



ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

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D. Boyd Busby, CPA
Executive Director

CERTIFIED MAIL 7022 0410 0002 8487 2519

July 19, 2024

Marion E Higgins Jr
1121 Riverchase Office Rd
Birmingham AL 35244

RE: Higgins, Marion E., Jr., CPA
Certificate No. 2399
Case No. 24-7

Dear Mr. Higgins:

Attached is an Order by the Alabama State Board of Public Accountancy ("the Board") dated May 8, 2024. The Order CENSURES your Alabama CPA Certificate No. 2399 and/or permit to practice for undertaking an audit report on financial statements of an employee benefit plan for submission to the US Department of Labor. The audit reports, financial statements and work papers reflected a lack of due professional care; they do not support that you complied with generally accepted auditing standards or principals.

This Board action requires the following action items be completed within 30 days, unless otherwise stated, and provide proof of such be sent to the Board office:

- 1) Payment of fine of seven thousand dollars (\$7,000.00). The fine can be paid by either cashier's check/money order payable to the Alabama State Board of Public Accountancy or you may pay online by using the following link, located on the Board's website, <https://appengine.egov.com/apps/al/asbpa/fines>.
- 2) Completion of the National Association of State Boards of Accountancy (NASBA) Center for Public Trust's (CPT) Ethical Leadership Training Program with a passing score of 80 by going to <https://cpt.secure.nonprofitsoapbox.com/altraining>. The NASBA CPT course is not a CPE program, and as such, should not be reported as CPE.
- 3) You also agree that you will not engage in any financial statement reporting to include attest engagements, compilation engagements, or preparation of financial statement engagements, unless approved by the Board.

If you have questions, please contact me at the number shown above.

Sincerely,

D. Boyd Busby, CPA
Executive Director

DBB/tt

Attachment

BEFORE THE ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

IN THE MATTER OF THE)
COMPLAINT AGAINST:)
MARION E HIGGINS JR, CPA) CASE NO. 24-7
CERTIFICATE NO. 2399)
RESPONDENT.)

ORDER

COMES NOW the Alabama State Board of Public Accountancy ("the Board"), and, following a full and fair hearing before the Board on July 12, 2024, in Montgomery, in the matter of the complaint against MARION E. HIGGINS, JR., CPA, Certificate No. 2399 makes the following Findings of Facts and Conclusions of Law in support of this Order.

FINDINGS OF FACTS

1. Respondent, Marion E. Higgins, Jr., is a Certified Public Accountant in the State of Alabama.
2. Respondent undertook to prepare an audit report on financial statements of an employee benefit plan (the "Plan") for the years ending as of December 31, 2021 and December 31, 2020, for submission to the United States Department of Labor in compliance with the Employment Retirement Income Security Act. Respondent subsequently prepared and submitted to the Department of Labor documents comprising an audit report intended to be considered in compliance with this act.
3. The audit report, financial statements and work papers submitted to the Department of Labor and reviewed by the Board were inadequate in that they reflected a lack of due professional care required of a certified public accountant, departures from generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants and departures from generally accepted accounting principles promulgated by a

body designated by Council of the American Institute of Certified Public Accountants to establish such principles.

4. The audit engagement in question reflects a lack of due professional care as evidenced by the incorrect disclosure in the Plan's financial statements that the employer's profit-sharing contributions are invested in a portfolio of investments directed by the Company. (AU-C §200.15-.16)

5. The auditor's reports on the Plan's audited financial statements do not support that the auditor complied with generally accepted auditing standards in that:

a. The auditor's original report on the financial statements of the Plan failed to comply with the requirements of the Statements on Auditing Standards (AU-C §703);

b. The auditor failed to properly plan the audit and identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement and relevant assertion levels and to design or document the nature, timing and extent of audit procedures responsive to the assessed level of the risk of material misstatement (AU-C §300, §330 and §315);

c. The auditor failed to either include in documentation or to obtain the service auditor's report (AU §230 and §402);

d. The auditor failed to either prepare audit documentation or perform procedures over the service auditor's report on the Plan's third-party administrator (AU §230, §500 and §402);

e. The auditor did not determine whether complimentary user entity controls identified by the service organization were relevant in addressing the risk of material

misstatements and failed to gain an understanding whether the Plan designed and implemented such controls (AU-C §402);

f. The auditor failed to design and perform tests of controls to obtain sufficient appropriate audit evidence about the operating effectiveness of the controls the auditor relied on in determining the nature, timing and extent of substantive procedures (AU-C §330);

6. The auditor failed to either prepare audit documentation or perform procedures over several substantial areas of the audit (AU §230 §500 §703 §250).

