BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

WEST VIRGINIA BOARD OF ACCOUNTANCY,

Complainant,

v. **Complaint No. 2017-05**

EDWARD J. WALSH, JR., C.P.A.,

Respondent.

FINAL ORDER

At a regular meeting of the West Virginia Board of Accountancy (the "**Board**") on April 27, 2018, the Board considered the *Recommended Decision* proposed by Jeffrey G. Blaydes, Esq., designated Hearing Examiner in this matter. A quorum was present, and the Board voted unanimously to **ADOPT** the *Recommended Decision* as the decision of the Board. A copy of the *Recommended Decision* is attached to this *Final Order* and incorporated by reference.

As the Hearing Examiner found and concluded, the Internal Revenue Service indefinitely suspended Mr. Walsh's authority to provide tax services, effective as of May 12, 2016. Just over a month later, Mr. Walsh submitted a renewal application to the Board. In his application, he denied that he had been "disciplined, reprimanded, or sanctioned by any governmental agency[.]" Mr. Walsh confirmed these things in communication with the Board and volunteered, further, that he had failed to file his own tax returns. As a result of these things, he has failed to adhere to the Rules of Professional Conduct by violating W. Va. Code §§ 30-9-20(a)(1), 30-9-20(a)(4), and 30-9-20(a)(5) and W. Va. C. S. R. §§ 1-1-13(13.1.a), 1-1-13(13.1.d), and 1-1-13(13.1.e).

For these reasons, pursuant to W. Va. C. S. R. 1-2-10(10.1), and in an accordance with the *Recommended Decision*, the Board hereby **ORDERS** as follows:

1. That Mr. Walsh's license to practice as a certified public accountant, to wit, License No. WV 002936, is **REVOKED**; and

2. That Mr. Walsh's application to renew his said license is **DENIED**.

ENTERED this 15th day of June 2018.

WEST VIRGINIA BOARD
OF ACCOUNTANCY

By: _____
Jon W. Cain, Sr., Board President

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v. **CASE NO. 2017-05**

EDWARD J. WALSH, JR., CPA

Respondent.

RECOMMENDED DECISION

This matter was heard on January 9, 2018, by the West Virginia Board of Accountancy ("Board"), by its designated Hearing Examiner, Jeffrey G. Blaydes, Esquire, at the West Virginia Board of Accountancy Office located at 405 Capitol Street, Suite 908, Charleston, West Virginia. Edward J. Walsh ("Walsh") did not appear at the hearing. The Board was represented by Katherine Campbell, Assistant Attorney General.[1]

Based upon the testimony, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Board is a state entity governed by West Virginia Code §§ 30-9-1, *et seq*. It is the regulatory board created for regulating the practice of accountancy in West Virginia. West Virginia Code §§ 30-9-1 to -5. To this end, the Board may suspend, revoke, or otherwise discipline an individual's certificate or registration to practice accounting. West Virginia Code § 30-9-20.

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[1]Since the hearing in this matter, Michael E. Bevers, Assistant Attorney General, has substituted for Ms. Campbell as counsel for the Board.

2. The Board investigated whether Walsh violated West Virginia Code § 30-9-1 to -31 and 25 C.S.R. §§ 1-1 to 7-2.

3. At all times relevant, Walsh was a licensee of the Board, holding License No. WV 002936 and, therefore, subject to the jurisdiction of the Board.

4. Brenda S. Turley has been the Executive Director of the Board since 2014.[2] Hearing Transcript at page 6 ("Tr. 6") As Executive Director, Ms. Turley maintains the operations and administrative functions of the Board's office and processes complaints and disciplinary matters. (Tr. 7)

5. Ms. Turley testified that Walsh held a certified public accountant license between January 4, 2013, and June 30, 2017. (Tr. 8) The Board received information from the National Association of State Boards of Accountancy that the Internal Revenue Service ("IRS") had indefinitely suspended Walsh from providing tax services beginning on May 12, 2016. (Tr. 9; Complainant's Ex. 1)

6. Walsh completed an application to renew his West Virginia license on June 24, 2016, or almost six weeks after his IRS suspension began. (Tr. 10) In his application for renewal, Walsh denied that he had received discipline from any government agency. (Tr. 10; Complainant's Ex. 1) Specifically, Question 10 of the Registration Renewal asks whether the renewal applicant had been "disciplined, reprimanded or sanctioned by any governmental agency?" (Ex. 1) Walsh responded, "No." As noted above, this response was not true.

