

**BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY**

**WEST VIRGINIA BOARD OF ACCOUNTANCY,**

**Complainant,**

**v.**

**Case No. 2006-05**

**JOHN WHITFIELD,**

**Respondent.**

**FINAL ORDER**

Now comes the West Virginia Board of Accountancy (hereinafter "Board"), and hereby adopts the "Hearing Examiner's Findings of Facts and Conclusions of Law," by Hearing Examiner Jack McClung, dated January 22, 2008, in its entirety, incorporated by reference herein.

Accordingly, the Board Orders as follows:

1. The Board shall adopt and ratify the Findings of Facts and Conclusions of Law entered on January 22, 2008 attached hereto and made a part of this Order.
2. Effective immediately, the Public Accountant (PA) license of John Whitfield (hereinafter "Respondent"), License No. NRPA0006, is hereby REVOKED.
3. That the Respondent shall be assessed a fine in the amount One Thousand Dollars (\$1,000.00).
4. That the Respondent shall reimburse the Board in the amount of Four Thousand Two Hundred thirty-five and 65/100 Dollars (\$4,235.65) for the costs incurred by the Board associated with the investigation and prosecution of this matter. Such

payment shall be paid to the Board in full within six (6) months of the date of entry of this Order.

5. Pursuant the West Virginia Code §29A-5-4(b) an appeal of this decision may be made to the Circuit Court of Kanawha County or in the circuit court of the county in which the licensee resides or does business. This appeal must be filed within 30 days after receiving notice of this decision.

ENTERED this 25<sup>TH</sup> day of February 2008.

**WEST VIRGINIA BOARD  
OF ACCOUNTANCY**

By: Robert S. Maust  
Robert S. Maust, CPA  
Board President

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**HEARING EXAMINER'S RECOMMENDED DECISION**

This matter came on for hearing before the undersigned Hearing Examiner on October 24, 2007, 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 and James M. Sturgeon, Jr.

The Respondent, through his counsel, Leon K. Oxley, on the date of the hearing, advised the Board that neither he nor the Respondent would be participating in the hearing. Mr. Oxley further stated that the Respondent had filed a Response to the Charging Statement, and that the Response and the record states the Respondent's position in this matter.

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 Public Accountant (PA) license, License No. NRPA0006.
3. As a licensee of the Board, the Respondent is subject to the license requirements of the Board.
4. The Board has not licensed the Respondent as a Certified Public Accountant (CPA) in the State of West Virginia.
5. The Respondent has issued correspondence and documents describing himself as a CPA, specifically on an invoice dated August 19, 2003, he lists himself as "John Whitfield, CPA, 514 Sixth Avenue, Huntington, WV 25701"; on a letter

dated January 31, 2004, his stationery lists him "John Whitfield, Certified Public Accountant, 514 Sixth Avenue, Huntington, WV 25701"; and on a fax cover sheet dated November 3, 2006, on his letterhead he lists himself as "John Whitfield, Certified Public Accountant" with a Huntington, West Virginia, address. *See Hearing Transcript pages 9-10 and 14-19.* (hereinafter Tr.) *Board's Exhibits 1, 4 and 5.*

6. The above conduct of the Respondent violates W. Va. Code § 30-9-26(g)(9) which states it is unlawful for anyone to "use or assume the title 'certified public accountant,' the abbreviation 'CPA,' or any other title, designation, word, combination of letters, abbreviation, sign, card or device that may lead a reasonable person to believe that the person is a certified public accountant or the holder of an out-of-state certificate" when in fact the person is not a CPA. It also violates W. Va. Code § 30-9-26(i), which states "the display or uttering by a person of any printed, engraved or written instrument, bearing the name of the person in conjunction with any of the claims, titles, words or phrases listed in this section is, for purposes of this section, prima facie evidence that the person has engaged in the acts."

7. On May 18, 2004, the Board directed the Respondent to immediately cease and desist from using the title of Certified Public Account on his letterhead or using the CPA title after his name as he was not properly licensed in the State of West Virginia in that capacity. On November 13, 2006, after the above cease and desist directive, the Respondent once again used the designation of "CPA" on a facsimile correspondence. *Board's Exhibits 1 and 6.*

8. On or about November 30, 2006, the Board received a complaint from Michael W. Gerber, CPA, of the firm Hayflich & Steinberg, CPA's PLLC, regarding an "audit" conducted by the Respondent for the Huntington Area Food Bank, Inc. (Food Bank). *Board's Exhibit 1.*

9. The complaint alleged that the audit was "grossly substandard and an embarrassment to the profession."

10. The Respondent, in his reply to the complaint, acknowledged that his work was substandard. Specifically he states "[t]here is some validity in the bullet-points provided" in the complaint, that "I . . . completed the audit in slipshod fashion" and "I did not review the current modeling standard provided nor carefully proofread work previously prepared." *Board's Exhibit 2.*

