

BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**WEST VIRGINIA BOARD OF
ACCOUNTANCY,**

Complainant,

v.

Case No. 2020-04

**WILLIAM GLENN EARP,
License No. WV004190,**

Respondent.

FINAL ORDER

Pursuant to W. Va. Code §§ 30-9-4 and 30-9-20, the West Virginia Board of Accountancy (“Board”) hereby ADOPTS and incorporates by reference, in its entirety, the *Recommended Findings of Fact, Conclusions of Law, and Recommended Decision* issued by Hearing Examiner Janis I. Reynolds on April 13, 2021, as the Board’s Findings of Fact and Conclusions of Law in this matter. A copy of the *Recommended Findings of Fact, Conclusions of Law, and Recommended Decision* is attached to this Final Order.

This matter proceeded to hearing on November 30, 2020, at the Board’s office in Charleston, West Virginia, before Hearing Examiner Janis I. Reynolds. The Board appeared by Assistant Attorney General, Keith D. Fisher, and its Executive Director, Brenda S. Turley. Respondent, William Glenn Earp, failed to appear in person or otherwise, despite being duly notified of the hearing in this matter. The Board presented testimony and other evidence at the hearing, and then submitted its proposed findings of fact and conclusions of law to the Hearing Examiner on January 28, 2021.

Based on the evidence of record, the Board has shown by a preponderance of the evidence that William Glenn Earp violated the Board's governing statutes and rules in the course of practicing as a Certified Public Accountant, all as more fully described in the attached *Recommended Findings of Fact, Conclusions of Law, and Recommended Decision*.

NOW, THEREFORE, in consideration of the foregoing, the Board does hereby ORDER and DECREE as follows:

1. William Glenn Earp's license, License No. WV004190, is hereby REVOKED.
2. William Glenn Earp shall surrender his physical license and wall certificate to the Board immediately upon entry of this Order.
3. William Glenn Earp shall cease using the title "certified public accountant," the abbreviation "CPA," or any other title, word, combination of letters, abbreviation, sign, card or device, in whatever medium, that may lead a reasonable person to believe that he is a certified public accountant.
4. William Glenn Earp shall reimburse the Board the reasonable and necessary expenses incurred in its investigation and disposition of this matter, which expenses total Two Thousand Forty One Dollars and Seventy Five Cents (\$2,041.75).
5. William Glenn Earp shall pay to the Board a fine in the amount of One Thousand Dollars (\$1,000.00).
6. William Glenn Earp shall immediately return to the complainant in this matter all records and documents requested by said complainant.
7. Should William Glenn Earp seek to reinstate his license, and as a condition thereto, he must comply with all terms of this Final Order and must undergo a mental and physical exam

by one or more health care providers selected by the Board, at his own expense, with the results of said exam released to the Board for its consideration.

8. This document is a public record as defined in W. Va. Code § 29B-1-2.

ENTERED this, the 27th day of April, 2021.

WEST VIRGINIA BOARD OF ACCOUNTANCY

By: Horace W. Emery
Horace W. Emery, CPA, President

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BEFORE THE WEST VIRGINIA BOARD OF ACCOUNTANCY

**IN RE: WILLIAM GLENN EARP,
License Number WV 004190,
Respondent.**

Case No. 2020-04

HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED DECISION

PROCEDURAL HISTORY

This matter came on for hearing on November 30, 2020, in the conference room utilized by the West Virginia Board of Accountancy ("Board"), located at 405 Capitol Street, Charleston, West Virginia 25303, pursuant to a Notice of Hearing and Statement of Charges dated October 22, 2020.

At hearing, the Board was represented by Assistant Attorney General Keith Fisher and Executive Director Brenda Turley. The Board presented the testimony of Ms. Turley and JN, the individual who filed the original complaint. The Board sent William Glenn Earp ("Respondent") the Notice of Hearing and Statement of Charges by certified and regular mail on October 22, 2020. Ex. 1. Respondent did not appear. This matter became mature for decision upon receipt of the Board's Proposed Findings of Fact and Conclusions of Law on January 30, 2021

ISSUES

The issue is whether the Board has proven the violations of law alleged in the Statement of Charges by a preponderance of the evidence. Respondent admitted his guilt to the charges in a letter dated March 10, 2020, and agreed to restitution for JN, but did not sign the Consent Agreement sent to him on July 23, 2020, or respond to a follow-up

extension email dated August 28, 2020. (See Findings of Fact 13 - 17.) With no response from Respondent, the Board scheduled this hearing.

