

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**WEST VIRGINIA BOARD OF
ACCOUNTANCY,**

Complainant,

v.

Complaint No. 2017-07A

ALLMAN & ASSOCIATES, PLLC,

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 as **Exhibit A** to this *Final Order* and incorporated by reference.

As the Hearing Examiner found and concluded, Christopher Allman is the only listed member of Respondent, Allman & Associates, PLLC. For a portion of 2017, Mr. Allman had a certified public accountant license and a firm license in West Virginia. During that window of time, however, neither Mr. Allman nor Respondent had an authorization to perform attest or compilation services. Yet—during that same window of time—Respondent’s website advertised that Respondent offered those services. Mr. Allman was advised more than once that this advertising was illegal, but he did not desist.

As a result of these things, Mr. Allman—as Respondent’s principal—has failed to adhere to the Rules of Professional Conduct by violating W. Va. Code § 30-9-20(a) and the regulatory scheme governing the Board.

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 the firm license and the license to practice as a certified public accountant that Mr. Allman held on May 23, 2017, to wit, Firm Permit No. F0462 and License No. WV004367, are **REVOKED**; and
2. That Mr. Allman’s application to renew his said licenses is **DENIED**.

ENTERED this 14th day of May 2018.

**WEST VIRGINIA BOARD
OF ACCOUNTANCY**

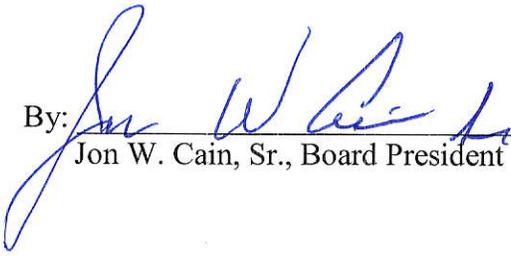
By:  _____
Jon W. Cain, Sr., Board President

Exhibit A

Recommended Decision

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

WEST VIRGINIA BOARD OF ACCOUNTANCY,

Complainant,

v.

Case No. 2017-07A

ALLMAN & ASSOCIATES, PLLC,

Respondent.

RECOMMENDED DECISION

This matter was heard on December 5, 2017, 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. Allman & Associates, PLLC (“Respondent”) 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 administrative agency charged with the responsibility of administering and enforcing state laws and regulations pertaining to the practice of accountancy in the State of West Virginia. W. Va. Code § 30-9-1 *et seq.*
2. Brenda Turley, the Board’s Executive Director, testified on behalf of the Board.
3. Ms. Turley testified that the Board received information that Respondent advertised on its firm website that it performed audits, reviews, attestation, and compilation services.

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

(December 5, 2017, transcript p. 10, 16 and Complainant Exhibit 1; hereinafter “(Tr. 10, 16; Complainant Ex. 1)”.

4. Ms. Turley testified that Respondent held a firm permit issued by the Board during the time period in which the advertising was found to be present on its website. Ms. Turley further testified that Respondent’s firm permit lapsed on June 30, 2016, along with its authorization. (Tr. 11)

5. Ms. Turley testified that Christopher Allman is the only listed member for Respondent with the West Virginia Secretary of State’s Office. Mr. Allman was a licensee of the Board as a certified public accountant (“CPA”) during the time that the advertising was found on Respondent’s website. (Tr. 11, 43; Complainant Ex.9)

6. Ms. Turley explained that in order to provide the work as listed on Respondent’s website, there had to be a certificate issued by the Board for an authorization. According to Ms. Turley, there was no authorization held by either Respondent or Mr. Allman because Mr. Allman was not enrolled in a Board-approved Peer Review program as required by 1 C.S.R. § 1-12.1, the Rules of Professional Conduct, since June 30, 2016. (Tr. 10, 12-13)

7. Ms. Turley also testified that neither the Respondent nor Mr. Allman currently holds any type of licensure or authorization from the Board. (Tr. 13-14)

