

BEFORE THE ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

IN THE MATTER OF THE)
COMPLAINT AGAINST:)
JOHN M. SIRMON, CPA) CASE NO. 08-7
CERTIFICATE NO. 1355)
RESPONDENT.)

ORDER

COMES NOW the Alabama State Board of Public Accountancy ("the Board"), and, following a full and fair hearing before the Board on May 11, 2009, makes the following Findings of Fact and Conclusions of Law in the above styled case.

FINDINGS OF FACT

1. Respondent is a duly Certified Public Accountant in the State of Alabama, and was so registered at all times relevant to the complaint.

2. Respondent was provided notice of a hearing in this matter by certified mail, return receipt requested, and first class mail to the most recent address on file with the Board.

3. The certified mail receipt was signed and returned to the Board by the U.S. Postal Service.

4. Subsequent to the initial hearing notice regarding this matter, the hearing was continued by the Administrative Law Judge until May 11, 2009 with the consent of both parties.

5. Respondent attended the hearing with Robert M. Galloway, Esq. as his attorney. Mr. Galloway presented several witnesses including the Respondent and Joe C. Lawrence, CPA, as an expert witness. Mr. Galloway questioned all witnesses, presented documentary evidence, and presented oral argument on behalf of the Respondent.

6. Documentary evidence designated as Board's Exhibits 1-3 and Respondent's Exhibits 1-4 were admitted into evidence and published to the Board.

7. The evidence presented at the hearing established that for a number of years the Respondent was a shareholder in the accounting firm of Sirmon & Pawlowski, P.C. During May 2008 Mark A. Pawlowski, CPA left the firm and the firm became Sirmon & Simmons, P.C.

8. The evidence presented at the hearing established that upon Pawlowski's departure from Sirmon & Pawlowski, P.C., he left the financial records of Husain Abdulla, a client of Sirmon & Pawlowski, P.C., who was served by Mr. Pawlowski during his tenure as a shareholder of Sirmon & Pawlowski, P.C. These records were related to several businesses owned by Abdulla. These records were contained in boxes labeled as relating to Abdulla's businesses. Respondent understood that Abdulla's records would be retrieved by Pawlowski at a later date.

9. The evidence presented at the hearing established that during July of 2008, after Pawlowski left Sirmon & Pawlowski, P.C., Respondent ordered personnel of Sirmon & Simmons, P.C. to throw away or dispose of the boxes containing Abdullah's records. At Respondent's direction the boxes were thrown away or disposed of.

10. The evidence presented at the hearing established that after the boxes of records had been thrown away or disposed of, Abdullah inquired at Sirmon & Simmons, P.C. as to the whereabouts of his records. Abdullah was told by the Respondent that Abdullah was not a client of Sirmon & Simmons, P.C., that Pawlowski should have taken the records with him when he left, and that he (Respondent) did not have time to look for the records.

11. The evidence presented at the hearing established that after the Board received a written complaint from Abdullah stating that he could not obtain his records, the Board wrote to Respondent by letter dated August 27, 2008, enclosing the complaint by Abdullah. By letter

dated September 3, 2008, Respondent stated that he was not able to find the records after a diligent search of the office of Sirmon & Simmons, P.C.

12. The Board finds that the actions of the Respondent in ordering that Abdullah's records be thrown away or disposed of constitute evidence of conduct discreditable to the public accounting profession.

13. The Board finds that Respondent's statements to Abdullah in response to Abdullah's inquiry were misleading and deceitful and constitute evidence of conduct discreditable to the public accounting profession.

14. The Board finds that Respondent's written response to the Board's inquiry was misleading and deceitful and constitutes evidence of conduct discreditable to the public accounting profession.

CONCLUSIONS OF LAW

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

A. The acts of the Respondent in ordering Abdullah's records be thrown away or disposed of and consequently failing to furnish the records to Abdullah upon request constitute a violation of Board Rule 30-X-7-.07(2)(b), which is a cause for disciplinary action under Section 34-1-12(a)(14), Code of Alabama 1975.

B. The acts of the Respondent in ordering Abdullah's records be thrown away or disposed of and consequently failing to furnish the records to Abdullah upon request constitute a violation of Section 34-1-21(b)(2), Code of Alabama 1975, which is a cause for disciplinary action under Section 34-1-12(a)(14), Code of Alabama 1975.

C. The act of the Respondent in ordering Abdulla's records to be thrown away or disposed of constitutes conduct discreditable to the public accounting profession in violation of Board Rule 30-X-6-.05(1), which is a cause for disciplinary action under Section 34-1-12(a)(4), Code of Alabama 1975 and a violation of Section 34-1-12(a)(11), Code of Alabama 1975, which is a cause for disciplinary action by the Board.

D. The statements of the Respondent to Abdulla in response to Abdulla's inquiry constitute conduct discreditable to the public accounting profession in violation of Board Rule 30-X-6-.05(1), which is a cause for disciplinary action under Section 34-1-12(a)(4), Code of Alabama 1975 and a violation of Section 34-1-12(a)(11), Code of Alabama 1975, which is a cause for disciplinary action by the Board.

E. The statements of the Respondent to Abdulla in response to Abdulla's inquiry were dishonest and constitute a violation of Section 34-1-12(a)(2), Code of Alabama 1975, which is a cause for disciplinary action by the Board.

F. The letter written by the Respondent in response to the Board's inquiry was misleading and deceitful and constitutes conduct discreditable to the public accounting profession in violation of Board Rule 30-X-6-.05(1), which is a cause for disciplinary action under Section 34-1-12(a)(4), Code of Alabama 1975 and a violation of Section 34-1-12(a)(11), Code of Alabama 1975, which is a cause for disciplinary action by the Board.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, the Board finds that the Respondent is guilty of all charges alleged in the Board's Complaint and, thus, he is due to be censured on each of the charges, separately and severally.

It is therefore ORDERED, ADJUDGED and DECREED by this Board that the Respondent be CENSURED and that Respondent is fined five hundred dollars (\$500.00) per count for each of the six counts in the Board's Complaint for a total fine of three thousand dollars (\$3,000.00).

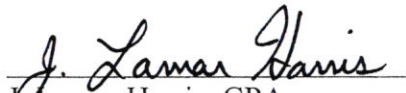
DONE this 11th day of May 2009.

ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

CONCUR:

MS. INGRAM AND
MESSRS. PATTERSON, RICHARDS
SCOTT AND WRIGHT

ATTEST:



J. Lamar Harris, CPA
Executive Director
June 5, 2009