

BEFORE THE MARYLAND STATE BOARD OF PUBLIC ACCOUNTANCY

MARYLAND STATE BOARD OF
PUBLIC ACCOUNTANCY,

v.

Eugene M. Egeberg, III,

Respondent.

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Case no. CPAS-15-0018

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FINAL ORDER

The above-captioned case was heard before the Maryland State Board of Public Accountancy ("the Board") on November 3, 2015. The allegations against Respondent Dale Arnold Egeberg, as set forth in the Board's charge letter dated August 17, 2015¹, were as follows:

1. During all relevant periods, you were licensed in Maryland as a certified public accountant.
2. On or about September 4, 2014, the U.S. Securities and Exchange Commission ("SEC") issued an order imposing sanctions against you for violations of the Securities Exchange Act of 1934 ("Exchange Act") and violated SEC rules and regulations. (SEC Release Nos. 9637, 72976, and 3580, File No. 3-15680). Pursuant to the order, you were barred from appearing or practicing before the SEC as an accountant. In addition, you were ordered to cease and desist from committing or causing any violations or future violations of Section 10(b) of the Exchange Act, Rule 10b-5(b) and Regulation S-X Rule 2-02(b)(1) thereunder. You were further ordered to pay disgorgement in the amount of \$11,250.00, with interest in the amount of \$633.08, along with a civil penalty in the amount of \$15,000.00. The Board hereby incorporates the SEC order, as attached hereto, into this Notice of Charges and Order for Hearing, as if it were

¹ The Board had previously issued a charge letter, dated March 2, 2014, containing identical allegations. The Board issued the August 17, 2015, charge letter as a result of the matter being postponed.

fully set forth herein.

3. Your violations of the Exchange Act and related SEC rules and regulations related to your conduct as a certified public accountant while operating a self-named sole proprietorship accounting firm in Baltimore, Maryland. The violative conduct occurred in connection with your audits of Fox Petroleum, Inc. ("Fox") for the fiscal years ended February 28, 2010 through February 28, 2012, audits relating to Fox's subsidiaries, and audits of financial statements of RPM Advantage, Inc. ("RPM") for the fiscal years ended December 31, 2006, through December 31, 2010.

4. In its order, the SEC made the following findings:

a) You failed to conduct audits with due professional care and skepticism by:

- i) failing to perform any audit tests or procedures to determine the accuracy of Fox's financial statements;
- ii) failing to make inquiries of the prior auditor for Fox's Financial statements;
- iii) failing to document any audit procedures performed with regard to RPM's financial statements; and
- iv) other noted deficiencies

b) You failed to obtain required engagement quality reviews;

c) There were deficiencies in connection with your audits of Fox's subsidiaries, Renfro Energy, LLC and Cameron Parish Pipelines, LLC, for the fiscal years ended December 31, 2009 and December 31, 2010 including, but not limited to, the following;

- i) failing to maintain documentation of any audit work performed;
- ii) failing to collect competent evidential matter; and
- iii) failing to obtain engagement quality reviews.

d) There were additional audit deficiencies in connection with the Fox and RPM audits including, but not limited to, the following;

- i) you lacked the knowledge, proficiency, training, and skill to perform audits of issuers registered with the SEC;

- ii) you did not have sufficient general audit training;
 - iii) due to your lack of training, you conducted all of your audits according to a "peer review checklist" that was downloaded from the AICPA's website rather than by applying appropriate audit standards.
- e) You failed to design and plan the audits;
 - f) Your audits were completely lacking in work papers; and
 - g) You failed to issue accurate audit reports;

Based on the above described circumstances, you are charged with violating the following laws of the State of Maryland:

Business Occupations and Professions Article, Ann. Code of Maryland

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

(a)(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:

(x) has had the right to practice as a certified public accountant before any unit of the State or federal government revoked or suspended;

(xi) has been sanctioned by any unit of State or federal government, or any regulatory entity established by law, for an act or omission that directly relates to the fitness of the applicant to practice certified public accountancy;
or

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

COMAR 09.24.01.06 Code of Professional Conduct

G. Competence and Technical Standards

(1) A licensee may not undertake any engagement for the performance of professional services which the licensee cannot reasonably expect to

complete with due professional competence, including compliance, where applicable, with §G(2)-(4) of this regulation.

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.

In its charge letter, the Board informed Mr. Egeberg 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. Egeberg was also informed that should the charges be proven, he would be subject to the imposition of a penalty in the amount of \$5,000.00 per violation. At the November 3, 2015, hearing, Mr. Egeberg was represented by John Pica, Esq. 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) Eugene Matthew Egeberg, III, was first licensed as a CPA by the Board on January 8, 1997, under Registration No. 23308. After his initial license expired on December 31, 1998, Mr. Egeberg next renewed his license on January 24, 2005. Mr. Egeberg was continuously licensed by the Board from January 24, 2005, until his license expired on March 30, 2015.

2) Mr. Egeberg earned a Bachelor's degree in Business Administration from Loyola College in 1994. After receiving his CPA license, Mr. Egeberg was employed by the Johns Hopkins Health System where he did grant accounting. Subsequently, Mr. Egeberg worked for Hunter Consulting where he did the firm's international accounting for London, Germany, France, Australia, and Singapore. After that, Mr. Egeberg worked for Constellation Energy as an accounting associate.