7. The Board initiated a Complaint letter on February 6, 2017, based on the information that the IRS had imposed an indefinite suspension on Walsh's tax services in May 2016 and on

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[2] Mr. Turley has been employed by the Board for twenty-two years.

Walsh's June 2016 denial of receiving any disciplinary action. (Tr. 12-15)

8. By letter dated March 9, 2017, Walsh responded to the Complaint letter with descriptions of personal and financial difficulties. However, failed to explain why he had denied receiving any discipline from any government agency. (Tr. 15-17; Complainant's Ex. 2) In his correspondence to the Board, Walsh admitted that he had failed to file his own personal income tax returns. (Tr. 16; Complainant's Ex. 2)

9. On April 21, 2017, the Board sent Walsh another letter asking him to clarify his answers to its first letter. (Tr. 17; Complainant's Ex. 3) Walsh did not respond. (Tr. 24)

10. The Board sent another letter dated May 30, 2017, again asking Walsh to explain why he had denied receiving discipline from any government agency. (Tr. 25; Complainant's Ex. 4) Again, Walsh did not respond before the Board's next meeting on July 28, 2017. (Tr. 28)

11. The Board met on July 28, 2017. (Tr. 28) The Board reviewed the relevant documents and the Complainant Committee recommended a finding of probable cause. Thereafter, the Board unanimously found probable cause to bring charges against Walsh. (Tr. 31; Complainant's Ex. 6)

12. On July 31, 2017, after the Board had found probable cause, Walsh sent an e-mail to the Board in which he attempted to explain why he had denied receiving discipline from any government agency on his renewal application. In this email, Walsh stated with regard to Question 10 on the Registration Renewal that:

> This question is my undoing. I was recently restricted by the IRS but I failed to remember or thought I still was under an agreed period to comply in filing my tax returns with no restrictions.

He further stated:

> My actions have dishonored our profession but again no intent was meant and lack of review of my work has caused me to face my shortcomings fully.

Finally, Walsh stated:

> I will plead guilty as it is true that the IRS has forbade me to file tax returns.

(Tr. 27-28, 31; Complainant's Ex. 5)

13. The Board sent a letter to Walsh dated August 15, 2017, which explained that the Board had received Walsh's e-mail after its July 28, 2017, meeting; that the Board had found probable cause at its July 28, 2017, meeting; that a Statement of Charges was included with the letter; and that the Board would schedule an administrative hearing. (Tr. 32; Complainant's Ex. 6) The letter also informed Walsh that if he were interested in entering into a consent agreement, he should contact the Board's legal representative within ten days. (Complainant's Ex. 6)

14. Walsh did not contact the Board to discuss a potential consent agreement or otherwise respond to the August 15, 2017, letter and Statement of Charges. Consequently, the parties did not discuss or reach an agreement. (Tr. 33-35)

15. The Board scheduled the matter for hearing on January 9, 2018, and sent a Notice of Hearing to Walsh at his last known address by certified mail and regular first-class mail. (Tr. 36; Complainant's Ex. 7) The hearing proceeded as scheduled on January 9, 2018. Walsh did not appear. (Tr. 4-5)

16. Walsh was properly notified of the hearing that took place on January 9, 2018.

17. The testimony of Ms. Turley, the Board's Director, which provided the basis for the foregoing Findings of Fact, was reliable and credible, and was supported by the evidence and

exhibits of record. Her recall of the salient facts was detailed, internally consistent, and bore the hallmark of truthfulness.

ANALYSIS

On or before May 12, 2016, the IRS indefinitely suspended Walsh from providing tax services. Walsh's indefinite suspension commenced on May 12, 2016.

On June 24, 2016, Walsh submitted his "Annual CPA Certificate or PA Registration Renewal" seeking to have his West Virginia license renewed. The renewal application contains an "Eligibility Verification Questionnaire" which asks at Question 10 whether the applicant has ever been "disciplined, reprimanded or sanctioned by any governmental agency?" Walsh responded, "No." Walsh then signed an acknowledgment that states,

> By signing and dating this form below, I do certify, under penalties of perjury and false swearing, that the information I have submitted is true and correct to the best of my knowledge. Making a false statement may subject the certificate or registration holder to disciplinary action including, but not limited to, revocation or suspension of the certificate or registration.

Although Walsh did not appear at the Board's properly noticed hearing, he corresponded with the Board prior to the hearing and admitted that he had falsified his application. In his written response to the Board on July 31, 2017, or more than two months after the IRS suspension had taken effect, Walsh stated that "Question 10" had been his "undoing" and that he "failed to remember" his IRS restriction. He then stated, "I will plead guilty as it is true that the IRS has forbade me to file tax returns." Finally, he admitted that his actions "have dishonored our profession." (Complainant Ex. 5) The reliable, probative, and substantial record in this case establishes by a preponderance of the evidence that Walsh falsified his renewal application in order to maintain his license.

