

BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY

MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY,

v.

Thomas Gerald Brennan, CPA

Respondent

Case no. CPAS-17-0084

*
*
*
*
*
*
*
*
*

* * * * *

FINAL ORDER

The above-captioned case was heard before the Maryland State Board of Public Accountancy ("the Board") on December 4, 2018. The allegations against Respondent Thomas Gerald Brennan, CPA, as set forth in the Board's charge letter dated October 4, 2018, were as follows:

During all relevant periods, you were licensed in Maryland as a certified public accountant. On or about February 4, 2017, you submitted an application by means of the Board's online licensing system for the renewal of your license as a Certified Public Accountant in the State of Maryland for the period February 4, 2015, through February 4, 2017. In your application, you claimed four hours of ethics continuing education and 84 hours of other qualifying continuing professional education (CPE) credits pertaining to the renewal term. Further, on the license renewal application you certified the accuracy of the information contained therein. The certification states, in pertinent part:

"I hereby certify, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge, information, and belief. . ."

Upon receipt of your application, the Board notified you that you were randomly selected for audit of the claimed CPE hours, and that you were being requested to submit supporting documentation to the Board. An audit of the documentation received showed no CPE credits during the referenced renewal term. You did have four carryforward credit hours, leaving a

deficiency of 76 credit hours.

It is alleged that your failure to accrue a total of 80 hours of CPE credits (four of which must be in ethics) during the renewal term of your license constitutes a violation of the Code of Professional Conduct.

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, Md. Annotated Code of Maryland

Section 2-312. Continuing education

(a) *In general.* (1) The Board shall adopt regulations that set, in accordance with this section, continuing education requirements as a condition to the renewal of licenses under this subtitle.

(2) A continuing education requirement does not apply to the first renewal of a license.

(3)(i) To qualify for any further renewal of a license under this subtitle, a licensee shall complete, for each 2-year license term, at least 80 hours in programs the Board approves.

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

(a) *Grounds.*

(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:

(i) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(xii) violates a rule of professional conduct adopted by the Board.

COMAR 09.24.01.06 Code of Professional Conduct

I. Other Responsibilities and Practices.

(1) A licensee may not commit any act that reflects adversely on the licensee's fitness to engage in the practice of public accountancy.

COMAR 09.24.02.03 Basic Requirement.

A. An applicant for license renewal shall complete, prior to submitting an application, a minimum of 80 credit hours of qualifying continuing education in each 2-year license term.

C. Professional Ethics.

(1) A minimum of 4 credit hours of the continuing education for each 2 year license term shall be in professional ethics.

COMAR 09.24.02.05 Controls and Reporting.

C. The Board, at its discretion, may verify the information and documentation supporting the certification of continuing education credit hours reported. Upon request, the individual who reported the continuing education credit hours shall submit to the Board, or its designee, copies of the original documentation.

In its charge letter, the Board informed Mr. Brennan 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. Brennan was also informed that should the charges be proven, he would be subject to a possible reprimand, suspension or revocation of his license, and/or the imposition of a penalty in the amount of \$5,000.00 per violation. At the December 4, 2018, hearing, Mr. Brennan failed

to appear. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

FINDINGS OF FACT

The Board hereby adopts and incorporates in its factual findings the facts set forth in the Board's charge letter dated October 4, 2018. 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) Thomas Gerald Brennan was first licensed by the Board as a certified public accountant under registration number 14398 on March 23, 1989. Mr. Brennan's current license is due to expire on February 4, 2019.

2) After submitting an online application to renew his license on or about February 20, 2017, Mr. Brennan was notified that his license renewal application had been selected for audit, and that he was to provide specific documentation for the 88 hours of continuing education ("CE") he claimed in connection with his renewal application.

3) Mr. Brennan provided documentation for his claimed continuing education in the audit checklist and supporting documentation dated March 6, 2017. With respect to the documentation of CE submitted, as of the date of his renewal application, Mr. Brennan had completed no qualifying CE.

4) Between February 23, 2017, to February 28, 2017, Mr. Brennan completed 88 hours of qualifying CE, including 4 hours of Ethics.

DISCUSSION

After reviewing the evidence, the Board finds that charges against Mr. Brennan are supported. At the time he submitted his application for renewal, Mr. Brennan did not meet the Board's continuing education requirements, and had no reasonable basis to expect that he did meet those requirements. Accordingly, the Board finds that Mr. Brennan: 1) failed to comply with the 80 hour continuing education requirement set forth in BOP § 2-312(a)(3)(i), and COMAR 09.24.02.02 at the time of his application for license renewal; 2) fraudulently or deceptively attempted to obtain a license in violation of BOP § 2-315(a)(1)(i) and COMAR 09.24.02.03A and 09.24.01.06I(1); and 3) failed to complete four hours of CE in ethics at the time of his application for license renewal in violation of COMAR 09.24.02.03C(1). Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Brennan 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 also 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.

With respect to the seriousness of and harm caused by the violation, Mr. Brennan claimed he had earned 80 continuing education credits which he knew, or should have

known, he had not completed at the time of his application in order to renew his license. The continuing education requirements exist to ensure that licensees maintain a requisite level of competence to justify the public's reliance on the CPA designation. Additionally, the Board relies on the honesty of its licensees with respect to reporting continuing education. The Board does not have the staff and resources to audit every renewal application for continuing education compliance. Mr. Brennan abused the trust placed in him by the Board. The Board thus considers this to be a significant violation.

With respect to good faith on the part of Mr. Brennan, the Board notes that he did complete the 80 hours of continuing education required for the renewal of his license prior to his hearing before the Board. However, Mr. Brennan did not appear for the hearing and offer any explanation to the Board for his actions. Under the circumstances, the Board chooses to take action to protect the public and the profession from any further harm. Although Mr. Brennan has no prior disciplinary history with the Board, this factor is outweighed by the others, and cannot preclude the imposition of a sanction by the Board.

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, Thomas Gerald Brennan, violated Business Occupations and Professions Article, Ann. Code of Maryland, §§ 2-312(a)(3)(i), 2-315(a)(1)(i), and 2-315(a)(1)(vii), and COMAR 09.24.01.06I(1), 09.24.02.03A, and 09.24.02.03C(1).

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 8th day of January, 2019,

ORDERED:

- 1) That the license issued to Mr. Brennan is hereby officially **SUSPENDED** until such time as Mr. Brennan complies with the terms of this order;
- 2) That Mr. Brennan pay to the Board, within 30 days of the date of this order, a civil monetary penalty in the amount of \$5,000.00; and
- 3) That the records, files, and documents of the Maryland Board of Public Accountancy reflect this decision.

**MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY**

SIGNATURE ON

By: **ORIGINAL DOCUMENT**
Arthur E. Flach, CPA
Chair