

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**WEST VIRGINIA BOARD OF
ACCOUNTANCY,**

Complainant,

v.

Case No. 2013-07

ROBERT J. TOLER, C.P.A.,

Respondent.

CONSENT AGREEMENT AND ORDER

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 Robert J. Toler ("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 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 Robert J. Toler is a licensee of the Board and is subject to the license requirements of said Board.

4. That on or about November 29, 2012, the Board received a written complaint from an individual complaining that the Respondent failed to provide accounting services as contracted by him. These accounting services included the failure to file timely and accurate tax returns from 2008 through present for himself personally and his two companies, A&E Construction and F&N Construction. Moreover, when the Complainant decided to obtain other accounting services the Complainant asserts that the Respondent failed to timely return the Complainant's records.

5. That Complainant provided letters from May 19, 2011, through July 30, 2012, which showed the requests of Complainant's counsel and bankruptcy counsel for the Respondent to complete the tax returns. These letters document the efforts of the Complainant to get the Respondent to complete the work and the Respondent's assurances that the work would be completed. However, the only tax return completed during this time period was the 2008 state and federal returns for F&N.

6. Moreover, on August 7, 2012, the Respondent was directed to cease from all further work on behalf of the Complainant and to return all materials to the Complainant. Complainant asserts that the Respondent failed to do so in a reasonable period of time; although,

Respondent contends that it was the Complainant who failed to pick-up the documents from his offices in a timely fashion.

7. That a copy of the Complaint and the supporting documentation were forwarded to the Respondent for a response, and the Respondent filed a response with the Board on February 13, 2013. Respondent states that the Complainant failed to provide him with timely and accurate information in order to prepare his tax returns in a timely and accurate manner.

8. That the Respondent acknowledged the receipt of numerous letters from the Complainant's counsel requesting that the tax returns be completed and filed appropriately. However, upon a request of the Board for further information regarding this issue as to why the tax returns went unprepared, the Respondent continued to state that he was "unable to prepare the tax returns for Mr. Williams because he was unwilling or unable to provide us with the information and explanations required for us to prepared complete and accurate returns." Moreover, he states that his requests for this additional information went "largely unanswered." *See* Letter dated June 26, 2013, from the Respondent to the Board.

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 met on July 19, 2013, and made a finding of probable cause for a violation of W. Va. Code § 30-9-20(d) and W. Va. Code R. § 1-1-19.2.a.2.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations 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 § 30-9-20(d) and W. Va. Code R. § 1-1-19.2.a.2 for inadequate communications.

CONSENT OF LICENSEE

I, Robert J. Toler, 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 a violation of the statute and rules of the Board.

The Respondent, Robert J. Toler, 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, Robert J. Toler, is hereby REPRIMANDED for his actions in the instant matter.
2. Respondent shall complete eight (8) hours of Board approved continuing education requirement at live presentations in the area of Ethics within six (6) months of entry of this *Consent Agreement and Order*. This continuing education requirement is in addition to the required continuing education in order to maintain licensure.
3. 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. The full amount is due within six (6) months upon the entry of this *Consent Agreement and Order*.
4. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the NASBA's Accountancy License Database and on the Board's website.
5. That this document is a public record as defined in W. Va. Code § 29B-1-2(4).
6. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

WEST VIRGINIA BOARD OF ACCOUNTANCY

by: *Louis J. Costanzo*
LOUIS J. COSTANZO, PRESIDENT

Entered: *June 17, 2016*
DATE

Agreed to by: *[Signature]*
Robert J. Toler, Respondent



[Signature]
James R. Sheatsley, Counsel for Respondent

Sworn and subscribed before me this *20th* day of *May*, 2016.
My Commission expires: *12-03-2017*

Melissa M. Whitt
Notary Public

as to Robert J. Toler