After a detailed review of the entire record, including testimony and documentary evidence, and in accordance with W. VA. CODE § 30-9-4, the undersigned Hearing Examiner makes the following Recommended Findings of Fact and Conclusions of Law. The credibility of the witnesses was assessed, the exhibits were reviewed, and the proposed findings of fact and conclusions of law timely submitted by the Board were reviewed and considered.

RECOMMENDED FINDINGS OF FACT

1. Respondent is a licensee of the Board issued License No. WV004190, and this license is currently active. Respondent's firm/company also holds an active permit with the Board. Tr. at 40, 43 - 44.

2. JN hired Respondent in March 2018 to prepare both his personal and business taxes. (Although JN's full name was included in the Exhibits, it was deemed unnecessary to identify him personally in this decision.) When Respondent was unable to file JN's taxes by the April deadline, JN obtained an extension until October 15, 2018. JN made frequent attempts to contact Respondent after this extension, but received no response until October 3, 2018. Through email communications with Respondent on October 15, 2018, JN was assured his taxes would be filed by the deadline. Tr. at 19 - 20.

3. On October 15, 2019, JN filed a Complaint with the Board. (Complaint No. 2020-04).

4. In his Complaint, JN stated Respondent "told me he filed my taxes in October 2018 for the tax year 2017. I requested a tax transcript from the IRS for 2017, and they

could not find a record [of the 2017 tax return]. William [Respondent] still has the only copy of the tax information for 2017. No response from either email, text or phone.” Ex. 6. (See also Exhibit 3, emails between JN and Respondent dated October 3, 9 and 15, in which Respondent told JN he would file his taxes before midnight on October 15, 2018, and Exhibits 4 and 5, IRS’s response to JN’s request for information.)

5. In this complaint, JN stated, “I want the penalties and interest for 2017 covered by Mr. Earp and I want my tax documents returned so I can file my 2017 taxes.” Ex. 6.

6. JN eventually filed his own tax return in October 2019 and paid the required penalty and interest. Tr. at 22 - 26.

7. On October 15, 2019, the Board sent Respondent a Notice of Complaint and a copy of JN’s complaint. Respondent was required to respond within thirty days. He was informed that after his response was received, the matter would be forwarded to the Complaint Committee and considered. This Notice was sent to Respondent’s address of record by regular and certified mail. The certified mailing came back to the Board on November 18, 2019. Ex. 6.; Tr. at 30 – 33.

8. The Board received no response to this letter. Tr. at 30.

9. By letter dated November 20, 2019, the Board again sent Respondent a Notice of Complaint and a copy of same. This time the letter was sent to his firm’s address by regular and certified mail, both of which were returned as undeliverable. Ex. 7; Tr. at 34 - 37.

10. In January 2020, Respondent submitted a “CPE Extension Request Form” and apprised the Board for the first time that his mailing address had changed. His phone

number and email address remained the same. The listed reason for the extension request was “health problems,” and Respondent stated he had been “convalescing in a private undisclosed apartment for [his] safety during this vulnerable time period.” Ex. 8; Tr. at 38 - 39.

11. Respondent’s request for this extension was granted. Tr. at 45.

12. On February 12, 2020, the Board sent Respondent a copy of the Complaint, and a letter informing him of the numerous attempts through mail and email to contact him. This letter also informed Respondent of the requirement to notify the Board of his change of address pursuant to W. VA. CODE R § 1-1-7.1. Respondent was required to respond to the Complaint within thirty days. The letter noted his response would be considered by the Board in assessing whether probable cause existed to pursue disciplinary action against his license. Ex. 9.

13. By letter dated March 10, 2020, Respondent answered the Complaint. He made the following statements:

- A. “I have read the complaint and believe it to be an honest account of the circumstances that the complainant experienced” while I was “preparing his tax returns.” Ex. 10 at No. 1.
- B. “I have reached a conclusion that the tax returns for J and R were not properly submitted to the tax authorities.” Ex. 10 at No. 7.
- C. “I am 100% responsible for the fact that the tax returns for J and R were not filed.” Ex. 10 at No. 9.
- D. “It is **my responsibility to prepare a complete and accurate tax return . . . I failed to satisfy this responsibility. . . .**” Ex. 10 at No. 10.
- E. In order to **atone** for any mistakes . . . , I propose the following:
 - a. To correctly prepare any and all returns that have not been filed as a result of my omission(s) . . .

...

c. I agree to pay any unwaived, tax penalties and *net* interest that are assessed as a result of my mistake(s).

d. It is important that I cover any/all financial damages caused by my mistakes.

Ex. 10 at No. 13. (Emphasis in original).