8. Ms. Turley testified that when Mr. Allman was seeking reinstatement of both his CPA license and firm permit in February 2017, the Board advised him by letter dated February 6, 2017, that, pursuant to West Virginia Code § 30-9-26 (e), an authorization is required for attest service work, including advertising for such work. (Tr. 19; Complainant Ex. 2)

9. Ms. Turley testified that the advertisement offering attest services remains on

Respondent's website as of the day of this hearing, or December 5, 2017. Moreover, the information remains the same as shown on Complainant Exhibit 1. (Tr. 15; Complainant Ex. 2)

10. Ms. Turley testified that the Board again requested that Mr. Allman remove the unlawful language from the website, but to no avail. (Tr. 23; Complainant Ex. 3)

11. Ms. Turley testified that the Board initiated a complaint on May 23, 2017, which was sent via certified mail and signed for Mr. Allman. (Tr. 25, 27; Complainant Ex. 4)

12. The Board never received a response from Respondent regarding the complaint. (Tr. 26)

13. Thereafter, the Board found probable cause and issued a Statement of Charges along with a Notice of Hearing. (Tr. 29; Complaint Ex. 5)

14. Both of these documents were sent via certified mail to 3857 Teays Valley Road, Suite 4, Hurricane, West Virginia, which is the address the Board had on file as given to them by Mr. Allman. The tracking information as provided by the U.S. Postal Service showed that these documents were not received by Mr. Allman. (Tr. 31; Complainant Ex. 6)

15. Ms. Turley indicated that during this time, Mr. Allman submitted another Reinstatement Application in November 2017 for licensure that lapsed June 30, 2017. However, he provided an address that was different than the one in the Board's records. As such, Ms. Turley testified that she re-sent via certified mail dated November 4, 2017, the Statement of Charges and Notice of Hearing (Complaint Ex. 5) to this new address at Post Office Box 43, Hurricane, West Virginia. (Tr. 36; Complainant Ex. 7)

16. Ms. Turley testified that the statement of charges and Notice of Hearing admitted as Complainant Exhibit 7 were sent via certified and regular mail. According to Ms. Turley, the

certified mail remained unclaimed; however, the regular mail was never returned to the Board office by the U.S. Postal Service. (Tr. 38-30; Complainant Ex. 8)

17. The testimony of Ms. Turley is found to be credible. Her testimony was internally consistent and has the hallmark of truthfulness.

18. Respondent received lawful notice of these procedures.

ANALYSIS

It is undisputed that Respondent advertised on his firm website that he performed audits, reviews, attestation, and compilation services. Moreover, it is clear that in order for Respondent or Mr. Allman to perform the work listed on the website that Respondent or Mr. Allman would have had to acquire authorization from the Board and be enrolled in a Board Peer Review program.² Neither Respondent nor Mr. Allman acquired such authorization.

As such, Respondent and Mr. Allman held their business out to be able to perform certain, specific accounting services when, in fact, they were not authorized to perform such services.

²The Board Rules and Rules of Professional Conduct set forth peer review programs that are acceptable to the Board. The Rule states:

For purposes of subdivision 12.2.e and 12.3.e, the Board shall accept (i) the peer review program offered by the AICPA and administered by the West Virginia Society of Certified Public Accountants or (ii) any other peer review program that the Board deems comparable in terms of quality, thoroughness and reliability to the AICPA peer review program. If an applicant intends to use a peer review program other than the AICPA peer review program, the applicant shall submit detailed information concerning the peer review program (including but not limited to the sponsor of the program, the standards used, the identity and qualifications of the expected reviewers, and similar information) to the Board prior to contracting with the peer review provider. The Board will promptly evaluate the proposed peer review program and inform the applicant whether the program is acceptable.