3) In 1997, Mr. Egeberg started his own personal tax preparation business as an addition to his other employment. In 2005, Mr. Egeberg's established his private practice as his sole employment.

4) The Board hereby adopts and incorporates into its findings of fact, the allegations set forth in the Board's Charge Letter dated August 17, 2015, and the SEC Disciplinary Order, File No. 3-15680, dated September 4, 2014 ("SEC Order"), with the following modifications:

a) In the SEC Order, strike the second sentence in paragraph 7 and replace with the following: "Egeberg sent the prior auditor a single e-mail and received no response."

b) In the SEC Order, in paragraph 8, insert the following after the first sentence: "Egeberg sent the prior auditor a single e-mail and received no response."

c) In the SEC Order, insert at the end of paragraph 13, "Egeberg never issued an engagement letter concerning the audits performed for Renfro and CPP."

5) Mr. Egeberg paid the disgorgement payment of \$11,250.00, and the civil penalty

of \$15,000.00 specified in the SEC Order.

DISCUSSION

Based on the testimony, evidence, and stipulations by Mr. Egeberg, the Board finds that the charges brought in this case are supported. The SEC, a regulatory entity established by law, by order dated September 4, 2014, sanctioned Mr. Egeberg in connection with audits he performed for a number of SEC registrants and barred him from appearing before the SEC as an accountant for acts directly relating to: 1) his provision of audit services; and 2) the SEC's investigation of same. Under the circumstances, it is clear that Mr. Egeberg has violated BOP §§2-315(a)(1)(x) and (xi). Additionally, due to the number and nature of audit deficiencies identified by the SEC, as well as Mr. Egeberg's own stipulations, the Board also finds that Mr. Egeberg has violated BOP §2-315(a)(1)(xii) and COMAR 09.24.01.06G(1) and COMAR 09.24.01.06I(1) by providing the afore-mentioned audit services without the reasonable expectation that he could complete them with due professional competence, reflecting adversely on his fitness to engage in the practice of public accountancy.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Egeberg 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 has the authority under BOP §2-315(a)(2) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or nor 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. The Board also considers these factors in determining whether to reprimand, suspend, or revoke a license.

With respect to the seriousness of the violations, the Board considers them to be extremely troubling. Mr. Egeberg made the decision to perform audits for SEC registrants, the highest level of attest work a CPA could offer, with clearly insufficient training, experience, and understanding of his professional responsibilities and no reasonable expectation that he could perform said services. Performing audits is a service reserved exclusively for CPAs. The public must be able to rely on a CPA to perform the profession's signature service competently. The SEC found Mr. Egeberg's conduct sufficiently egregious to bar him from appearing before the SEC as an accountant and impose a substantial monetary penalty as well. The Board also finds it difficult to understand how Mr. Egeberg could not at any point in his dealings with the SEC produce the documentation he produced at the Board hearing. Even after considering the additional evidence that was not before the SEC, the Board finds Mr. Egeberg's violations to be extremely serious. Finally, the Board did not find Mr. Egeberg's explanation of when he actually began the audits of Renfro and CPP credible.

With respect to the harm cause by the violations, the audit clients identified in the SEC Order were unable to rely on the audits Mr. Egeberg performed. Mr. Egeberg's provision of services without the competence to perform them and resulting sanction by

the SEC also damaged the profession as a whole.

With respect to the good faith of the violator, Mr. Egeberg appears to have cooperated fully with the SEC, complied with the terms of the SEC order, and has been responsive to the Board. The Board has considered these actions in Mr. Egeberg's favor.

Finally, the Board has no record of any prior violations of the Maryland Public Accountancy Law by Mr. Egeberg. Nonetheless, in the Board's view, after consideration of the factors discussed, Mr. Egeberg must incur a serious sanction for his conduct.

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, Eugene M. Egeberg, III, violated BOP §§2-315(a)(1)(x), (xi), and (xii) and COMAR 09.24.01.06G(1), 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 16th day of, January, 2016,

ORDERED:

1) That the license to practice certified public accountancy issued by the Board to Eugene M. Egeberg, III be and hereby is **REVOKED** effective thirty (30) days from the date of this order unless the Respondent obtains a judicial stay of enforcement pursuant to Md. State Gov. Code Ann., §10-226;

2) That Eugene M. Egeberg, III, immediately cease and desist any

representation to the public, by the use of the title "licensed certified public accountant", "certified public accountant", "public accountant", or "auditor", by use of the abbreviation "CPA", by description of services, methods, or procedures, or otherwise, that he is authorized to practice certified public accountancy in Maryland;

3) That Eugene M. Egeberg, III immediately cease and desist offering or providing any services that amount to the "practice of certified public accountancy" as that term is defined in BOP §2-101(f); and

4) That the records, files, and documents of the Maryland Board of Public Accountancy reflect this decision.

MARYLAND STATE BOARD OF

(BOARD CHAIR'S SIGNATURE
APPEARS ON ORIGINAL DOCUMENT)

By:

Arthur E. Hach, CPA
Chair