14. JN has not been contacted by Respondent, has received no payment from him, and his 2017 tax information has not been returned. Tr. at 25.

15. By letter dated July 23, 2020, the Board informed Respondent that after reviewing all the available information, and the findings and recommendations of the Complaint Committee, the Board voted to seek disciplinary action. The Board offered Respondent the option of resolving the issue with an enclosed Consent Agreement and Order, instead of a hearing. Respondent was directed to respond to this letter within thirty days. Ex. 11.

16. This July 23, 2020 letter was sent by certified and regular mail to the new address Respondent had given the Board in January 2020 and was received July 25, 2020. Ex. 11. Respondent did not respond. Tr. at 54.

17. On August 28, 2020, Ms. Turley emailed Respondent and noted the above Agreement and Order had been sent but records indicated there had been no response. She extended the deadline to respond to September 11, 2020. Ex. 12. Again, there was no response.

18. At its October 22, 2020 meeting, the Board reviewed the matter and Respondent's failure to respond. The Board voted to proceed to hearing, and the Notice of Hearing and Statement of Charges was sent to Respondent's most recent address by

regular and certified mail. The certified mail was returned as undelivered, and the regular mail was not returned. Ex. 1.

19. The Statement of Charges stated "the Board's Complaint Committee found probable cause to believe that Respondent was in violation of the Board's governing statutes and rules, more particularly, W. Va. Code § 30-9-20(a)(5 - 6) and W. Va. Code R. §§ 1-1-7.1, 1-1-13.1.e -f, [and] 1-1-19.2.a.2." Ex. 1.

20. As of the date of this hearing, no response has been received by the Board.

Consistent with the above Recommended Findings of Fact, the undersigned Hearing Examiner recommends the following Conclusions of Law.

RECOMMENDED CONCLUSIONS OF LAW

1. The West Virginia Board of Accountancy ("Board") is a statutorily created regulatory body whose purpose is "to protect the public interest in receiving accurate and reliable financial information and assurance." Regulation of licensure is an important part of the Board's duties. See W. VA. CODE §§ 30-9-1 *et seq.*

2. The West Virginia Legislature has declared that "[t]he fundamental purpose of licensure and registration is to protect the public, and any license, registration, certification or other authorization to practice issued pursuant to this chapter is a revocable privilege." W. VA. CODE § 30-1-1a.

3. Every Chapter 30 board, including the West Virginia Board of Accountancy, may suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct Each board may also assess administrative costs.

W. VA. CODE §§ 30-1-8(a) & 30-9-4(4).

4. In order to carry out its regulatory duties, the Board has the power to hold hearings and to suspend, revoke, or otherwise discipline an accountant's license pursuant to the authority granted by W. VA. CODE §§ 30-9-4(4 & 6) & 30-9-20 and W. Va. Code R §§ 1-1-13, 1-2-3, & 1-3-4.

5. Respondent is licensed by the Board, holding License No. WV004190. As a licensee of the Board, he is subject to the license requirements and to the rules, regulations, statutes, and policies governing the practice of accounting in the State of West Virginia.

6. The Board issued a timely Notice of Hearing and Statement of Charges on October 22, 2020, which were sent to Respondent by certified and regular mail in accordance with W. VA. CODE § 29A-5-1 and W. VA. CODE R § 1-2-3.8.

7. Pursuant to W. VA. CODE § 29A-5-2 (a) in dealing with administrative cases:

The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is type commonly relied upon by reasonably prudent men in the conduct of their affairs. . . .

See also W. VA. CODE R 1-2-3.10(c).

8. The Board may designate a Hearing Examiner to conduct hearings. W. VA. CODER §§ 1-2-3.10(j) & 1-2-6.1. The undersigned Hearing Examiner is a licensed attorney and was so designated in this case by the Board.

9. "The general rule, unless altered by statute, is that in an administrative proceeding the required degree of proof is a preponderance of the evidence. 2 Am. Jur. 2d Administrative Law § 392; *Cf., Harper v. State Workmen's Compensation Commissioner*, 234 S. E. 2d 779 (W. Va. 1977)." *Jordan v. Roberts*, 161 W. Va. 750, 755,

246 S. E. 2d 259, 262 (1978). A "preponderance of the evidence" means the greater weight of the evidence, "even in the slightest degree." *McCullough v. Clark*, 106 S.E. 61, 70 (W. Va. 1921).