7. The financial statements of the Plan as of and for the years ended December 31, 2021 and 2020 do not comply with generally accepted accounting principles in that:

a. Although the benefit responsive investment contract(s) is (are) reflected at contract value and marked as such, the Plan's Statements of Net Assets Available for Benefits improperly indicates the total net assets available for benefits are at fair value (FASB ASC 962-205-45) ;

b. The financial statements of the Plan include inaccurate disclosures regarding the fully benefit responsive investment contracts stating that the Statement of Net Assets Available for Benefits presents the fair value of the investment contracts as well as the adjustment of the fully benefit-responsive investment contracts from fair value to contract value and adjustments from fair value to contract value for these contracts are included in the net appreciation from mutual funds (FASB ASC 962-205-45); and

c. The fair market value disclosures in the financial statements of the Plan incorrectly include the fully benefit responsive investment contract(s) (FASB ASC 962-325-35).

CONCLUSIONS OF LAW

The Board finds that the facts as established in the signed Consent Agreement, as presented at the hearing, and as outlined above constitute a violation of Sections 34-1-1, et seq., Code of Alabama 1975, as follows:

1. Respondent stipulates that the circumstances set forth in the "Finding of Facts" constitutes a violation of administrative rule: Ala. Admin. Code r. 30-X-6-.03(1)(b), 30-X-6-.03(2) and 30-X-6-.03(3).
2. Respondent stipulates the circumstances set forth in the "Findings of Facts" are a basis for disciplinary action by the Board.

It is therefore ORDERED, ADJUDGED and DECREED by this Board that the license, registration, certificate and/or permit to practice of the Respondent be CENSURED, and that the following action items be completed within 30 days, unless otherwise stated, and Respondent provide proof of such be sent to the Board office:

1. Payment of fine of seven thousand dollars (\$7,000.00). The fine can be paid by going to <https://appengine.egov.com/apps/al/asbpa/fines>.
2. Respondent agrees that he will not engage in any financial statement reporting to include attest engagements, compilation engagements or preparation of financial statement engagements, unless approved by the Board.

3. Completion of the National Association of State Boards of Accountancy (NASBA) Center for Public Trust (CPT) course with a passing score of 80 by going to <https://cpt.secure.nonprofitsoapbox.com/altraining>. The NASBA CPT course is not a CPE program, and as such, should not be reported as CPE.

DONE this 12th day of July 2024.

ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

CONCUR:

MS. SHEPPARD-HARRIS
and
MESSRS. ETHEREDGE, KINTZ, SCHAFFERS
and SMITH.

ABSENT:

MS. PRINCE and MR. SKINNER

ATTEST:



D. Boyd Busby, CPA
Executive Director
July 19, 2024

BEFORE THE ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

IN THE MATTER OF)
THE COMPLAINT AGAINST:)
MARION E HIGGINS JR, CPA) CASE NO. 24-7
CERTIFICATE NO. 2399)
RESPONDENT.)
)

CONSENT AGREEMENT

Marion E. Higgins, Jr., an Alabama Certified Public Accountant (hereinafter referred to as "Respondent") hereby stipulates and agrees, subject to approval by the Alabama State Board of Public Accountancy (hereinafter referred to as the "Board"), as follows:

STIPULATED FACTS

1. Respondent, Marion E. Higgins, Jr., is a Certified Public Accountant in the State of Alabama.
2. Respondent undertook to prepare an audit report on financial statements of an employee benefit plan (the "Plan") for the years ending as of December 31, 2021 and December 31, 2020, for submission to the United States Department of Labor in compliance with the Employment Retirement Income Security Act. Respondent subsequently prepared and submitted to the Department of Labor documents comprising an audit report intended to be considered in compliance with this act.
3. The audit report, financial statements and work papers submitted to the Department of Labor and reviewed by the Board were inadequate in that they reflected a lack of due professional care required of a certified public accountant, departures from generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants and departures from generally accepted accounting principles promulgated by a body designated by Council of the American Institute of Certified Public Accountants to establish such principles.

4. The audit engagement in question reflects a lack of due professional care as evidenced by the incorrect disclosure in the Plan's financial statements that the employer's profit-sharing contributions are invested in a portfolio of investments directed by the Company. (AU-C §200.15-.16)

5. The auditor's reports on the Plan's audited financial statements do not support that the auditor complied with generally accepted auditing standards in that:

a. The auditor's original report on the financial statements of the Plan failed to comply with the requirements of the Statements on Auditing Standards (AU-C §703);

b. The auditor failed to properly plan the audit and identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement and relevant assertion levels and to design or document the nature, timing and extent of audit procedures responsive to the assessed level of the risk of material misstatement (AU-C §300, §330 and §315);

c. The auditor failed to either include in documentation or to obtain the service auditor's report (AU §230 and §402);

d. The auditor failed to either prepare audit documentation or perform procedures over the service auditor's report on the Plan's third-party administrator (AU §230, §500 and §402);

e. The auditor did not determine whether complimentary user entity controls identified by the service organization were relevant in addressing the risk of material misstatements and failed to gain an understanding whether the Plan designed and implemented such controls (AU-C §402);

f. The auditor failed to design and perform tests of controls to obtain sufficient appropriate audit evidence about the operating effectiveness of the controls the auditor relied on in determining the nature, timing and extent of substantive procedures (AU-C §330);

6. The auditor failed to either prepare audit documentation or perform procedures over several substantial areas of the audit (AU §230 §500 §703 §250).

