

**BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS**

MARYLAND STATE BOARD OF INDIVIDUAL \*  
TAX PREPARERS, \*

v. \*

Case no. MITP-16-0036

Funso Timothy, \*

Respondent. \*

\* \* \* \* \*

**FINAL ORDER**

**I. Procedural Background.**

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on April 24, 2017. The allegations against Respondent Funso Timothy, as set forth in the Board's charge letter dated March 31, 2017, were as follows:

On or about January 19, 2012, you [Mr. Timothy] obtained a registration from the Board to provide services as an individual tax preparer in Maryland (Registration No. 2526). the registration was renewed for subsequent periods and is currently due to expire on January 19, 2018.

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 19, 2016.

On or about February 18, 2016, the Board sent notice of the complaint to you by both certified and regular mail. The Board's notice directed you to provide a written response to the complaint by March 4, 2016. To date, you have failed to provide any written response to the Board. It is alleged that your failure to respond as directed constitutes a violation of the Board's Code of Professional Conduct.

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 21-311. 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.

**COMAR 09.38.01.05 Code of Professional Conduct.**

**E. Communications with the Board.**

(1) An individual tax preparer shall respond in writing to any communications from the Board requesting a response, within 30 days of the mailing of these communications, by registered or certified mail, to the last address furnished to the Board by the individual tax preparer.

In its charge letter, the Board informed Mr. Timothy 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. Timothy 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 August 8,

2016, hearing, Mr. Timothy 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) After having his electronic filing privileges suspended by the Comptroller, on or about February 11, 2016, Mr. Timothy retained the law firm of Frost & Associates, LLC, to represent him in his dealings with the Comptroller.

2) After receiving the Notice of Complaint from the Board dated February 18, 2016<sup>1</sup>, Mr. Timothy contacted Frost & Associates, LLC and requested that the firm handle the matter. The Board received no response to the Notice of Complaint from Frost & Associates, LLC.

3) Subsequently, after becoming dissatisfied with the legal representation provided, Mr. Timothy terminated his client relationship with Frost & Associates, LLC. At that time, Mr. Timothy did not inquire whether Frost & Associates, LLC had responded to the Board's Notice of Complaint on his behalf.

4) After receiving the Board's charge letter dated March 31, 2017, Mr. Timothy

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<sup>1</sup>In the complaint, the Board incorrectly referred to the respondent as "Timothy Funso". The Board apologizes for the error.

did not contact the Board to inquire as to the status of the matter or provide a written response to the complaint.

- 5) Mr. Timothy has no previous violations with the Board.

### **III. Evaluation of the Evidence.**

The Board believes that all charges in this case are supported. At the hearing in this matter, Mr. Timothy admitted that he had received the complaint, but had not responded. While Mr. Timothy testified that he believed the law firm of Frost & Associates would be responding on his behalf, Mr. Timothy took no steps to verify that a response had been submitted to the Board. Additionally, Mr. Timothy should have realized that no response had been submitted in light of the March 31, 2017 charge letter.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Timothy 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 §2-311(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 violation, the Board must be able to rely on registrants to respond to written communications from the Board. While Mr. Timothy could certainly elect to rely upon counsel to file a response on his behalf, Mr.

Timothy nonetheless has an obligation to verify that a response was filed within the time frame specified by the Board in accordance with its regulation. Additionally, the Board is confused by Mr. Timothy's actions after receiving the charge letter in this case. At that point, it should have been clear to Mr. Timothy that the Board had not received a response to the complaint. Mr. Timothy might have avoided this proceeding with a simple phone call to the Board and a simple written response.

With respect to good faith on the part of Mr. Timothy, he did appear at the hearing, and admitted that he had not responded to the Board's complaint. However, the Board believes that this factor is outweighed by the others. Under the circumstances, the Board believes that a minimal 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, Funso Timothy, violated Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-311(a)(5) and COMAR 09.38.01.05(E)(1).

#### **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 22<sup>ND</sup> day of May, 2017 **ORDERED:**

1) That Funso Timothy pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$250.00 for his violation of Business

Occupations and Professions Article, Ann. Code of Maryland, Section 21-311(a)(5) and COMAR 09.38.01.05(E)(1);

2) That these sanctions are 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; and

3) 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**  
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Kay Riddle  
Vice Chair