

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**WEST VIRGINIA BOARD OF
ACCOUNTANCY,**

Complainant,

v.

Case No. 2020-05

**ANITA WAGLEY,
License No. WV005442,**

Respondent.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Accountancy (“Board”) and Anita Wagley (“Respondent”) for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matter. As a means of compromise, the Board and Respondent hereby agree to resolve this matter by and through a voluntary agreement and consent to disciplinary action, with consideration given to appropriate safeguards for protection of the public.

WHEREAS, Respondent acknowledges that the Board may file a Statement of Charges alleging that she has violated certain provisions of W. Va. Code §§ 30-9-1 *et seq.* and W. Va. Code R. §§ 1-1-1 *et seq.*, and proceed to a hearing and seek disciplinary action in this matter.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle this matter without further prosecution and a formal hearing.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by Respondent.

THEREFORE, it is hereby STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reached an understanding concerning the proper disposition of the matter in controversy, and the Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT

1. Respondent is a licensee of the Board, holding License No. WV005442, and at all times relevant, practiced as a Certified Public Accountant in the State of West Virginia.
2. On or about May 1, 2020, the Board received a complaint from an individual identified herein as "D.A." alleging the following against Respondent: "In November 2019, our S/S withholding wasn't eft'ed out of our acct, as it normally was, each month. I contacted [Respondent] about this, but have never been able to get any info from her. Also, our quarterly reports were never given to me for 2019." D.A. included with the complaint a copy of correspondence, sent February 5, 2020, requesting that Respondent supply certain tax information for the years 2018-2019 to another accountant. D.A. noted that Respondent had failed to respond to that correspondence as of April 24, 2020.
3. By email correspondence dated May 5, 2020, the Board transmitted a copy of D.A.'s complaint to Respondent and requested that she file a written response thereto within 30 days.
4. Respondent responded to D.A.'s complaint by email correspondence dated May 28, 2020. Respondent states in her response, "The 1st and 2nd Q 2019 Form 941's were emailed to [D.A.]" She further states, "Attached are the signed signature pages for the returns in question. . . I would never have mailed a client a signature pages without providing them with a copy of their return." Lastly, Respondent claims that she ceased to have access to D.A.'s account following

a change in bank ownership and that D.A. “was informed of this and was also informed that I could not file any further payroll reports for after the fact payroll until I had access to the account”

5. By email correspondence dated July 10, 2020, the Board requested additional information from Respondent.

6. By email correspondence dated July 22, 2020, the Board requested additional information from D.A. The Board received a response to its request the next day.

7. The Board again requested additional information from Respondent by correspondence dated July 23, 2020 and August 18, 2020. Certified mail records indicate that the latter correspondence was delivered on August 20, 2020.

8. Having not received a response to its requests for information from Respondent, the Board emailed Respondent on September 28, 2020, noting it was her last opportunity to respond.

9. Respondent finally responded on October 1, 2020, claiming that she did not receive the aforementioned certified mail. In response to the Board’s questions, Respondent stated that she never received a notification from D.A. about the change in bank ownership, but also that she could not remember how she communicated with D.A. and that she had “an unreliable phone sold by AT&T.”

10. In an email to Respondent dated October 1, 2020, the Board transmitted a copy of the additional information provided by D.A. and informed Respondent that she could file a response thereto on or before October 6, 2020. The Board did not receive any further response from Respondent.

11. The Board’s Complaint Review Committee reviewed D.A.’s complaint, Respondent’s response thereto, and the other information and documents obtained during

investigation, and found probable cause to believe that Respondent failed to exercise due professional care in the performance of professional services, a violation of the Board's governing statutes and rules, more particularly, W. Va. Code § 30-9-20(a)(5)-(6) and W. Va. Code R. §§ 1-13.1.e-f. and 1-1-19.2.a.2.

12. Upon recommendation of the Complaint Review Committee, the Board, by majority vote at its meeting on October 9, 2020, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against Respondent.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, holding License No. WV005442, and is therefore subject to the license requirements and disciplinary rules of the Board.

2. The Board is a state entity created and governed by W. Va. Code §§ 30-9-1 *et seq.*, and is empowered to regulate the practice of accountancy in the State of West Virginia.

3. In order to carry out its regulatory duties, the Board has the power to hold a hearing and to suspend or revoke a license, reprimand a licensee, impose probationary conditions, or take other disciplinary action under W. Va. Code §§ 30-9-4 and 30-9-20 and W. Va. Code R. §§ 1-1-13, 1-2-3, and 1-3-4.

4. Respondent does not contest that the Board has probable cause to charge her with one or more violations of the Board's governing statutes and rules based upon the allegations at issue in this matter.

5. The conduct described in the above *Findings of Fact* would, if proven, constitute violations of W. Va. Code § 30-9-20 and W. Va. Code R. §§ 1-1-1 *et seq.* Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Anita Wagley, by signing this *Consent Agreement and Order*, acknowledge the following:

1. After having had the opportunity to consult with an attorney of my choice, I sign this Consent Agreement and Order voluntarily, freely, without compulsion or duress, and understand that my signature has legal consequences.

2. The entire agreement is contained in this Consent Agreement and Order, and 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 in this document.

3. I am aware that I may pursue this matter through appropriate administrative and/or court proceedings. I am aware of my legal rights regarding this matter, but I have chosen to waive those rights intelligently, knowingly, and voluntarily.

4. 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. I acknowledge that the execution of this document constitutes disciplinary action by the Board and is therefore considered to be public information.

The Respondent, Anita Wagley, by affixing her signature hereto, agrees to the following Order:

ORDER

Based on the foregoing, the Board does hereby ORDER and DECREE as follows:

1. Respondent is hereby REPRIMANDED for her actions in this matter.
2. Within six months from the date of entry of this Order, Respondent shall complete eight hours of Board-approved continuing education on the subject(s) of professional

responsibility and/or ethics, and then submit to the Board a certificate of completion or other documentary proof of successful completion. These eight credit hours of continuing education will not count toward the continuing education requirement for license renewal.

3. Within six months from the date of entry of this Order, Respondent shall reimburse the Board the costs of this proceeding, including the administrative and legal expenses incurred by the Board in the investigation and disposition of this matter.

4. This Consent Agreement and Order shall remain in effect until all of its terms have been completed.

5. Any failure to comply with all provisions in this Consent Agreement and Order may result in additional disciplinary action, up to and including the suspension or revocation of Respondent's license.

6. This document is a public record as defined in West Virginia Code § 29B-1-2 and may be reported to other governmental agencies, professional boards, or other organizations.

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

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In recognition of this *Consent Agreement and Order*, we hereby affix our signatures.

WEST VIRGINIA BOARD OF ACCOUNTANCY

By: Horace W. Emery
Horace W. Emery, CPA, President

Entered: 12/7/2020
Date

REVIEWED AND AGREED TO BY:

Anita Wagley
Anita Wagley
Respondent

11/28/2020
Date

This day personally appeared before me, Anita Wagley, whose name is signed to the foregoing document and who is known to me, having acknowledged before me that the statements in the foregoing document are complete, true and correct, to the best of her knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 28th day of November, 2020.

My Commission expires: 2-2-2022

William M. Matheny, II
Notary Public

