

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

WEST VIRGINIA BOARD OF ACCOUNTANCY,

Complainant,

v.

Case No.: 2007-03

GREGORY L. SIZEMORE, CPA,

Respondent.

FINAL ORDER

This matter came before a Hearing Examiner designated by the West Virginia Board of Accountancy ("Board") pursuant to W. Va. Code §§ 30-1-8 and 30-9-22, for a hearing of this case matter on January 13, 2009. As a result, the Hearing Examiner submitted his Recommended Decision dated April 20, 2009.

WHEREFORE, the Board **ADOPTS** the Hearing Examiners's Recommended Decision in its entirety, including the Findings of Fact and Conclusions of Law, which shall be attached and made part of this Final Order.

FURTHER on the basis of the now adopted Recommended Decision, the Board does hereby **ORDER** and **DECREE** that:

1. Respondent's license is hereby suspended for a period of three (3) year effective upon the entry date of this *Final Order* hereto.
2. During this three (3) year period of suspension the Respondent must complete the following requirements:

a. Respondent shall complete forty (40) continuing professional educational hours each year of his three (3) year suspension. Moreover, the Respondent shall complete an additional sixteen (16) hours of CPE in ethics during the last year of his suspension in addition to regularly mandated hours of CPE that are required by the Board and this *Final Order*. Respondent shall provide proof of completion of these CPE hours to the Board for all three years of the suspension.

b. Respondent shall reimburse the Board for all of the administrative and legal expenses incurred by the Board in the investigation and disposition of this case by the end of the suspension period and prior to the reinstatement of his license. The Board shall determine the amount of these expenses to be reimbursed.

c. Respondent shall pay a seven thousand five hundred dollar fine (\$7,500.00) to be paid in three installments of two thousand five hundred dollars each (\$2,500.00). The first installment is due on July 1, 2009, the second installment is due on July 1, 2010, and the last installment shall be paid prior to the end of the suspension period. Moreover, a letter must accompany each installment payment attesting that the Respondent is not holding himself out as a CPA.

3. Respondent must complete all of these requirements during the three year suspension in order to be eligible for reinstatement of his CPA license.

4. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting on the Board's website and on NASBA's Enforcement Information Exchange (EIX) database.

5. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).

ENTERED: Reed Spangler
REED SPANGLER, BOARD PRESIDENT

DATE: May 28, 2009

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WEST VIRGINIA BOARD OF ACCOUNTANCY,

Complainant,

v.

Case No. 2007-03

GREGORY L. SIZEMORE, CPA,

Respondent.

HEARING EXAMINER'S RECOMMENDED DECISION

This matter came on for hearing before the undersigned Hearing Examiner on January 13, 2009, pursuant to the provisions of W. Va. Code §§ 30-1-8 and 30-9-22. The West Virginia Board of Accountancy (hereinafter Board) appeared by its counsel Assistant Attorney General Darlene Ratliff-Thomas, Esq., and called as witnesses Jo Ann Walker, Eva Tanner, and Gregory Sizemore. The Respondent appeared pro se, testified on his own behalf, and called no witnesses,

All witnesses were sworn, documents were received into evidence, and the hearing was recorded electronically.

After a review of the record and exhibits admitted into evidence at the said hearing of this matter, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the undersigned Hearing Examiner makes the following Findings of Fact and Conclusions of Law. To the extent that these findings and conclusions are generally consistent with any

proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Hearing Officer. Conversely, to the extent that the same are inconsistent with these findings and conclusions, they are rejected. To the extent that the testimony of any witness is not in accordance with these findings and conclusions, such testimony is not credited. Any proposed Finding of Fact, Conclusion of Law, or Argument proposed and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

FINDINGS OF FACT

1. The Board is a state entity created by W. Va. Code § 30-9-1 *et seq.*, and is authorized to regulate the practice of accountancy.
2. The Respondent is a licensee of the West Virginia Board of Accountancy and holds a Certified Public Accountant (CPA) license, License No. 4424.
3. As a licensee of the Board, the Respondent is subject to the license requirements of the Board.
4. On or about March 2, 2007, the Board received a complaint from Eva June Tanner on behalf of Samuels Trucking. (Complainant's Exhibit 1.)
5. Ms. Tanner testified that the Respondent was employed to provide accounting services to William Samuels, individually and as d/b/a Samuels Trucking and Samuels Logging, at Indore, Clay County, West Virginia. (Tr. 8-24.)

6. Ms. Tanner further testified that the Respondent was paid various sums of money for services that he never rendered. Specifically, he was paid Six Hundred Dollars (\$600.00) to prepare an amended 2003 tax return as well as provide other accounting services; One Thousand Three-Hundred Twenty-one and 12/100 Dollars (\$1,321.12), as reimbursement for an alleged advance by Respondent to WorkForce West Virginia on behalf of Samuels Trucking; and Nine Hundred Sixty-six Dollars (\$966.00) allegedly to reimburse the Respondent for monies advanced by Respondent to the Internal Revenue Service (IRS) on behalf of William Samuels. (Tr. 11-16.)

