

BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY

MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY,

v.

Dale Arnold Hotz,

Respondent.

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Case no. CPAS-14-0005

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FINAL ORDER

The above-captioned case was heard before the Maryland State Board of Public Accountancy ("the Board") on February 4, 2014. The allegations against Respondent Dale Arnold Hotz, as set forth in the Board's charge letter dated December 3, 2013, were as follows:

1. During all relevant periods, you were licensed in Maryland as a certified public accountant.
2. On or about November 13, 2012, the Public Company Accounting Oversight Board ("PCAOB") issued an order imposing sanctions against you for violations of the Sarbanes - Oxley Act of 2002 (the "Act"), related to PCAOB rules, and Auditing Standards (PCAOB Release No. 105-2012-008). Pursuant to the order, you were censured and you were barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i). The Board hereby incorporates the PCAOB order, as attached hereto, into this Notice of Charges and Order for Hearing, as if it were fully set forth herein.
3. Your violations of the Act, PCAOB rules, and Auditing Standards related to your conduct as a partner in the Frederick, Maryland office of the registered public accounting firm of McGladrey & Pullen, LLP ("M&P"). The violative conduct occurred in connection with the PCAOB's inspection of an audit by M&P of a company (the "Company") that was classified as an "issuer" as that term is defined in the Act and

PCAOB Rule 1001(i)(iii).

4. In its order, the PCAOB made the following findings:

a) M&P had been the independent auditor for the Company since March of 2007;

b) M&P issued an audit report expressing an unqualified opinion on the Company's December 31, 2009 financial statements;

c) You were the engagement partner for M&P's audit of the Company's December 31, 2009 financial statements;

d) You supervised the members of the audit engagement team and had overall responsibility for ensuring their compliance with PCAOB rules and auditing standards related to the audit;

e) You violated both PCAOB Rule 4006, Duty to Cooperate With Inspectors, and Auditing Standard No. 3, Audit Documentation ("AS3");

f) In advance of the field work for the PCAOB's inspection of the Audit, you improperly created and/or added documents to the audit documentation, all in violation of Rule 4006;

g) You provided false and misleading information to the PCAOB, in violation of Rule 4006;

h) In violation of AS3, you added documents to the audit documentation and altered certain audit documentation, without indicating the date that information was added to the workpapers, the name of the persons preparing the additional documentation, and the reason for adding it after documentation completion date.

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

Business Occupations and Professions Article, Ann. Code of Maryland

Section 2-315. Denials, reprimands, suspensions, and revocations - Grounds; license certificate.

(a)(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:

(xi) has been sanctioned by any unit of State or federal government, or any regulatory entity established by law, for an act or omission that directly relates to the fitness of the applicant to practice certified public accountancy.

In its charge letter, the Board informed Mr. Hotz of his right to a hearing on the charges, in accordance with the Business Occupations and Professions Article ("BOP") of the *Annotated Code of Maryland*, §2-317 *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 .09.24.01.07. Mr. Hotz was also informed that should the charges be proven, she would be subject to a the imposition of a penalty in the amount of \$5,000.00 per violation. At the February 4, 2014, hearing, Mr. Hotz 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 Mr. Hotz had been properly notified of the proceedings. The Notice of Charges and Order for Hearing was mailed via Certified Mail and regular mail to Mr. Hotz at his last address of record with the Board, 5291 Corporate Drive, Suite 100, Frederick, Maryland 21703, and a signed Certified Mail receipt ("green card") was introduced into evidence at the hearing. There was also no indication that the regular mail notice was returned by the U.S. Postal Service as undeliverable. Accordingly, the Board found that reasonable attempts had

been made to provide Mr. Hotz notice of the hearing and proceeded in his absence.

FINDINGS OF FACT

After examining all of the evidence, including both the testimony and the documentary evidence submitted at the hearing, and having assessed the demeanor and credibility of those offering testimony, the Board makes the following findings of fact:

1) Dale Arnold Hotz was first licensed as a CPA by the Board on April 17, 2006, under Registration No. 35577. He has been licensed by the Board since that time, and his CPA license is set to expire on April 17, 2014.

2) The Board hereby adopts and incorporates into its findings of fact, the allegations set forth in the Board's Charge Letter dated December 3, 2013, and the PCAOB Disciplinary Order, PCAOB Release No. 105-2012-008, Dated November 13, 2012.

DISCUSSION

Based on the uncontroverted evidence, the Board finds that the charge brought by in this case is supported. The PCAOB, a regulatory entity established by law, by order dated November 13, 2012, censured Mr. Hotz and barred him from being an associated person with a registered public accounting firm for acts directly relating to: 1) his provision of audit services; and 2) the PCAOB's investigation of same. Under the circumstances, it is clear that Mr. Hotz has violated BOP §2-315(a)(1)(xi).

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Hotz under these circumstances. In addition to the authority

granted by BOP §2-315(a)(1) to reprimand a licensee or suspend or revoke a license, the Board has the authority under BOP §2-315(a)(2) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP §2-315(a)(2)(ii) 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; and 5) any other relevant factors. The Board also considers these factors in determining whether to reprimand, suspend, or revoke a license.

With respect to the seriousness of the violation, the Board considers it to be extremely troubling. Mr. Hotz was sanctioned by the PCAOB after he made multiple misrepresentations to the PCAOB in connection with its inspection of the audit performed by Mr. Hotz's firm. The Board believes that honesty is essential to the practice of certified public accountancy. The public relies on the veracity of the independent certified public accountants whose services they engage. Mr. Hotz's intentional, dishonest actions call into question his regard for both the standards governing his profession and the authority of regulatory bodies that enforce them, as well as his fitness to practice.

With respect to the harm caused by the violation, while Mr. Hotz's actions may not have resulted in direct harm to the public, they certainly damage the profession as a whole. With respect to the good faith of the violator, Mr. Hotz has shown none. He failed to respond to the charges or appear at the hearing and offer any explanation for his conduct, or any facts in mitigation.

Finally, the Board has no record of any prior violations of the Maryland Public Accountancy Law by Mr. Hotz. In the Board's view, Mr. Hotz's prior clean record is insufficient to preclude a serious sanction in this case, particularly in the absence of any other mitigating factors.

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 Public Accountancy hereby concludes as a matter of law that the Respondent, Dale Arnold Hotz, violated BOP §2-315(a)(1)(xi).

ORDER

In consideration of the Maryland State Board of Public Accountancy's Findings of Fact and Conclusions of Law in this matter, it is this 20 day of March, 2014, **ORDERED:**

1) That the license to practice certified public accountancy issued by the Board to Dale Arnold Hotz, be and hereby is **REVOKED** 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 Dale Arnold Hotz immediately cease and desist any representation to the public, by the use of the title "licensed certified public accountant", "certified public accountant", "public accountant", or "auditor", by use of the abbreviation "CPA", by description of services, methods, or procedures, or otherwise, that he is authorized to practice certified public accountancy in Maryland;

3) That Dale Arnold Hotz immediately cease and desist offering or providing any services that amount to the "practice of certified public accountancy" as that term is defined in BOP §2-101(f); and

4) That the records, files, and documents of the Maryland Board of Public Accountancy reflect this decision.

**MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY**
(BOARD CHAIR'S SIGNATURE

By: APPEARS ON ORIGINAL DOCUMENT)

Elizabeth Gantrier, CPA
Chair