

MAR 28 2025

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BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**WEST VIRGINIA BOARD OF
ACCOUNTANCY,**

Complainant,

v.

Case No. 2025-02

**BRUCE M. AVEY, JR.,
License No. WV001014,**

Respondent.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Accountancy ("Board") and Bruce M. Avey, Jr. ("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 he 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. WV001014, and at all times relevant, practiced as a Certified Public Accountant in the State of West Virginia.
2. On or about September 9, 2024, the Board received a complaint from Tina Creller, the Director of "Mountain Cats TNR, Inc." ("Mountain Cats"), a registered 501(c)(3) whose mission "is to control the population of feral cats in the Jefferson County, WV area by using Trap-Neuter-Return." In early Spring of 2023, Ms. Creller sought the assistance of Respondent to prepare Mountain Cats' 2022 tax returns. Respondent agreed to prepare the 2022 tax returns. Accordingly, Ms. Creller provided Respondent with Mountain Cats' financial documentation.
3. Respondent failed to file Mountain Cats' 2022 taxes by the May 15, 2023, deadline. Respondent informed Ms. Creller that he had filed an extension with the Internal Revenue Service ("IRS"), as he had not filed the tax return.
4. Ms. Creller alleged that she attempted to contact Respondent multiple times via telephone in the early Summer of 2023 about Mountain Cats' tax return, and that she had left Respondent numerous messages. Ms. Creller stated that she spoke with Respondent on or about July 15, 2023, about the tax return, and that he once again informed Ms. Creller that he was "taking care of it," and that he "would take care of any penalties from this."
5. Ms. Creller subsequently received notification from the IRS that the request for extension on behalf of Mountain Cats was rejected because it was not received by the required

date. Ms. Creller alleged that when she informed Respondent of the same, he stated that he was “still not concerned” and that he was working on the tax return.

6. Ms. Creller alleged that on November 18, 2023, Respondent mailed signed copies of the completed tax return for Mountain Cats. Ms. Creller further alleged that, by correspondence dated January 2, 2024, the IRS returned Mountain Cats’ tax return to her because it had been mailed as opposed to filed electronically as was required. Ms. Creller successfully electronically filed the tax return for Mountain Cats on January 22, 2024.

7. Thereafter, by notice dated February 19, 2024, the IRS informed Ms. Creller that Mountain Cats was charged a late penalty in the amount of \$3,645.80, due March 11, 2024, for failure to file the tax return prior to its due date. Ms. Avey asserted that she contacted Respondent, who assured her that he would contact the IRS and address the matter.

8. By notice dated July 8, 2024, the IRS informed Ms. Creller that Mountain Cats owed a late penalty in the amount of \$3,645.80 and interest in the amount of \$113.28. The notice further provided “[t]his is a notice of intent to levy your property or rights to property” as a result of “unpaid taxes for the tax period ending December 31, 2022.” Ms. Creller subsequently filed the instant complaint against Respondent, as noted above.

9. By correspondence dated September 9, 2024, the Board transmitted a copy of Ms. Creller’s complaint to Respondent and requested that he file a written response thereto within thirty (30) days.

10. Respondent failed to respond to the Board’s September 9, 2024, correspondence, so on October 18, 2024, via email, the Board sent Respondent another copy of its September 9, 2024, correspondence.

11. On October 23, 2024, the Board received Respondent's response to Ms. Creller's complaint. In response, Respondent asserted that Ms. Creller had initially informed him that Mountain Cats' revenue was less than what it turned out to be, and that the increased revenue made their filing more substantial. Respondent stated that on May 11, 2023, he e-filed an extension to file Mountain Cats' tax return, which was rejected "due to information not matching the e-file database." As a result, Respondent mailed the IRS a paper extension, which he maintained the IRS failed to process timely.

12. Respondent maintained that he decided to file Mountain Cats' tax return by paper, since the extension he e-filed was rejected, but that the paper file was never delivered by the postal service. Respondent added that the IRS instructed Ms. Creller to e-file Mountain Cats' tax return, which she did. Respondent stated that he informed Ms. Creller that the IRS first time penalty abatement program would negate any penalties Mountain Cats would receive. Respondent acknowledged that Ms. Creller contacted him when she received the IRS's notice about penalties, and he admitted that he inadvertently failed to write the letter in support of Mountain Cats receiving relief from the abatement program. Respondent added that he would pay Mountain Cats' penalties if Mountain Cats was ultimately required to pay them.

13. The Board confirmed that the IRS had removed the \$3,645.80 penalty Ms. Creller had been assessed.

14. The Board's Complaint Committee reviewed the complaint, the response, and all documents submitted therewith and obtained during the investigation.

15. Upon recommendation of the Complaint Committee, the Board, by majority vote at its meeting on January 24, 2025, 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 (9), and W. Va. Code R. §§ 1-1-13.1.e., f. and i., and 1-1-19.2.a.2. Accordingly, the Board 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. WV001014, 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 him 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, Bruce M. Avey, Jr., 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 admit that my actions violated the statutes and rules of the West Virginia Board of Accountancy.

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

The Respondent, Bruce M. Avey, Jr., by affixing his 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 his actions in this matter.
2. Within six months from the date of entry of this Order, Respondent shall complete the Professional Ethical Leadership Training Program through the National Association of State Boards of Accountancy Center ("NASBA") for the Public Trust ("CPT"). Respondent must

provide proof that he completed the program and that he received a 100% score. This program 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 but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this matter, which total \$859.55.

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: Barry L. Burgess CPA
Barry L. Burgess, CPA, President

Entered: 3-31-25
Date

REVIEWED AND AGREED TO BY:

Bruce M. Avey, Jr.
Bruce M. Avey, Jr.
Respondent

March 25 2025
Date

This day personally appeared before me, Bruce M. Avey, Jr., 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 his knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 25 day of March, 2025.

My Commission expires: 12-7-25

Kristen Engelke
Notary Public