7. Also, Ms. Tanner testified that she attempted on various occasions to communicate with Respondent regarding the services that were to be rendered, but was unsuccessful. (Tr. 11, 14-15, 17, 20, 31.)

8. Ms. Tanner testified that Mr. Samuels "had to take off two days of work" to go to Charleston to get the WorkForce West Virginia account "straightened up." And he was again required to pay the sum he had previously paid to the Respondent. (Tr. 15-16.)

9. The Respondent acknowledged that he owes reimbursement to Williams Samuels for the amounts listed in paragraph 6 above, which total Two Thousand Eight Hundred Eighty-seven and 12/100 Dollars (\$2,887.12). (Tr. 6. 61, 63, 70-71; Complainant Exhibits 3 and 7.)

10. The Respondent testified that he does not agree with the charges in this matter. Specifically, he says, "I understand something has happened and I did not deliver services and someone took the money, but I did not do it." (Tr. 6.)

11. Further, Respondent testified that "I was not aware of anything going on with WorkForce West Virginia. I was not aware that I was doing amended tax returns for Mr. Samuels, and I was not aware that I was supposed to be making a payment to the IRS on his behalf." (Tr. 75.)

12. The Respondent also testified that, except for the WorkForce West Virginia payment, that

"I didn't know anything about the checks. I didn't know they existed. I didn't know. I had nothing to do with any of it. I mean, I had not even been in correspondence over the services. I didn't know the services that I was supposed to perform." (Tr. 29.)

That he never received "any benefit from the money directly" that he knew of, that his wife endorsed all three checks and/or money orders in this matter, with her signature, except for one which had his signature and his wife's; that Respondent contends that the signature is not his. (Tr. 6, 27, 29 and 71; Complainant Exhibit 1.)

13. The Respondent admitted that he was performing accounting services from his home and that he would ask his wife to pickup or deliver documents to his customers for him. He also had his wife to make telephone calls to his clients to remind them of documents he needed to complete their accounting work. His wife

would make calls and take messages for him from his various customers. (Tr. 66, 74, 81.)

14. The Respondent contends that it appears his wife took various sums of monies from Mr. Samuels and that she was not acting on his behalf when she did so, but said, "I'll assume full responsibility for repayment." (Tr. 71.)

15. The undersigned represents that enclosed with the Respondent's post-hearing submission was a copy of a check dated February 25, 2009, payable to William Samuels in the amount of Two Thousand Eight Hundred Eighty-seven Dollars and Twelve cents (\$2,887.12) along with a receipt signed by Mr. Samuel's mother Eva June Tanner which is attached hereto and designated "Attachment A".

CONCLUSIONS OF LAW

1. The West Virginia Board of Accountancy has jurisdiction over this matter. See W. Va. Code § 30-9-1 *et seq.*

2. The Respondent, is a licensee of the West Virginia Board of Accountancy and is subject to license requirements of the Board.

3. That the Board has the power to revoke a license, place a licensee on probation, suspend a license, reprimand a licensee or take other disciplinary action under W. Va. Code § 30-9-1 *et seq.* and the rules promulgated thereunder.

4. That the Respondent took payment for services that he failed to render.

5. The failure of the Respondent resulted in harm to Mr. Samuels.

6. Mr. Samuels was required to pay the sum of One Thousand Three-Hundred Twenty-one and 12/100 Dollars (\$1,321.12) to WorkForce West Virginia, although he had already paid the exact sum to the Respondent, who was to tender the same to WorkForce West Virginia on behalf of Mr. Samuels. Mr. Samuels had to seek another accountant to complete the work the Respondent failed to render.


7. That in performing his accounting services, the Respondent actively utilized the services of his wife and thereby, either knowingly or unwittingly, held her out as his agent. He allowed her to answer, make and return telephone calls on his behalf and pick up and deliver accounting documents to his customers. Evidence adduced at hearing of this matter shows that there was substantial contact with the wife by Ms. Tanner, on behalf of her son, William Samuels, but very little with the Respondent despite numerous attempts to do so. The Respondent is responsible for the actions of his wife as they relate to his accounting practice. (Tr. 66, 74, 81.)

8. The conduct of the Respondent constitutes dishonesty, fraud and/or professional negligence in the practice of certified public accountancy in violations of W. Va. Code § 30-9-20(a)(5) and the rules of the Board. Such conduct is grounds for disciplinary action.

THEREFORE, in accordance with the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the undersigned that the Board take whatever disciplinary action that it deems appropriate against the Respondent's

license to practice accountancy in the State of West Virginia, up to and including revocation, along with an assessment of payment for all costs related to this matter.

Dated this 20th day of April, 2009.



JACK C. McCLUNG
HEARING EXAMINER