7. The financial statements of the Plan as of and for the years ended December 31, 2021 and 2020 do not comply with generally accepted accounting principles in that:

a. Although the benefit responsive investment contract(s) is (are) reflected at contract value and marked as such, the Plan's Statements of Net Assets Available for Benefits improperly indicates the total net assets available for benefits are at fair value (FASB ASC 962-205-45) ;

b. The financial statements of the Plan include inaccurate disclosures regarding the fully benefit responsive investment contracts stating that the Statement of Net Assets Available for Benefits presents the fair value of the investment contracts as well as the adjustment of the fully benefit-responsive investment contracts from fair value to contract value and adjustments from fair value to contract value for these contracts are included in the net appreciation from mutual funds (FASB ASC 962-205-45); and;

c. The fair market value disclosures in the financial statements of the Plan incorrectly include the fully benefit responsive investment contract(s) (FASB ASC 962-325-35).

STIPULATED CONCLUSIONS OF LAW

8. Respondent admits he is subject to the provisions of the Ala. Code (1975) §§ 34-1-1-22 and the jurisdiction of the Board.

9. Respondent stipulates that the circumstances set forth in the "Stipulated Facts" constitutes a violation of administrative rule: Ala. Admin. Code r. 30-X-6-.03(1)(b), 30-X-6-.03(2) and 30-X-6-.03(3).

10. Respondent stipulates the circumstances set forth in the "Stipulated Facts" are a basis for disciplinary action by the Board.

STIPULATED DISPOSITION

11. Respondent shall refrain from violating the provisions of Title 34, Chapter 1, Ala. Code (1975).

12. Respondent understands this Consent Agreement and subsequent Final Order will be a public record, and this information may be placed on the Board's website and in its newsletter.

13. Respondent acknowledges that the Final Order will be considered a censure by the Board pursuant to Ala. Code (1975) §§ 34-1-12(a)(4), 34-1-12(a)(14) and/or Ala. Admin. Code r. 30-X-6-.03(1)(b), 30-X-6-.03(2) and 30-X-6-.03(3).

14. Respondent shall submit to the Board an administrative fine of \$7,000.00 (seven thousand dollars). The fine is due within 30 days of the Board's acceptance of this agreement.

15. Respondent agrees that he will not engage in any financial statement reporting to include attest engagements, compilation engagements or preparation of financial statement engagements, unless approved by the Board.

16. Respondent shall complete the Ethical Leadership Training Program provided by the National Association of State Board of Accountancy (NASBA) Center for Public Trust with a passing score of 80 and provide proof of completion within 30 days of the Board's acceptance of this agreement.

17. Respondent understands this Consent Agreement is subject to the approval of the Board and has no force and effect until a Final Order based upon it is rendered by the Board.

18. Respondent agrees to comply with the terms of this Consent Agreement and understands failure to comply with the terms of the Consent Agreement may result in additional charges or discipline.

19. Respondent understands in order to make a decision relative to approving this Consent Agreement discussions must take place between Board Members, Board Staff and Board Counsel. Respondent understands that the discussion will take place at a regularly scheduled meeting of the Board.

20. Respondent understands he has the right to seek the advice of legal counsel. Respondent also understands he has the right to a formal fact-finding hearing before the Board, to compel the testimony of witnesses, to cross-examine witnesses against him, and to obtain judicial review of the Board's decision in said formal hearing but expressly waives these rights with execution of this Consent Agreement and Final Order of the Board.

21. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review or to otherwise challenge or contest the validity of the Consent Agreement, the stipulated facts, conclusions of law and imposition of administrative action contained herein, and the Final Order of the Board incorporating said Consent Agreement.

22. Respondent, for the purpose of avoiding further administrative action with respect to this Cause executes this Consent Agreement. It is agreed that presentation to and consideration of the Consent Agreement by the Board requires certain factual information related to this matter be disclosed to the Board members. Should the Consent Agreement not be accepted by the Board, it is therefore expressly agreed that the reviewing, and consideration of this Consent Agreement, and the information provided to the Board for their review, shall not unfairly prejudice the Board and shall in no way act to disqualify any Board member from any further participation in this matter through its resolution, including, but not limited to, any contested hearing on this matter should one be necessary. Likewise, if this Consent Agreement is not accepted, the Board shall not take into consideration the contents of this Agreement as evidence of an admission and all stipulations hereinabove are thereby rescinded.

FOR THE BOARD

7-12-24
DATE

Billington M. Garrett
BILLINGTON M. GARRETT, Esq.
General Counsel

FOR THE RESPONDENT

May 7, 2024
DATE

Marion E. Higgins Jr.
MARION E. HIGGINS, JR
N/A
_____, Esq.
Attorney for the Respondent

State of Alabama
County of Tuscaloosa

Subscribed and sworn to before me, a Notary Public on this 7 day of May, 2024.

Melanie C. Gafnea
Notary Public

My Commission Expires

