

BEFORE THE MARYLAND BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND BOARD OF
INDIVIDUAL TAX PREPARERS

v.

NICK ISHWAR ADHIKARI
Applicant

CASE NO.: MITP-22-0012

* * * * *

SETTLEMENT AGREEMENT AND CONSENT ORDER

This matter comes before the Maryland Board of Individual Tax Preparers (“Board”) based upon the Board’s denial of Nick Ishwar Adhikari’s application for a registration to provide individual tax preparation services in Maryland. By letter dated December 21, 2020, the Board advised Mr. Adhikari that it had denied his application. Therein, the Board explained that it denied his application pursuant to Md. Code Ann., Business Occupations and Professions Article (“BOP”) § 21-311(a)(1).

That section provides that the Board may deny a registration to any applicant who “fraudulently or deceptively obtains or attempts to obtain a registration for the applicant ...” The Board based its denial on an allegation that Mr. Adhikari was found using his cellular phone while taking the Maryland Individual Tax Preparers Examination (“Exam”). Test takers are notified that they are prohibited from bringing cell phones into the testing room and he violated that prohibition. As such, Mr. Adhikari was not allowed to complete the Exam.

Further, Mr. Adhikari has not been permitted to retake the Exam. Because taking and passing the Exam is a pre-requisite to registration, Mr. Adhikari cannot obtain a registration until he takes and passes the Exam. To take the Exam, an applicant must be otherwise qualified for registration per BOP § 21-304. In turn, BOP § 21-302(a) holds that “[t]o qualify for a registration, the applicant shall be an individual who meets the requirements of this section,” and BOP § 21-302(b) mandates that “[t]he applicant shall be of good character and reputation.” The alleged conduct impugned Mr. Adhikari’s character and reputation, so he has not been permitted to retake the Exam.

On or about June 1, 2021, Mr. Adhikari requested a hearing on his application’s denial. Because Mr. Adhikari must first take and pass the Exam before he can obtain a registration, the Board construed his request to include a request to take the Exam. The Board scheduled a hearing for December 13, 2021. Prior to the hearing, however, the Board and Mr. Adhikari (collectively “Parties”) agreed to enter into this Settlement Agreement and Consent Order (“Consent Order”) as a full and final resolution to this matter. The Parties agree and stipulate that:

1. The Board has jurisdiction over Mr. Adhikari and the subject matter related hereto.
2. Mr. Adhikari does not possess a Board issued registration to provide individual tax preparation services in Maryland.
3. On or about October 13, 2020, Mr. Adhikari sat for the Exam.
4. While taking the Exam, Mr. Adhikari was seen with a prohibited item, to wit: a cell phone.
5. When confronted, Mr. Adhikari acknowledged using the phone to confirm an answer to a test question.
6. Due to the infraction, Mr. Adhikari was not permitted to complete the Exam.
7. Mr. Adhikari has not completed and passed the Exam, so he is not eligible for a Board issued registration.
8. Based on the above facts, Mr. Adhikari admits violations of BOP §21-311(a)(1) and, by way of §21-311(a)(6), §§ 21-302(a) and (b), which provide:

§ 21-311. Denial, suspension, or revocation of registration
(a) Grounds for discipline -- Subject to the hearing provisions of § 21-312 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a registration to any applicant... if the applicant...:

(1) fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registered individual or for another;

(6) violates any provision of this title.

§ 21-302. Registration qualifications
(a) In general -- To qualify for a registration, the applicant shall be an individual who meets the requirements of this section.

(b) Character and reputation -- The applicant shall be of good character and reputation.
9. Mr. Adhikari agrees that due to the violations, he is not entitled to take the Exam or to obtain a registration.
10. Mr. Adhikari further agrees that to resolve this matter he shall:

- a. Complete an ethics course that would otherwise qualify for continuing professional education credit for a registration renewal pursuant to Code of Maryland Regulations ("COMAR") 09.38.02;
 - b. Upon completion of the ethics course, provide satisfactory proof of completion to the Board;
 - c. Within thirty (30) days of signing this Consent Order, pay to the Board a ONE THOUSAND DOLLAR (\$1,000) civil monetary penalty by certified check, cashier's check, or money order, made payable to the "Maryland Board of Individual Tax Preparers";
 - d. Not apply the credit obtained from the ethics course completed hereto toward any continuing professional education requirement because it is in addition to and separate from any other obligation; and
 - e. Not provide, attempt to provide, offer to provide, or represent that he is authorized to provide any individual tax preparation services that require a Board registration, unless and until he has met all conditions in this Consent Order and obtained a registration from the Board.
11. Once Mr. Adhikari completes the ethics course, provides satisfactory proof thereof, and pays the civil monetary penalty, and unless and until any new allegations are lodged with the Board against him that would prevent him from being qualified to take the Exam, Mr. Adhikari shall be permitted to apply for and take the Exam.
12. Mr. Adhikari agrees that he shall adhere to the testing conditions and terms required of all applicants, and that failure to abide by those conditions, including the condition that applicants may not have a cell phone in the exam room, shall result in the loss of his right to reapply to take the Exam for three (3) years from the date he signs this Consent Order.
13. Upon Mr. Adhikari's successful completion of the conditions herein, the Board agrees not to deny Mr. Adhikari a registration based upon his conduct during the Exam on October 13, 2020.
14. Mr. Adhikari agrees and acknowledges that he shall meet all other registration requirements before he will become eligible for a registration and that nothing in this Consent Order shall be construed to prevent the Board from denying him a registration on any other lawful basis or to limit the Board from considering his October 13, 2020 conduct when determining appropriate action and/or sanction in any other matter.
15. Mr. Adhikari shall abide by the provisions of the Maryland Individual Tax Preparers Act, BOP §§ 21-101, *et seq.*, and related regulations, COMAR 09.38.

