

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL *
TAX PREPARERS, *

v. *

Case no. MITP-16-0025

Gail C. Wilson, *

Respondent. *

* * * * *

FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on February 13, 2017. The allegations against Respondent Gail C. Wilson, as set forth in the Board's charge letter dated December 7, 2016, were as follows:

On or about March 17, 2015, you obtained a registration from the Board to provide services as an individual tax preparer in Maryland (Registration No. 5876) for the period ending on March 17, 2017.

As a registration holder, you were required to pass the Maryland Individual Tax Preparer's examination given by the Board by December 31, 2015 in order to remain qualified to hold a registration. However, to date, you have not passed the required examination and, therefore, have not been qualified to hold a registration since January 2, 2016.

On or about February 8, 2016, a complaint was filed with the Board by the Maryland Office of the Comptroller ("Comptroller") 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, on or about January 19, 2016, you began filing 2015 Maryland individual tax returns on behalf of individual tax preparers as a professional tax preparer.

On or about February 17, 2016, the Board sent notice of the complaint

to you by both certified and regular mail. The Board's notice directed you to provide a written response to the by March 19, 2016. You failed to provide any response to the Board. It is alleged that your failure to provide a response constitutes a violation of the Code of Professional Conduct.

Upon receipt of the Comptroller's complaint and a subsequent Board investigation, it was determined that you provided individual tax preparation services to Maryland taxpayers while not qualified to hold a registration, as you had not yet passed the required examination, by filing approximately 24 Maryland Individual Tax Returns (Form 502) from January 9, 2016, through February 2, 2016.

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 21-302. Qualifications

(a) In general. - To qualify for a registration, the applicant shall be an individual who meets the requirements of this section.

(e) Examination. - Except as otherwise provided in this subtitle, the applicant shall pass an examination given by the Board under this subtitle.

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:

(5) violates any regulation adopted under this title; or

(6) violates any provision of this title.

COMAR 09.38.01.02 The Examination.

B. After December 31, 2015, an individual shall pass the Examination given by the Board in order to qualify for a registration unless the individual meets the requirements of §D of this regulation.

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.

E. Communications with the Board.

(1) An individual tax preparer 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 an individual tax preparer.

In its charge letter, the Board informed Ms. Wilson 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. Wilson 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 up to \$5,000.00 per violation. At the February 13, 2017, hearing, Ms. Wilson 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 Wilson 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. Wilson at her address of record, 4811 Norwood Road, Baltimore, MD 21212. The certified mail green card appears to bear Ms. Wilson's signature.

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) Gail C. Wilson was first registered with the Board as a individual tax preparer under registration number 5876 on March 17, 2015. Ms. Wilson's registration is due to expire on March 17, 2017. As of the date of this order, Ms. Wilson has not passed the Maryland Individual Tax Preparers Examination given by the Board. Additionally, Ms. Wilson has not applied for a waiver of the examination requirement, and has not submitted evidence that she passed the Registered Tax Return Preparer Examination given by the Internal Revenue Service from November 1, 2011, through January 18, 2013.

2) Ms. Wilson has not presented evidence to the Board that she is 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), or that the 24 Maryland Individual Tax Returns (Form 502) that she filed from January 9, 2016, through February 2, 2016, were prepared free of charge.

3) As of the date of the hearing, Ms. Wilson had not scheduled a date to take the Maryland Individual Tax Preparers Examination.

4) Ms. Wilson has not been previously disciplined by the Board.

III. Evaluation of the Evidence.

Because Ms. Wilson did not appear for the hearing, the evidence presented was uncontroverted. The Board believes that all the charges in this case are supported. Ms. Wilson prepared 24 returns while registered but prior to passing the examination after the examination requirement was in effect. Additionally, Ms. Wilson failed to respond to the Board's February 17, 2016, Notice of Complaint.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Ms. Wilson 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 § 21-311(b) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 21-311(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.

With respect to the seriousness of and harm caused by the violations, the Board views the registration and examination requirements as the cornerstones of the Maryland Individual Tax Preparers Act. Ms. Wilson did not pass the Maryland Individual Tax Preparers Examination, as required under COMAR 09.38.01.02, prior to providing individual

tax preparation services from January 9, 2016, through February 2, 2016, potentially taking business from registered individuals who had complied with the examination requirement.

Additionally, Ms. Wilson failed to respond to the Board's Notice of Complaint. The Board must be able to rely on registrants to respond to written Board communications, otherwise the Board has little ability to fulfill its obligations to the public and the profession short of formal disciplinary proceedings.

With respect to good faith on the part of Ms. Wilson, she has simply shown none—she did not appear at the hearing to provide any explanation for her actions or acknowledge any wrongdoing. While Ms. Wilson 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 Gail C. Wilson, violated Business Occupations and Professions Article, Ann. Code of Maryland, §§ 21-302, and COMAR 09.38.01.02B, and 09.38.01.05E.

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 22nd day of February, 2017

ORDERED:

1) That the registration issued to Gail C. Wilson is hereby **REVOKED**. Ms. Wilson may not provide, attempt to provide, or offer to provide individual tax preparation services in Maryland, nor may she represent to the public that she is authorized to provide individual tax preparation services in Maryland;

2) That Ms. Wilson pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$1,450.00 for her multiple violations of Business Occupations and Professions Article, Ann. Code of Maryland, §§ 21-302 and COMAR 09.38.01.02B and 09.38.01.05E;

3) That this sanction is effective thirty (30) days from the date of this order unless Ms. Wilson obtains a judicial stay of enforcement pursuant to Md. State Gov. Code Ann., § 10-222; and

4) 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 on File

By: _____

Fredric Bader
Chair