10. In disciplinary actions, the Board has the burden of proof. W. VA. CODE R § 1-2-3.10 (m).

11. Credibility is determined by the Hearing Examiner in administrative cases, based upon thorough evaluation of witness testimony. See *Darby v. Kanawha County Bd. of Educ.*, 227 W. Va. 525, 711 S.E.2d 595 (2011). The Hearing Examiner is uniquely situated to make such determinations, and such determinations are binding unless patently without basis in the record. *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1965). Credibility determinations may be based upon many factors, including the following: the general demeanor and comportment of the witness at hearing; the bias or interest of the witness; the consistency or inconsistency of the statements of the witness; the witness' ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness. See *Franklin D. Cleckley, Handbook on Evidence for W. Va. Lawyers*, § 607.02(1)(b) (5th Ed. 2012).

12. The undersigned Hearing Examiner finds the testimony of JN and Ms. Turley to be credible and reliable. Their testimony was consistent with and supported by documentary evidence.

13. "In addition to any other sanctions imposed, the board shall require a licensee . . . to pay the costs of the proceeding." W. VA. CODE § 30-9-22(d).

14. The Board asserts Respondent has violated W. VA. CODE §§ 30-9-20 (a)(5-6) and W. VA. CODE R §§ 1-1-13.1 (e) & (f). (The Rules have nearly identical wording as the Code sections.) This Code Section states the Board may take disciplinary action if the licensee has been found guilty of any of the following actions:

(5) Dishonesty, fraud, professional negligence in the performance of services as a licensee . . . or a wilful departure practice from accepted standards of professional conduct applicable to licensees. . . .

(6) Violation of any provision of this article or any rule, including the violation of any professional standard or rule of professional conduct.

15. The Board also asserts Respondent violated W. VA. CODE R § 1-1-19.2.a.2 which states, a licensee shall “[e]xercise due professional care in the performance of professional services.”

16. Additionally, the Board asserts Respondent violated W. VA. CODE R § 1-1-7.1, which states, in part, “[A]ll registerants and certificants shall file with the Board a written notification of any change of home or employment address within thirty (30) days after its occurrence.”

17. Violations of these code sections and rules grant the Board the authority to “take disciplinary action against a licensee . . . who, after hearing, has been adjudged by the board” as guilty of any of the identified violations. W. VA. CODE § 30-9-20 (a).

18. W. VA. CODE § 30-9-20 (c) states, “[d]isciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fines not to exceed \$1,000 per day per violation, and mandatory attendance at continuing professional education seminars.”

19. The Board has met its burden of proof by a preponderance of the evidence. In his March 10, 2020 response to the Complaint, Respondent admitted he did not file JN's taxes and did not respond to JN's repeated inquires. Respondent stated it was his responsibility to prepare JN's tax return, and he failed to satisfy this responsibility. Ex. 10. Clearly, these acts were a "wilful departure from accepted standards of professional conduct" and demonstrated a failure to "[e]xercise due professional care in the performance of professional services."

20. Additionally, the Board has established Respondent violated W. VA. CODE R § 1-1-7.1 when he did not notify the Board of his change of address. Without a proper address, the Board wasted time and money trying to contact Respondent, while JN waited for a response to his Complaint.

21. Accordingly, the Board has good cause to proceed with disciplinary action against Respondent's license.

22. Pursuant to W. VA. CODE § 30-9-22(d), these Conclusions of Law "shall" require Respondent to pay the costs of these proceedings.

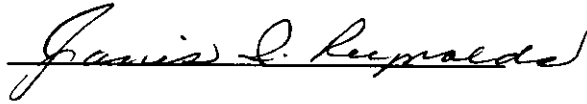
RECOMMENDED DECISION

Based upon the foregoing Recommended Findings of Fact and Conclusions of Law, the Hearing Examiner **RESPECTFULLY RECOMMENDS** and **FINDS** that the West Virginia Board of Accountancy has proven the allegations identified in the Notice of Hearing and Statement of Charges dated October 22, 2020. Respondent's behavior and actions violated the West Virginia Code and the Board's Rules as set forth herein. **FURTHER**, the undersigned recommends the West Virginia Board of Accountancy determine what disciplinary action should be taken against Respondent's license and assess the costs

owed by Respondent for these proceedings. **ADDITIONALLY**, Respondent should be required to return JN's tax information to him forthwith.

Pursuant to W. VA. CODE R 1-2-6.3, the Board may adopt, modify, or reject any findings of fact and conclusions of law recommended by the Hearing Examiner.

DATED: April 13, 2021

A handwritten signature in cursive script, reading "Janis I. Reynolds", written over a horizontal line.

Janis I. Reynolds
Hearing Examiner
WV State Bar No. 4363