

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL
TAX PREPARERS,

v.

Linda Jo Byrd,

Ms. Byrd.

Case no. MITP-17-0087

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FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on October 23, 2017. The allegations against Ms. Byrd Linda Jo Byrd, as set forth in the Board's charge letter dated September 5, 2017, were as follows:

On or about August 7, 2013, you obtained a registration from the Board to provide services as an individual tax preparer (Registration No. 4067). Your registration was renewed for subsequent periods and later expired on August 7, 2017. However, the Board retained jurisdiction after the expiration date for disciplinary purposes pursuant to BOP¹, Section 21-314, because you were under investigation due to the referenced complaint.

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 examination. It is alleged, therefore, that you have not been qualified to hold a registration since December 31, 2015.

On or about May 26, 2017, the Board sent notice of complaint by certified mail informing you that the Board had been advised by the Office of the Maryland Comptroller that you had been filing Maryland income tax returns, although you had not passed the Maryland tax preparers

¹Business Occupations and Professions Article, Maryland Annotated Code.

examination. The letter directed you to provide a response by June 30, 2017. You failed to respond to the Board.

A Board investigation 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 749 Maryland Individual Tax Returns (Form 502) for various tax years from approximately January 30, 2016 through May 11, 2017.

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. Byrd of the 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. Byrd was also informed that should the charges be proven, pursuant to BOP § 21-311, Ms. Byrd would be subject to a possible reprimand, suspension or revocation of registration, and/or the imposition of a penalty in the amount of up to \$5,000.00 per violation. At the October 23, 2017, hearing, Ms. Byrd 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 Ms. Byrd had been properly notified of the proceedings. The Notice of Charges and Order for Hearing was mailed via certified mail and regular mail to the Ms. Byrd at the address of record, 5950 Setter Drive, Elkridge,

MD 21075. The certified mail notice was returned to the Board with the indication "Return to Sender. Unclaimed. Unable to Forward." The regular mail notice was not returned suggesting that it was received. Additionally, Ms. Byrd signed the green card showing receipt of the certified mail Notice of Complaint mailed to her on May 26, 2017, while her registration was active. Ms. Byrd was clearly aware of the complaint and could have notified the Board of an alternate address. Under the circumstances, the Board proceeded to hear the matter in Ms. Byrd's absence.

II. Findings of Fact.

The Board hereby adopts and incorporates 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) As of the date of this order, Ms. Byrd has not passed the Maryland Individual Tax Preparers Examination given by the Board. Additionally, Ms. Byrd has not applied for a waiver of the examination requirement, and has not submitted evidence that Ms. Byrd passed the Registered Tax Return Preparer Examination given by the Internal Revenue Service from November 1, 2011, through January 18, 2013.

2) Ms. Byrd has not presented evidence to the Board that Ms. Byrd 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 749 Maryland Individual Tax Returns (Form 502) that Ms. Byrd filed from January 30, 2016 through May 11, 2017, were prepared free of charge.

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

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

III. Evaluation of the Evidence.

Because Ms. Byrd did not appear for the hearing, the evidence presented was uncontroverted. The Board believes that all the charges in this case are supported. Ms. Byrd prepared 749 returns while registered but prior to passing the examination after the examination requirement was in effect. Additionally, Ms. Byrd failed to respond as directed to either the Board's May 26, 2017, Notice of Complaint.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Ms. Byrd 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. Byrd 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 30, 2016 through May 11, 2017, potentially taking business from registered individuals who had complied with the examination requirement.

Additionally, on two occasions, Ms. Byrd 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, Ms. Byrd has simply shown none—Ms. Byrd did not appear at the hearing to provide any explanation or acknowledge any wrongdoing. While Ms. Byrd 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 Respondent Linda Jo Byrd 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 13 day of November,

2017 **ORDERED:**

1) That the registration issued to Linda Jo Byrd is hereby **REVOKED**. Linda Jo Byrd may not provide, attempt to provide, or offer to provide individual tax preparation services in Maryland for valuable consideration, and may not represent to the public that she is authorized to provide individual tax preparation services in Maryland;

2) That Linda Jo Byrd pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$25,500.00 for 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 Linda Jo Byrd 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 of File

By: _____

Kay Riddle
Vice Chair