West Virginia Code § 30-9-2(4) defines “authorization” as follows:

“Authorization” means an authorization issued pursuant to this article that entitles a permit holder or an individual practitioner to perform attest or compilation services.³

³“Attest services” are defined as:

(A) Any audit or other engagement to be performed in accordance with the statements on Auditing Standards (SAS);

(B) Any review of a financial statement to be performed in accordance with the statements on Standards for Accounting and Review Services (SSARS);

(C) Any examination of prospective financial information to be performed in accordance with applicable Statements on Standards for Attestation Engagements (SSAE);

(D) Any engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board (PCAOB); or

(E) Any examination, review or agreed upon procedures engagement to be performed in accordance with the statements on Standards for Attestation Engagements (SSAE), other than an examination described in paragraph (C) of this subdivision.

W. V. Code § 30-9-2(3)

“Compilation services” are defined as:

providing a service performed in accordance with the statements on Standards for Accounting and Review Services that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement: Provided, That this definition does not apply to the use of the term “compilation” in section thirty-one of this article.

W. Va. Code § 30-9-2(12)

Pursuant to 1 C.S.R § 1-12.1,

No individual practitioner or firm may provide attest or compilation services without first having obtained an authorization issued by this Board unless the individual practitioner or firm meets the substantial equivalency practice privilege exceptions below:

Are undergoing a peer review program that conforms with applicable laws and rules[.]

The Legislative Rule further provides that the Board may issue an authorization to an individual practitioner who provides, *inter alia*, a fee and verification “that the individual practitioner has timely completed a peer review . . . in a satisfactory manner as determined by the Board.” 1 C.S.R. § 1-12.2.e. The same applies to a firm seeking authorization. 1 C.S.R. § 1-12.3.e.

In this instance, neither Respondent nor Mr. Allman had the appropriate authorization required peer review program. As such, Respondent’s website presented inaccurate, misleading, and unlawful information to the public.⁴

The statutory and regulatory scheme for the Board defines “unlawful acts” to include the following:

No authorization holder or substantial equivalency practitioner may perform attest or compilation services in a manner other than pursuant to the statements on standards relating to those services specified by rule.

W. Va. Code § 30-9-26(a). Moreover, “unlawful acts” include as follows:

No person or firm that does not hold an authorization to perform attest services may perform or offer to perform attest services, and no person or firm that does not hold an authorization to perform compilation services may perform or offer to perform compilation services.

W. Va. Code § 30-9-26(e)

⁴In fact, Ms. Turley testified that Respondent continued to present this misinformation on its website as of the date of the hearing in this case despite prior written warnings from the Board about the website.

The Legislative Rule further indicates that:

Dishonesty, fraud, professional negligence in the performance of services as a licensee or substantial equivalency practitioner or in the filing or failure to file the licensee's or substantial equivalency practitioner's own income tax returns, or a willful departure from accepted standards of professional conduct applicable to licensees and substantial equivalency practitioners.

1 C.S.R. § 1-13.1.e

Additionally, the Legislative Rule states:

Violation of any provision of this article, any lawful order of this Board, or any Rule, including the violation of any professional standard or rule of professional conduct.

1 C.S.R. § 1-13.1.f

Finally, the Legislative Rule indicates:

Any conduct reflecting adversely upon the licensee's or substantial equivalency practitioner's fitness to perform professional services.

1 C.S.R. § 1-13.1.i

The evidence of record indicates that Respondent and/or Mr. Allman violated these provisions governing the practice of accountancy in West Virginia.⁵

The Board is authorized to refuse to issue or renew, suspend, or revoke a license. Additionally, the Board may limit any license or practice privilege of any licensee, substantial practitioner or firm and may take appropriate action against a licensee following a hearing wherein the licensee, substantial practitioner or firm has been adjudged "unqualified." 1 C.S.R. 1, § 13.1 *et seq.*

