

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL *
TAX PREPARERS, *

v. *

Case no. ITP-CC-2013-12

Barbara L. McCarthy, *

Respondent. *

* * * * *

FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on January 13, 2014. The allegations against Respondent Barbara L. McCarthy, as set forth in the Board's charge letter dated November 18, 2013, were as follows:

At all relevant times, you [Ms. McCarthy] were registered by the Board to provide individual tax preparation services in the State. In or around February of 2012, you entered into an agreement with Delores Hardy-Little ("the Complainant") to prepare her U.S. and Maryland Individual Income Tax Returns for 2011.

In connection with your preparation of the returns, you inflated certain itemized deductions on "Schedule A" by creating fictitious charitable donations and gambling losses to generate a higher refund amount. The Internal Revenue Service and the State of Maryland disallowed the deductions which resulted in the Complainant owing approximately \$7000.00 to the IRS and \$3000.00 to the Comptroller of Maryland in back taxes, penalties and interest. You knowingly provided false and/or misleading information on the returns in order to create a more favorable tax outcome for the Complainant without her authority or consent.

Based on the circumstances described above, you are charged with violating the following laws of the State of Maryland:

Business Occupations and Professions Article, Ann. Code of Maryland

Section 21-311. Denial, suspension, revocation of registration; reprimands; penalties.

(a) In general.-- Subject to the hearing provisions of § 21-312 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a registration to any applicant, reprimand and registered individual, or suspend or revoke a registration if the applicant or registered individual:

(4) is guilty of negligence, incompetence, or misconduct while providing individual tax preparation services; [or]

(5) violates any regulation adopted under this title.

Code of Maryland Regulations (COMAR) 09.38.01

.05 Code of Professional Conduct.

A. Responsibilities and Practices.

(1) An individual tax preparer may not commit any act that reflects adversely on the individual tax preparer's fitness to provide individual tax preparation services.

(3) An individual tax preparer may not knowingly misrepresent facts while providing individual tax preparation services. An individual tax preparer may resolve doubt in favor of a client if there is reasonable support for the position.

F. Competence and Technical Standards.

(1) An individual tax preparer shall provide individual tax preparation services in accordance with applicable professional standards.

In its charge letter, the Board informed Ms. McCarthy 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. McCarthy was also informed that should the charges be proven, pursuant to BOP §21-311, she would be subject to a possible reprimand, suspension or revocation of her registration, and/or the imposition of a penalty in the amount of \$5,000.00 per violation. At the January 13, 2014, hearing, Ms. McCarthy 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 Ms. McCarthy had been properly notified of the proceedings. The Notice of Charges and Order for Hearing was mailed via Certified Mail and regular mail to Ms. McCarthy at her address of record, 7228 Hylton Street, Capitol Heights, MD 20743. The certified mail notice was returned to the Board marked "Return to Sender. Unclaimed. Unable to forward." The regular mail notice was not returned. At the time of the mailing of the notice, Ms. McCarthy was registered as an individual tax preparer with the Board, and had an obligation to notify the Board of any change of address. Finally, Douglas Blackstone, Executive Director of the Board, testified that he had received a telephone message from Ms. McCarthy prior to the hearing in which she indicated she had misread the notice and would be unable to attend the hearing due to a personal conflict.

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) Barbara L. McCarthy has been registered with the Board as a individual tax preparer under registration number 2074 since January 9, of 2012.
- 2) On March 16, 2013, the Board received a complaint from Delores Hardy Little concerning individual tax preparation services provided by Ms. McCarthy.
- 3) Eric Little, Ms. Hardy Little's husband, retained Ms. McCarthy to prepare Federal and Maryland State individual income tax returns for Ms. Hardy Little and him for the 2011 tax year. Ms. McCarthy received \$100.00 for these services.
- 4) Ms. Hardy Little did not have direct contact with Ms. McCarthy during the preparation of her 2011 Federal and Maryland State individual income tax returns. Her husband, Mr. Little, went to Ms. McCarthy's office to deliver documents necessary for the preparation of their tax returns.
- 5) Schedule A attached to Ms. Hardy Little's Federal Individual Income Tax Return Form 1040 for 2011 indicates that Ms. Hardy Little made \$6,000.00 in charitable contributions by cash or check, and \$500.00 in charitable contributions other than by cash or check. Ms. Hardy Little made no such charitable contributions, and did not authorize Ms.

McCarthy to include said deductions on her Schedule A.