It must be noted that Walsh was a current licensee at the time that he submitted the renewal

application. Thus, any violation that occurred when he submitted the falsified application could give rise to an action by the Board to suspend or revoke the then-existing license, as well as an action to deny the renewal application.

In this instance, Walsh received notice of the hearing in this case, but failed to appear. He directed some correspondence to the Board, but provided no firsthand testimony and did not submit to live questioning from the Board's representative.

West Virginia Code § 30-9-20(a)(1) states that the Board may refuse to renew an existing license and revoke the same where a licensee is adjudged unqualified as a result of:

> Fraud or deceit in obtaining or maintaining a license or substantial equivalency practice privilege.

See also 1 C.S.R. Series § 1-13.1.a.

Based upon the facts presented herein, the Board has established by a preponderance of the evidence that the license held by Walsh for the period January 4, 2013, to June 30, 2017, should be revoked for the submission of a falsified application for renewal on June 24, 2016, while his then-current license was active. Additionally, it is also beyond cavil that the renewal application should be denied based upon Walsh's failure to provide truthful information in the application to the Board.

In support of the foregoing, the undersigned now issues the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board of Accountancy is a regulatory board created for regulating the practice of accountancy. West Virginia Code § 30-9-1 to -5.

2. Walsh was a licensee of the Board at all relevant times, and is, therefore, subject to the jurisdiction and license requirements of the Board. West Virginia Code§ 30-9-1- to -5.

3. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke, or otherwise discipline an individual's certificate or registration to practice accounting. West Virginia Code§ 30-9-20.

4. The Board may refuse to issue or to renew any license or privilege of any licensee and may take disciplinary action against any licensee whom the Board finds unqualified because he or she has engaged in deceit in obtaining or maintaining a license. West Virginia Code § 30-9-20(a)(1); *see also* 1 C.S.R. § 1-13.1.a.

5. The Board may refuse to issue or refuse to renew any license or privilege of any licensee whose right to practice before any state or federal agency has been revoked or suspended. West Virginia Code § 30-9-20(a)(4); *see also 1* C.S.R. § 1-13.1.d.

6. The Board may refuse to renew any license or privilege of any licensee who has failed to file his or her own income tax returns. West Virginia Code § 30-9-20(a)(5); *see also* C.S.R. § 1-13.1.e.

7. It is the responsibility of each licensee to "ensure that the Board has a current address." 1 C.S.R. § 3-5.8.

8. The IRS indefinitely suspended Walsh from providing tax services beginning on May 12, 2016. (Tr. 9; *see also* Complainant's Ex. 1 at p.1) Walsh completed an application to renew his West Virginia license on June 24, 2016, in which he denied receiving discipline from any government agency. (Tr. 10; *see also* Complainant's Ex. 1 at p. 2)

9. The Board gave Walsh proper notice of the pending charges against him and notice of the hearing under the law and rules of the Board. The Board was, therefore, within its power to proceed with the hearing despite Walsh's failure to appear. (Complainant's Ex. 7; *see also* 1 C.S.R.

§ 3-5.8)

10. The testimony of Executive Director Brenda S. Turley, which serves as the basis for the foregoing Findings of Fact, was reliable and credible, and was supported by the evidence and exhibits of record. Walsh failed to appear at the hearing in this case.

11. The Board met its burden of proof and showed, by a preponderance of the evidence, that its denial of Walsh's renewal application was warranted. Alternatively, the undersigned finds that the Board has shown, by a preponderance of the evidence, that revocation of the license existing at the time the allegation arose in this case is appropriate herein.

RECOMMENDED DECISION

WHEREFORE based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Board of Accountancy finds that Walsh failed to adhere to the Rules of Professional Conduct by violating West Virginia Code § 30-9-20(a)(1), West Virginia Code § 30-9-20(a)(4), West Virginia Code § 30-9-20(a)(5), and West Virginia Code of State Rules § 1-1-13.1.a, West Virginia Code of State Rules § 1-1-13.1.d, and West Virginia Code of State Rules § 1-1-13.1.e. As a result, Walsh's license held at the time the allegation arose should be revoked and his renewal application should be denied.

Entered this 23rd day of March, 2018.

JEFFREY G. BLAYDES
HEARING EXAMINER