⁵Additionally, the regulatory scheme for the Board requires that Respondent and/or Mr. Allman provide to the Board "written notification of any change of home or employment address within thirty (30) days after its occurrence." Respondent and/or Mr. Allman failed to update this information as required. Additionally, or alternatively, Respondent and/or Mr. Allman failed to respond to correspondence or inquiries from the Board. 1 C.S.R. § 1-1.7.1

In assessing a proposed penalty in this case, it is important to consider the mandate of all professional licensing boards, including the Board. It is self-evident that all state boards are constituted for the purpose of protecting the public. The Legislature has found:

that as a matter of public policy the practice of the professions referred to in this chapter is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

W. Va. Code § 30-1-1a. This Board is specifically directed to:

protect the public interest in receiving accurate and reliable financial information and assurance, certified public accountants, public accountants, and accounting firms are required to be licensed as provided in this article.

W. Va. Code § 30-9-1.

The violation committed by Respondent and/or Mr. Allman in this case involved the important functions of attest and compilation services. The public was advised that Respondent and/or Mr. Allman could lawfully perform these services when, in fact, Respondent and/or Mr. Allman did not have authorization for the same. Given the significance of this unlawful misrepresentation, revocation of the license or any other privilege held by Respondent and/or Mr. Allman during the time-frame at issue is appropriate herein based upon this issue standing alone.

The conduct of Respondent and/or Mr. Allman in communicating with the Board is also a matter of serious concern. The Board, through its representative, has attempted repeatedly to communicate with Respondent and Mr. Allman to no avail. The Board indicated that contact information for Respondent and Mr. Allman have not been updated. Nor has Mr. Allman been consistently responsive to inquiries from the Board. Finally, Mr. Allman, despite lawful notice, failed to attend the hearing in this matter.

Given the foregoing, the undersigned recommends revocation of the licenses and privileges at issue herein. The undersigned now recommends the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board is a state agency created by West Virginia Code § 30-9-1 *et seq.*, and is empowered to regulate, among other things, the practice of accountancy in the State of West Virginia.

2. Pursuant to West Virginia Code § 30-9-20, in order to carry out its regulatory duties, the Board is empowered to suspend, revoke, or otherwise discipline an individual's license or practice privilege.

3. The specific grounds for discipline are defined at West Virginia Code § 30-9-20(a).

4. Respondent held a firm permit issued by the Board at the time of the alleged violation which continues today. However, at all relevant times, Respondent held itself out to have authority to perform attest and compilation services when, in fact, it lacked such authority. Respondent has held itself out on its website to perform such services in an unlawful manner.

5. West Virginia Code §30-9-26(e) states:

No person or firm that does not hold an authorization to perform attest services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform attest services, and no person or firm that does not hold an authorization to perform compilation services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform compilation services.

Respondent has violated this provision by unlawfully offering attest and compilation services. This violation constitutes a ground for disciplinary action pursuant to 1 C.S.R. §1-13.1.f as it is a violation of West Virginia Code § 30-9-1 *et seq.*

6. Moreover, the actions of Respondent and/or Mr. Allman constitute dishonesty and

a willful departure from accepted standards of professional conduct. 1 C.S.R. §1-13.1.e. Respondent's failure to update his contact information with the Board and to consistently communicate with the Board also violates the provision. W. Va. Code §1-1-7.1.

7. Finally, the foregoing reflects adversely upon Respondent's fitness to perform professional services. 1 C.S.R. § 1-13.1.

8. Respondent was given proper notice of the hearing along with the pending charges against him pursuant to the law and rules of the Board. (Complainant Ex. 5, 7)

WHEREFORE based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Board of Accountancy finds that Mr. Allman failed to adhere to the Rules of Professional Conduct by violating West Virginia Code § 30-9-20(a) as set forth herein and the regulatory scheme governing the Board. As a result, Mr. Allman's license held at the time the allegation arose should be revoked and his renewal application should be denied.

Entered this 25th day of April, 2018.



JEFFREY G. BLAYDES
HEARING EXAMINER