

BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY

MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY,

v.

Edgar R. Lugo, CPA

Respondent

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Case no. CPAS-14-0038

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FINAL ORDER

The above-captioned case was heard before the Maryland State Board of Public Accountancy ("the Board") on September 1, 2015. The allegations against Respondent Edgar R. Lugo, CPA, as set forth in the Board's charge letter dated July 17, 2015, were as follows:

During all relevant periods, you were licensed in Maryland as a certified public accountant. On or about October 15, 2013, you submitted an application by means of the Board's online licensing system for the renewal of your license as a certified public accountant in the State of Maryland for the period from October 17, 2013 through October 16, 2015. It is alleged that in your application, you claimed 80 hours of continuing education (CE) credits pertaining to the renewal term, from October 16, 2011 through October 15, 2013. Further, it is alleged that on the license renewal application you certified to the accuracy of the information contained therein. The certification states, in pertinent part:

"I hereby certify, under penalty of perjury, that the information contained herein is true and correct to the best of my knowledge, information, and belief. . ."

It is alleged that upon receipt of your application, the Board notified you that you were randomly selected for an audit of the claimed CE hours, and that you were being requested to submit supporting documentation to the Board. It is alleged that you subsequently submitted documentation to support 80 CE hours earned. It is alleged that 64 hours were earned during

the renewal period. Upon review, it is alleged that it was determined that 16 of the CE hours claimed were not earned until after the date of certification and submission of your renewal application. It is alleged that these hours were completed on October 16, 2013, the day after your certification and the submission of your renewal application. It is alleged that you did not have CE carry forward credits from the prior license term. Therefore, when you submitted your renewal application, it is alleged that you misrepresented to the Board that you had met the CE requirements for renewal though, in fact, the requirements were not met.

Based on the above described circumstances, you are charged with violating the following laws of the State of Maryland and provisions of the Code of Maryland Regulations (COMAR):

Business Occupations and Professions Article, Ann. Code of Maryland

Section 2-312. Continuing education

(a) *In general.* - (1) The Board shall adopt regulations that set, in accordance with this section, continuing education requirements as a condition to the renewal of licenses under this subtitle.

(3)(i) To qualify for any further renewal of a license under this subtitle, a licensee shall complete, for each 2-year license term, at least 80 hours in programs the Board approves.

(ii) If a licensee completes more than 80 hours during a 2-year license term, the Board shall credit the excess hours to the requirements for the following term.

Section 2-315. Denials, reprimands, suspensions, and revocations - Grounds; license certificate.

(a) *Grounds.* -

(1) Subject to the hearing provisions of §2-317 of this subtitle, the Board, on the affirmative vote of a majority of its members, may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

(i) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(xii) violates a rule of professional conduct adopted by the Board.

COMAR 09.24.01.06 Code of Professional Conduct

I. Other Responsibilities and Practices.

(1) A licensee may not commit any act that reflects adversely on the licensee's fitness to engage in the practice of public accountancy.

COMAR 09.24.02.02 Basic Requirement.

A. The applicant shall complete a minimum of 80 hours of acceptable continuing education in each 2-year license term after initial renewal.

B. A minimum of 4 hours of the continuing education for each 2-year license term shall be in professional ethics with no carry forward provision for excess hours.

In its charge letter, the Board informed Mr. Lugo of his right to a hearing on the charges, in accordance with the Business Occupations and Professions Article ("BOP") of the *Annotated Code of Maryland*, §2-317 *et seq.*, the Maryland Administrative Procedure Act as set forth in the State Government Article of the *Annotated Code of Maryland*, Title 10, Subtitle 2, and the Board's hearing rules set forth at COMAR .09.24.01.07. Mr. Lugo was also informed that should the charges be proven, he would be subject to a possible reprimand, suspension or revocation of his license, and/or the imposition of a penalty in the amount of \$5,000.00 per violation. At the September 1, 2015, hearing, Mr. Lugo appeared without counsel. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

FINDINGS OF FACT

After examining all of the evidence, including both the testimony and the

documentary evidence submitted at the hearing, and having assessed the demeanor and credibility of those offering testimony, the Board makes the following findings of fact:

1) Edgar R. Lugo was first licensed by the Board as a certified public accountant under registration number 26018 on April 14, 1998. Mr. Lugo has been licensed for the following periods: April 14, 1998, through December 31, 1998; May 21, 1999, through October 16, 2003; December 28, 2003, through October 16, 2007; April 28, 2009, through October 16, 2009; and December 27, 2009, through October 16, 2015, the date his most recent license expired.

