

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL *
TAX PREPARERS, *

v. *

Case no. MITP-16-0094

Akinyemi T. Jelenke, *

Respondent. *

* * * * *

FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on September 29, 2016. The allegations against Respondent Akinyemi T. Jelenke, as set forth in the Board's charge letter dated August 12, 2016, were as follows:

On or about October 7, 2015, you obtained a registration from the Board as an individual tax preparer (Registration No. 6002). Prior to that date, you were not registered to provide individual tax preparation services in Maryland.

As a registration holder, you were required to pass the Maryland Individual Tax Preparer's examination given by the Board by December 31, 2015 in order to remain qualified to hold a registration. To date, you have not passed the examination. It is alleged that you have not been qualified to hold a registration since December 31, 2015.

On or about February 8, 2016, a complaint was filed with the Board by the Maryland Office of the Comptroller ("Comptroller") stating that it had suspended electronic filing privileges for you and multiple other tax preparers in the State due to suspicions regarding the propriety of filed returns.

the Comptroller's complaint further alleged that, as a professional tax preparer, you began filing Maryland individual tax returns for 2015 on behalf of taxpayers on or about January 27, 2016.

Upon receipt of the Comptroller's complaint and a subsequent investigation, it was determined that you provided individual tax preparation services to Maryland taxpayers while not qualified to hold a registration, as you had not yet passed the required examination, by filing approximately 38 Maryland Individual Tax Returns (Form 502) from January 13, 2016, through April 2016.

It was further determined that you provided individual tax preparation services to Maryland taxpayers during 2014 and 2015 when you were not registered with the Board. From March 4, 2014 through July 28, 2015, you filed approximately 11 Maryland individual tax returns for the 2013 tax year. In addition, from February 7, 2015 through October 5, 2015, you filed approximately 43 Maryland individual tax returns for the 2014 tax year.

It is alleged that in connection with your provision of those services as an individual tax preparer, you failed to provide required written disclosures to taxpayers in accordance with BOP Art. 21-403(b)

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 21-301. Registration required.

An individual shall be registered by the Board before the individual may provide individual tax preparation services in the State.

Section 21-302. Qualifications

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

(b) Examination. - Except as otherwise provided in this subtitle, the applicant shall pass an examination given by the Board under this subtitle.

Section 21-311. Denial, suspension, revocation of registration; reprimands; penalties.

(a) In general.-- 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, reprimand and registered individual, or suspend or revoke a registration if the applicant or registered individual:

(5) violates any regulation adopted under this title; or

(6) violates any provision of this title.

Section 21-401. Practice without registration prohibited.

Except as otherwise provided in this title, a person may not provide, attempt to provide, or offer to provide individual tax preparation services in the State unless registered by the Board.

Section 21-403. Maintenance of Records.

(b) Required disclosures. --

(1) Prior to rendering individual tax preparation services, an individual shall disclose to the customer, in writing:

(i) the individual tax preparer's name, address, and telephone number;

(ii) that the individual tax preparer is not a certified public accountant;

(iii) services that the individual tax preparer is qualified to provide;

(iv) the individual tax preparer's education and training, including examinations taken and successfully passed; and

(v) any other information the Board requires.

(2) A disclosure required under this subsection shall be provided to a customer:

(i) At an initial meeting between the individual tax preparer and the customer; and

(ii) If the individual tax preparer maintains a website, on the website.

COMAR 09.38.01.02 The Examination.

B. After December 31, 2015, an individual shall pass the Examination given by the Board in order to qualify for a registration unless the individual meets the requirements of §D of this regulation.

COMAR 09.38.01.05 Code of Professional Conduct.

A. Other Responsibilities and Practices.

(1) An individual tax preparer may not commit any act that reflects adversely on the individual tax preparer's fitness to provide individual tax preparation services.

In its charge letter, the Board informed Mr. Jelenke 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*, §21-312 *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 09.01.02. Mr. Jelenke was also informed that should the charges be proven, pursuant to BOP § 21-311, he would be subject to a possible reprimand, suspension or revocation of his registration, and/or the imposition of a penalty in the amount of up to \$5,000.00 per violation. At the September 29, 2016, hearing, Mr. Jelenke appeared without counsel. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

II. Findings of Fact.

The Board includes in its factual findings the facts set forth in the procedural background of the matter. In addition, after examining all of the evidence, including both the testimony of witnesses and the documentary evidence submitted at the

hearing, and having assessed the demeanor and credibility of those offering testimony, the Board makes the following additional findings of fact:

1) Akinyemi Taiwo Jelenke was first registered with the Board as a individual tax preparer under registration number 6002 on October 7, 2015. Mr. Jelenke's current registration is set to expire on October 7, 2017. Mr. Jelenke has not passed the Maryland Individual Tax Preparers Examination given by the Board. Additionally, Mr. Jelenke has not applied for a waiver of the examination requirement, and has not submitted evidence that he passed the Registered Tax Return Preparer Examination given by the Internal Revenue Service from November 1, 2011, through January 18, 2013.

2) Mr. Jelenke has been a member of the Maryland Society of Accountants and Tax Professionals ("MSATP") (previously the Maryland Society of Accountants) since 2012.

