

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

WEST VIRGINIA BOARD OF  
ACCOUNTANCY,

Complainant,

v.

Case No. 2013-01

THOMAS A. DAVIS, C.P.A.,

Respondent.

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CONSENT AGREEMENT AND ORDER

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After due investigation of information received regarding possible statutory and rule violations, the West Virginia Board of Accountancy ("Board") determined that there was probable cause to believe that Thomas A. Davis ("Respondent") has exhibited unprofessional and unethical conduct in the practice of accountancy, in violation of the provisions of W. Va. Code § 30-9-1 *et seq.* and the Rules of the Board, 1 C.S.R. § 1 *et seq.* The Respondent was provided with written notice of the allegations against him pursuant to the rules of the Board and the laws of this State. Now, in lieu of hearing, the parties agree to entry of the following Order in disposition of this matter.

**FINDINGS OF FACT**

The Board adopts the following findings in this matter:

1. The Board is a state entity created by W. Va. Code § 30-9-1 *et seq.*, and is a regulatory board created for the purpose of regulating the practice of public accounting. W. Va. Code § 30-9-1.

2. 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 because of authority granted to it by W. Va. Code § 30-9-20.

3. That Thomas A. Davis is a licensee of the Board and is subject to the license requirements of said Board.

4. That the Respondent, at all times material hereto, operated his own accounting business known as "Davis and Davis Accounting Services, Inc." located in Charleston, West Virginia.

5. That on or about July 13, 2012, the Board received a written complaint from an organization complaining that the Respondent was performing attestation services for which he did not hold the authorization to do so by the Board.

6. That Respondent had conducted an audit for the Upshur Human Resources, Inc. for the year ended June 30, 2011.

7. That a copy of the Complaint was forwarded to the Respondent for a response, and the Respondent filed a response with the Board on August 24, 2012. Respondent admitted to performing attestation services for which he had no authorization as required from the Board. He also stated that he would discontinue offering those services until he is fully authorized by the Board to do so. Moreover, he admitted that he had no excuse for performing such unlicensed services other than he needed the money for medical bills.

8. That upon investigation by the Board, it was discovered that the Respondent held no authorization to perform attestation services in the state of West Virginia.

9. That the Board's assigned Complaint Committee did review all the information obtained during the investigation and based upon that review, did make a recommendation to the Board for a finding of probable cause.

10. That the Board did meet and made a finding of probable cause for a violation of W. Va. Code § 30-9-26(e).

#### **CONCLUSIONS OF LAW**

1. That the Board has jurisdiction to take disciplinary action against Respondent.

2. That based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice accountancy, pursuant to W. Va. Code § 30-9-20.

3. That the Respondent's actions as outlined above violate W. Va. Code § 30-9-26(e).

#### **CONSENT OF LICENSEE**

I, Thomas A. Davis, by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this *Consent Agreement* voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

2. That no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth herein.

3. That I acknowledge that I am aware that I may pursue this matter through appropriate administrative and/or court proceedings, and I am aware of my legal rights, including my right to a

hearing pursuant to W. Va. Code § 30-1-8(e), regarding this matter, but intelligently, knowingly and voluntarily waive such rights.

4. That I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

5. That I admit that my actions were unprofessional and unethical and a violation of the statute and rules of the Board.

The Respondent, Thomas A. Davis, by affixing his signature hereon, agrees to the following:

**ORDER**

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent is hereby ORDERED to cease from performing any type of attestation services until the following is completed:

a. No later than June 30, 2013, Respondent shall complete twenty-four (24) hours of continuing professional education in the following areas:

- 1) Eight (8) hours in non-profit;
- 2) Eight (8) hours in A-133 audits; and
- 3) Eight (8) hours in ethics.

b. Moreover, these twenty-four (24) hours are in addition to those continuing education hours required by the Board in order to maintain licensure. Further, these hours shall not be obtained via online or self-study, but must be delivered in live presentation format.

c. Upon successful completion of the CPE denoted in Item Number one a (1.a.) above, but no later than June 30, 2013, Respondent must submit an application for an authorization from this Board pursuant to the Board's statute and rules, and be successfully awarded the authorization from the Board.

2. Upon receipt of successful completion of Item Number one (1) above, the Respondent shall obtain a peer review approved by the Board no later than eighteen months from the date the authorization to perform attestation services is issued which shall include the following:
  - a. Peer review will be based upon any attestation work completed within eighteen months after the date the authorization to perform attestation was awarded by the Board;
  - b. The peer review must be completed and submitted to the Board within three (3) months after the date denoted in Item Number two a (2.a.) above;
  - c. Peer review will have access to the Findings of this Board;
  - d. Peer review shall report to the Board the results of said review; and
  - e. The cost of this peer review shall be the responsibility of the Respondent.
3. Respondent is hereby ORDERED to pay a fine in the amount of five-hundred dollars (\$500.00) to be paid by June 30, 2013.
4. In addition to the CPE hours required in Item Number one a (1.a.) above, by December 31, 2013, the Respondent shall take the *Professional Ethics, AICPA's Comprehensive Course* and provide the Board with documentation verifying successful passage of the course.
5. Respondent shall be on a probationary period of two years which shall include the following terms and conditions:
  - a. Respondent shall submit written quarterly status reports denoting compliance with the specific provisions contained within the *Consent Agreement and Order* to coincide with the Board's regularly scheduled meetings.
  - b. At the end of the two-year probationary period, the Board reserves the right to extend the probationary period.



6. Should the Respondent fail to complete any of the terms of this *Consent Agreement and Order*, the Respondent's license to practice accountancy in the State of West Virginia shall be SUSPENDED, effective immediately, until such time that a hearing can be scheduled to hear the matter.

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

8. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

WEST VIRGINIA BOARD OF ACCOUNTANCY

by: Donald B. Nestor  
Don Nestor, President

Entered: 1/11/2013

Agreed to by: Thomas A. Davis  
Thomas A. Davis, Respondent

Sworn and subscribed before me this 3<sup>rd</sup> day of January, 2012, 2013

My Commission expires: Sept 21, 2022

Ellen J. Davis  
Notary Public