2) By electronic mail dated October 15, 2013, at 11:28 p.m., the Board notified Mr. Lugo that his license had been selected for audit, and that he was to provide specific documentation for the 80 hours of continuing education he claimed in connection with his renewal application submitted on October 15, 2013.

3) Mr. Lugo provided documentation for his claimed continuing education via email dated November 30, 2013.

4) As of October 15, 2013, Mr. Lugo had completed 64 continuing education credits. As of October 16, 2013, Mr. Lugo had completed 80 continuing education credits.

5) Mr. Lugo has no prior disciplinary history with the Board.

DISCUSSION

Applying the law to the facts, the Board believes that the evidence and testimony supports the charges that Mr. Lugo has violated BOP § 2-315(a)(1)(i) and (xii) and COMAR 09.24.01.06(I)1. At the time he submitted his renewal application, Mr. Lugo had not

completed the 80 hours of continuing education necessary to renew his license and he nonetheless certified under the penalties of perjury that he had in fact completed the necessary continuing education for renewal. The Board accepts Mr. Lugo's explanation that he believed he had until October 16, 2013, to complete his remaining 16 hours of continuing education, in fact did so and had planned to do so regardless of whether he was audited, and did not grasp the significance of the certification at the time he submitted his application. However, that does not completely mitigate the fact that Mr. Lugo's renewal application was deceptive inasmuch as he made a false certification as to his continuing education hours. The Board expects any licensed CPA to understand the significance of a sworn certification, and take all reasonable steps to ensure its accuracy. In this case, Mr. Lugo did not.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Lugo under these circumstances. In addition to the authority granted by BOP § 2-315(a)(1) to reprimand a licensee or suspend or revoke a license, the Board also has the authority under BOP § 2-315(a)(2) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 2-315(a)(2)(ii) provides that the Board shall consider the following factors: 1) the seriousness of the violation; 2) the harm caused by the violation; 3) the good faith of the violator; 4) any history of previous violations by the violator; and 5) any other relevant factors.

With respect to the seriousness of and harm caused by the violation, the continuing

education requirements exist to ensure that licensees maintain a requisite level of competence to justify the public's reliance on the CPA designation. The Board relies on the honesty of its licensees with respect to reporting continuing education. The Board does not have the staff and resources to audit every renewal application for continuing education compliance. The Board thus treats violations involving misrepresentations about continuing education as significant.

With respect to good faith on the part of Mr. Lugo, he did complete the 80 hours of continuing education, cooperated during the investigation, and participated fully in the hearing in this matter. The Board believes this weighs in his favor. Additionally, Mr. Lugo has no prior disciplinary history with the Board. Accordingly, the Board is inclined to impose a minimal sanction under the circumstances.

CONCLUSIONS OF LAW

Based on the Findings of Fact, and using the specialized knowledge, training, and experience of its members, the Maryland State Board of Public Accountancy hereby concludes as a matter of law that the Respondent, Edward R. Lugo violated Business Occupations and Professions Article, Ann. Code of Maryland, §§ 2-312(a)(1)(i) and (xii) and COMAR 09.24.01.06I(1).

ORDER

In consideration of the Maryland State Board of Public Accountancy's Findings of Fact and Conclusions of Law in this matter, it is this 3rd day of November, 2015,

ORDERED:

- 1) That Mr. Lugo is hereby officially **REPRIMANDED**; and
- 2) That the records, files, and documents of the Maryland Board of Public Accountancy reflect this decision.

**MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY**

(BOARD CHAIR'S SIGNATURE
APPEARS ON ORIGINAL DOCUMENT)

By:

Arthur Flach, CPA
Chair