3) In 2009, Mr. Jelenke obtained a Master of Science degree in Business and Management from the University of Maryland. In 2012, Mr. Jelenke obtained a Master of Science Degree in Business Administration from New York University.

4) Mr. Jelenke is not a Certified Public Accountant, an attorney, an enrolled agent or otherwise exempt from the requirements of the Maryland Individual Tax Preparers Act pursuant to BOP § 21-102(b).

5) Mr. Jelenke has operated Broadview Advisors & Company, Inc., in Silver Spring, Maryland since approximately 2011. Mr. Jelenke estimates that 90% of his

business is consulting with 10% being tax services. Mr. Jelenke's fee for individual tax preparation services ranges from \$50.00 to \$500.00 depending on the complexity of the return.

6) With respect to the clients for whom he provided individual tax preparation services in Maryland, prior to performing such services Mr. Jelenke did not disclose, in writing, the information specified in BOP § 21-403(b). Additionally, Mr. Jelenke did not maintain a website that included the information specified in BOP § 21-403(b).

7) As of the date of the hearing, Mr. Jelenke had not scheduled a date to take the Maryland Individual Tax Preparers Examination. Mr. Jelenke testified that he planned to take the examination by the end of the month.

8) Mr. Jelenke submitted evidence showing that on May 12, 2016, he completed the MD Exam Prep Course offered by MSATP, constituting 2 hours of continuing education credits.

III. Evaluation of the Evidence.

The Board believes that all the charges in this case are supported. At the hearing in this matter, Mr. Jelenke did not dispute the allegations in the Board's charge letter. Mr. Jelenke prepared 54 returns while not registered, and 38 returns while registered by prior to passing the examination after the examination requirement was in effect. Finally, Mr. Jelenke never provided the written disclosures to his clients required under BOP § 21-403(b). Accordingly, the sole remaining issue before the Board is

what, if any, sanction it must impose against Mr. Jelenke under these circumstances. In addition to the authority granted by BOP § 21-311(a) to reprimand a registrant or suspend or revoke a registration, the Board also has the authority under BOP § 21-311(b) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 21-311(b) 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.

With respect to the seriousness of and harm caused by the violations, the Board views the registration and examination requirements as the cornerstones of the Maryland Individual Tax Preparers Act. Mr. Jelenke provided individual tax preparation services prior to becoming registered with the Board thereby taking business from properly registered individuals. Fortunately for Mr. Jelenke, there no evidence was presented at the hearing showing any negative consequence for the clients who utilized his services prior to the date he became registered, and the Comptroller has apparently taken no further action against him. Further, once he became registered in October of 2015, Mr. Jelenke did not pass the Maryland Individual Tax Preparers Examination, as required under COMAR 09.38.01.02, prior to providing individual tax preparation services from January 13, 2016, through April 2016, again potentially taking business from registered individuals who had complied with the examination requirement. Although Mr. Jelenke argues he was "misled" by the Board--Mr. Jelenke suggest the

Board should not have granted him a registration in October of 2015 if he was to be required to pass the Maryland Individual Tax Preparers examination. The simple fact is that the Board could not have denied his registration in October of 2015 based on a regulation that did not apply until after December 31, 2015. To the extent that Mr. Jelenke claimed that he was unaware of the examination requirement, the Board finds that testimony difficult to believe. Mr. Jelenke has been a member of the MSATP since 2012. MSATP worked closely with the Board in its extensive efforts to make the profession aware of the timetable for the examination requirement. Had Mr. Jelenke made a cursory visit to the Board's website he would have found information explaining the examination requirement.

With respect to good faith on the part of Mr. Jelenke, he did appear at the hearing and acknowledged his errors. However, after weighing all the factors, the Board believes that a significant sanction is warranted.

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 Individual Tax Preparers hereby concludes as a matter of law that the Respondent Akinyemi T. Jelenke, violated Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-301, 21-302, 21-401, and 21-403(b), and COMAR 09.38.01.02B.

ORDER

In consideration of the Maryland State Board of Individual Tax Preparer's

Findings of Fact and Conclusions of Law in this matter, it is this 14th day of November, 2016 **ORDERED:**

1) That the registration issued to Akinyemit T. Jelenke is hereby **SUSPENDED** pending his passing of the Maryland Individual Tax Preparers Examination. During the suspension, Mr. Jelenke may not provide, attempt to provide, or offer to provide individual tax preparation services in Maryland, nor may he represent to the public that he is authorized to provide individual tax preparation services in Maryland;

2) That Akinyemi T. Jelenke pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$4,550.00 for his multiple violations of Business Occupations and Professions Article, Ann. Code of Maryland, §§ 21-301, 21-302 21-401 and 21-403(b), and COMAR 09.38.01.02B;

2) That this sanction is effective thirty (30) days from the date of this order unless the Respondent obtains a judicial stay of enforcement; and

4) That the records, files, and documents of the Maryland State Board of Individual Tax Preparers reflect this decision.

**MARYLAND STATE BOARD OF
INDIVIDUAL TAX PREPARERS**

By:

Signature on File

Kay Riddle
Vice Chair