingston of her right to a hearing on the charges, in accordance with the Business Occupations and Professions Article ("BOP") of the *Annotated Code of Maryland*, §21-312 *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 09.01.02. Ms. Livingston was also informed that should the charges be proven, pursuant to BOP § 21-405(a), she would be subject to the imposition of a penalty not to exceed \$5,000.00 per violation. At the June 26, 2017 hearing, Ms. Livingston failed to appear. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

As a preliminary matter, the Board finds that all reasonable efforts have been made to notify Ms. Livingston of the proceedings. The May 26, 2017, Notice of Charges and Order for Hearing was mailed via certified mail and regular mail to Ms. Livingston at three different addresses: 1) the two addresses provided by the Office of the Comptroller for Quick Tax, 2401 Liberty Heights Ave., Baltimore, MD 21215, and Office Tax Solutions, 2230 E. Monument St., Baltimore, MD 21205, the two businesses through which Ms. Livingston electronically filed tax returns in Maryland; and 2) the address obtained from a Maryland Motor Vehicles Administration Driver License search for Ms. Livingston, 453 N. Bouldin St., Baltimore, MD 21224.

The Board has no information concerning the certified mail notice sent to Ms. Livingston at the 2401 Liberty Heights Ave, address, and the regular mail sent to this address was not returned. The certified mail notice sent to the 2230 E. Monument St. address was returned marked "RETURN TO SENDER, VACANT, UNABLE TO FORWARD" and the regular mail notice was returned marked "RETURN TO SENDER, REFUSED, UNABLE TO FORWARD." Finally, the certified mail notice sent to the 453 N. Bouldin St., address was returned marked "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD" and the regular mail notice sent to this address was not returned. Accordingly the Board concludes that all reasonable efforts were made to provide Ms. Livingston actual notice of the proceedings and will address the merits of the matter in Ms. Livingston's absence.

II. Findings of Fact.

The Board includes in its factual findings the facts set forth in the procedural background of the matter. In addition, after examining all of the evidence, including both the testimony of witnesses 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 findings of fact:

1) Ms. Livingston is not a Certified Public Accountant, an attorney, an enrolled agent or otherwise exempt from the requirements of the Maryland Individual Tax Preparers Act pursuant to BOP § 21-102(b) and has presented no evidence that the returns in question were prepared free of charge.

2) Ms. Livingston has not been previously disciplined by the Board.

3) By letter dated February 23, 2017, the Board notified Ms. Livingston of the complaint at issue in the instant case. Ms. Livingston never responded to the Board's complaint.

III. Evaluation of the Evidence.

The Board believes that the charges in this case are supported. At the hearing in this matter, the evidence demonstrated that, on at least 116 occasions, Ms. Livingston provided individual tax preparation services, as defined in BOP § 21-101(f), without a registration issued by the Board and that Ms. Livingston is not exempt from the registration requirement pursuant to BOP § 21-102(b).

Accordingly, the sole remaining issue before the Board is what, if any, sanction it

must impose against Ms. Livingston under these circumstances. The Board has the authority under BOP § 21-405 (a) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 21-405(a) 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.

With respect to the seriousness of and harm caused by the violation, Ms. Livingston ignored the fundamental obligation of any non-exempt individual who provides individual tax preparation services in Maryland: being registered with the Board. Ms. Livingston essentially took opportunities away from individuals who have taken the steps necessary to become registered, including demonstrating competence by satisfying the examination requirement. The Board simply has no information concerning Ms. Livingston's competence.

With respect to good faith on the part of Ms. Livingston, she basically demonstrated none. She did not appear at the hearing to offer any explanation for her actions, and did not respond to the Board's complaint. While Ms. Livingston does not have a prior disciplinary history with the Board, the Board finds that, after weighing all the factors, a significant sanction is warranted.

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 Individual Tax Preparers hereby

concludes as a matter of law that the Respondent Tawanda Livingston violated Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-301 and 21-401.

ORDER

In consideration of the Maryland State Board of Individual Tax Preparer's Findings of Fact and Conclusions of Law in this matter, it is this 14 day of August,

2017 **ORDERED:**

1) That Tawanda Livingston pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$5,800.00 for her violations of Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-301 and 21-401;

2) That this sanction is 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., § 10-222; and

3) That the records, files, and documents of the Maryland State Board of Individual Tax Preparers reflect this decision.

**MARYLAND STATE BOARD OF
INDIVIDUAL TAX PREPARERS**

Signature of File

By:

Jane Bourassa
Acting Chair