16. By entering this Consent Order Mr. Adhikari, in relation to this matter, waives the right to have any allegations reduced to writing, to an administrative hearing before the Board or its designee, to the making of Findings of Fact and Conclusions of Law, to all other proceedings before the Board or its designee on this matter, and to any rights to appeal from this Consent Order to any court of competent jurisdiction.
17. The Parties agree that a waiver of any of the rights or duties provided herein must be in writing, and that any waiver constitutes a one-time waiver on a case-by-case basis and not a waiver of this entire Consent Order or the subject provision(s) unless otherwise explicitly stated in writing.
18. The Parties agree that this Consent Order represents the final expression of their intent and agreement relating to the subject matter of this Consent Order, that this Consent Order contains all the terms the Parties agreed to on the subject matter of this Consent Order, and they intend for this Consent Order to replace all their previous discussions, understandings, and agreements relating to the subject matter.
19. Mr. Adhikari agrees that this Consent Order shall constitute a Final Order of the Board and shall be enforceable as such.
20. Mr. Adhikari knowingly, freely, and voluntarily enters this Consent Order having had the opportunity to consult, or after having consulted, with counsel.
21. The Parties agree that this Consent Order will serve as the Final Order in Case No. MITP-22-0012, will become part of Mr. Adhikari's registration record maintained by the Board, and the Board's records and publications will reflect its terms.

**BASED ON THE AGREEMENTS AND STIPULATIONS SET FORTH
HEREIN, IT IS, THIS 21 DAY OF April, 2022, BY THE
MARYLAND BOARD OF INDIVIDUAL TAX PREPARERS:**

ORDERED, that Nick Ishwar Adhikari, violated BOP §21-311(a)(1) and, by way of §21-311(a)(6), §§ 21-302(a) and (b); and it is further

ORDERED, that Mr. Adhikari shall complete an ethics course that would otherwise qualify as continuing professional education hours for a registration renewal pursuant to COMAR 09.38.02, and upon completion of the ethics course, provide satisfactory proof of completion to the Board; and it is further

ORDERED, that within thirty (30) days after he signs this Consent Order, Mr. Adhikari shall pay a ONE THOUSAND DOLLAR (\$1,000) civil monetary penalty to the Board by certified check, cashier's check, or money order, made payable to the "Maryland Board of Individual Tax Preparers"; and it is further

ORDERED, that Mr. Adhikari shall deliver the proof of completion of the ethics course and civil monetary penalty to: Attn: Executive Director, Maryland Board of Individual Tax Preparers, Department of Labor, 1100 North Eutaw Street, Baltimore, MD, 21201; and it is further

ORDERED, that Mr. Adhikari shall not apply the credit obtained from the ethics course completed hereto toward any continuing professional education requirement because it is in addition to and separate from any other obligation; and it is further

ORDERED, that Mr. Adhikari shall not provide, attempt to provide, offer to provide, or represent that he is authorized to provide any individual tax preparation services that require a Board registration, unless and until he has met all conditions in this Consent Order and obtained a registration from the Board; and it is further

ORDERED, that once Mr. Adhikari completes the ethics course, provides satisfactory proof thereof, and pays the civil monetary penalty, and unless and until any new allegations are lodged with the Board against him that would prevent him from being qualified to take the Exam, Mr. Adhikari shall be permitted to apply for and take the Exam; and it is further

ORDERED, that Mr. Adhikari shall adhere to the testing conditions and terms required of all applicants, and failure to abide by those conditions, including the condition that applicants may not have a cell phone in the exam room, shall result in the loss of his right to reapply to take the Exam for three (3) years from the date he signs this Consent Order; and it is further

ORDERED, that upon Mr. Adhikari's successful completion of the conditions herein, the Board shall not deny Mr. Adhikari a registration based upon his conduct during the Exam on October 13, 2020; and it is further

ORDERED, that Mr. Adhikari shall meet all other registration requirements before he will become eligible for a registration and that nothing in this Consent Order shall be construed to prevent the Board from denying Mr. Adhikari a registration on any other lawful basis or to limit the Board from considering his October 13, 2020 conduct when determining appropriate action and/or sanction in any other matter; and it is further

ORDERED, that unless otherwise specified in this Consent Order, each provision herein shall remain in effect and enforceable as herein agreed unless the Board in writing stays, modifies, terminates, or suspends it; and it is further

ORDERED, that this document shall constitute a Final Order of the Board, and the Board may consider this Consent Order and the facts set forth herein in connection with, and in deciding, any subsequent action or proceeding before the Board, and that

this Consent Order may, if relevant, be admitted into evidence in any matter before the Board, its designee, and/or any court.

MARYLAND BOARD OF
INDIVIDUAL TAX PREPARERS

Signature on File _____

By: Steven P. Wions, CPA
Maryland Board of Individual Tax Preparers

AGREED:

Signature on File _____

04-26-2022
Date

Nick Ishwar Adhikari