6) Schedule A attached to Ms. Hardy Little's Federal Individual Income Tax Return Form 1040 for 2011 indicates that Ms. Hardy Little had \$1,000.00 in gambling losses. Ms. Hardy Little had no gambling losses, and did not authorize Ms. McCarthy to include said deductions on her Schedule A.

7) Ms. McCarthy filed the 2011 Federal and Maryland State individual income tax returns for Ms. Hardy Little electronically. Ms. Hardy Little did not see the completed returns prior to their filing.

8) Ms. Hardy Little first became aware of problems with her 2011 Federal and Maryland State individual income tax returns after receiving a letter in December of 2012 from the Internal Revenue Service which disallowed the above described Schedule A deductions and indicated Ms. Hardy Little owed both taxes and penalties. At present, Ms. Hardy Little owes approximately \$7,000.00 to the Internal Revenue Service, and \$3,000.00 to the Maryland Comptroller of the Treasury.

9) When Ms. Hardy Little contacted Ms. McCarthy about the situation, Ms. McCarthy apologized, and offered to assist in the payment of the taxes and penalties owed. To date, Ms. McCarthy had made no payments to Ms. McCarthy, and has not refunded the fee she charged in connection with the preparation and filing of the tax returns.

10) Ms. McCarthy filed a response dated May 22, 2013, to Ms. Hardy Little's complaint with the Board. In her response, Ms. McCarthy indicates that the improper Schedule A deductions were the result of a problem with her key pad when she entered the

information.

III. Evaluation of the Evidence.

Because Ms. McCarthy failed to appear at the hearing, the evidence and testimony presented in support of the charges was uncontroverted. Ms. McCarthy included illegal and unauthorized deductions in Ms. Hardy Little's 2011 Federal and Maryland State Income Tax Returns. Additionally, the Board finds the explanation for the deductions offered in her May 22, 2013, response to the Board, i.e., a faulty keypad, not credible. The Board believes that Ms. McCarthy knew that these fabricated deductions were illegal, but was simply trying to ensure that Ms. Hardy Little receive a refund and that Ms. McCarthy would receive a favorable referral as a result. Thus the Board finds that Ms. McCarthy violated BOP §21-311(a)(4) by virtue of her inclusion of the impermissible and unauthorized Schedule A deductions discussed above, and violated COMAR 09.38.01.05(A)(1) and (3), and 09.38.01.05(F)(1) by knowingly misrepresenting the facts in Ms. Hardy Little's individual income tax returns in violation of applicable professional standards. By violating this provision of the Board's Code of Professional Conduct, Ms. McCarthy has also violated BOP §21-311(a)(5)

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Ms. McCarthy under these circumstances. In addition to the authority granted by BOP §21-311(a) to reprimand a registrant or suspend or revoke a registration, the Board also has the authority under BOP §2-311(b) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or nor to impose a civil monetary penalty,

BOP §2-311(b) 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.

In this case, Ms. McCarthy knowingly violated the law and applicable professional standards through the impermissible and unauthorized Schedule A deductions discussed above. The Board views knowing violations of the law and applicable professional standards to be extremely serious.

Further, Ms. McCarthy's actions have resulted in significant financial harm to Ms. Hardy Little, in the form of interest and penalties and a total liability of approximately \$10,000.00. Ms. McCarthy had not shown good faith. Although she made promises to Ms. Hardy Little, and also to the Board, that she would help pay the monies owed, she has not made good on these promises. Although Ms. McCarthy does not have any prior disciplinary history with the Board, the seriousness of the violation, the harm caused, and her lack of good faith far outweigh her prior record, and cannot preclude the imposition of serious sanctions by the Board. Ms. McCarthy's actions leave the Board with little choice but to take immediate, decisive action to protect the public from any further harm.

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, Barbara L. McCarthy, violated Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-311(a)(4) and (5)

and COMAR 09.38.01.05(A)(1) and (3), and COMAR 09.38.01.05(F)(1).

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 _____ day of February, 2014,

ORDERED:

1) That Barbara L. McCarthy's Registration be and hereby is **REVOKED** 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., §10-226;

2) That Barbara L. McCarthy shall 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 her violations of BOP §§21-311(a)(4) and (5) and COMAR 09.38.01.05(A)(1) and (3), and COMAR 09.38.01.05(F)(1); 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**

By: Patricia Snell CPA
Patricia Snell , CPA
Chair