11. The Board offered the testimony of its Executive Director, Jo Ann Walker. Mrs. Walker has been the Executive Director since 1973. *Tr. p. 8.*

12. Mrs. Walker testified that the Respondent holds a non-resident public accountant license with the Board. Further, that he has never held a certified public accountant license with the State of West Virginia. *Tr. pp. 15, 17.*

13. The Board also offered testimony of James M. Sturgeon, Jr. Mr. Sturgeon is an attorney licensed to practice law in the State of West Virginia, Virginia, and Ohio. He also holds a CPA certificate with the State of West Virginia. He has been an associate professor of advanced accounting at West Virginia State University. He is a member of the West Virginia Society of Certified Public Accountants where he regularly teaches continuing professional education courses. In

his law practice, he regularly represents accounting firms where he advises them on both accounting and auditing matters. *Tr. pp. 20-22.*

14. Mr. Sturgeon testified that "an audited financial statement represents an assurance to both the entity under audit, its board of directors, and those who deal with that entity of the accuracy of the financial information. The entity itself and its board of directors will use that audit in part to verify that they're properly operating their entity, and outside parties will use that as a verification that loans, grants, and other dealings are properly done with an entity that is properly under control." *Tr. pp. 22-23.*

15. Mr. Sturgeon further testified that "the issuance of an audit opinion is the highest level of assurance that can be obtained in America with respect to a financial statement, and it is necessary that those financial statements that are audited be done so precisely in accordance with standards; otherwise, the confidence in the standard, in the financial statement is eroded." *Tr. p. 23.*

16. The Board, through Mr. Sturgeon, offered testimony as to the three (3) sets of standards associated with auditing: training and proficiency, independence and due care.

17. A review of the document submitted by the Respondent as an audit for the Food Bank, (See Board Exhibit 1) indicates that neither the Respondent nor his employee were properly trained or proficient in doing audits or understanding the underlying principles of accounting.

18. The audit prepared by the Respondent was not prepared in accordance with generally accepted accounting principles (GAAP). GAAP are the basis of financial accounting and reflect federal financial accounting standards. GAAP are the accounting rules used to prepare and standardize the reporting of financial statements.

19. An accountant/licensee must be independent in the performance of professional services of the company it is auditing. Mr. Sturgeon states that "the independence standard for a certified public accountant has the same level of importance as a conflict of interest standard does for lawyers." *Tr. p. 25* and W. Va. Code R. § 1-1-20 *et seq.*

20. The Respondent violated the standard of independence in that he allowed an employee who was a member of the board of the Food Bank to work on the audit.

21. The Respondent, in his response, stated that he did not know that his employee was a member of the board of the Food Bank, which "indicates that he was not making the appropriate inquiries nor educating his employees about the necessity of independence." *Tr. p. 25.*

22. A review of the Respondent's Response to the initial complaint shows he also clearly violated the standard of due care. The Respondent states that the work was "slipshod," that he did not carefully proofread the work, nor did he review the "current modeling standards." *See Board Exhibit 2.*

#### **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. 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. The conduct of the Respondent constitutes violations of West Virginia Code §30-9-1 and the rules of the Board. Such conduct is grounds for disciplinary action.

5. The Respondent was negligent in his conduct as it relates to the preparation of an audit for the Huntington Area Food Bank. Inc.

6. The Respondent lacked the necessary knowledge to properly prepare the audit which represents a danger to his clients as well as those individuals who would deal with his clients and rely on their audited financial statements in violation of W. Va. Code R. § 1-1-20.2(a)(1).

7. The Respondent failed to use due professional care in preparing the audit which was below the accepted accounting and audit standards in violation of W. Va. Code § 30-9-20(a)(5).

8. The Respondent failed to be independent in preparing the audit in that one of his employees that worked on the audit was also a board member of the company being audited in violation of W. Va. Code R. § 1-1-20.1.

9. The Respondent is not licensed in the State of West Virginia as a certified public accountant; however, he has continually used the title/designation of CPA in violation of W. Va. Code §§ 30-9-26(g)(9) and (i).

The COMPLAINANT BOARD proved by a preponderance of the evidence adduced at hearing that the Respondent violated certain provisions of W. Va. Code §30-9-1 *et seq.*, which embraces the laws which regulate the practice of accountancy in the State of West Virginia, specifically, W. Va. Code §§30-9-20(a)(5), 30-9-26(g)(9) and (i), and the rules of the Board, which subjects the Respondent to disciplinary action with respect to his license to practice accountancy in the State of West Virginia.

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 27th day of January, 2008.

  
JACK C. McCLUNG  
HEARING EXAMINER