

BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS

MARYLAND STATE BOARD OF INDIVIDUAL *
TAX PREPARERS, *

v. *

Case no. MITP-17-0109

Surinder Sawhney, *

Respondent. *

* * * * *

FINAL ORDER

I. Procedural Background.

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on November 13, 2017. The allegations against Respondent Surinder Sawhney, as set forth in the Board's charge letter dated October 3, 2017, were as follows:

On or about November 8, 2015, you obtained a registration from the Board to provide services as an individual tax preparer (Registration No. 6038). Your registration is currently due to expire on November 8, 2017¹.

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, therefore, that you have not been qualified to hold a registration since December 31, 2015.

On or about June 1, 2017, the Board sent a notice of complaint by certified mail informing you that the Board had been advised by the Office of the Maryland Comptroller that you had been filing Maryland income tax returns, although you had not passed the Maryland tax preparers examination.

¹Because the investigation of this matter began while Mr. Sawhney held an active registration with the Board, the registration remains effective for the purpose of the Board retaining jurisdiction over this matter pursuant to Md. Busin. Occup. and Prof. Code Ann., § 21-314.

A Board investigation 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 431 Maryland Individual Tax Returns (Form 502) for various tax years from approximately February 1, 2016 through May 22, 2017.

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 21-302. Qualifications

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

(e) 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.

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. 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. Sawhney of the 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. Sawhney was also informed that should the charges be proven, pursuant to BOP § 21-311, Mr. Sawhney would be subject to a possible reprimand, suspension or revocation of registration, and/or the imposition of a penalty in the amount of up to \$5,000.00 per violation. At the November 13, 2017, hearing, Mr. Sawhney did not appear. Mr. Sawhney did notify the Board in writing that, due to his age and health condition, he would not be attending the hearing, and Mr. Sawhney submitted supporting medical documentation concerning his condition. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

Under the circumstances, the Board proceeded to hear the matter in Mr. Sawhney's absence.

II. Findings of Fact.

The Board hereby adopts and incorporates 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) Mr. Sawhney took and passed the Maryland Individual Tax Preparers Examination on November 5, 2017.

2) Mr. Sawhney has not presented evidence to the Board that he is 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), or that the 431 Maryland Individual Tax Returns (Form 502) that he filed from February 1, 2016 through May 22, 2017, were prepared free of charge.

3) Mr. Sawhney has not been previously disciplined by the Board.

4) In January of 2016, Mr. Sawhney applied to the Board for a waiver of the Examination requirement under COMAR 09.38.01.02. Mr. Sawhney's application for waiver was administratively denied based on his inability to document 8 hours of continuing education earned in 2013. Mr. Sawhney otherwise complied with the requirements to receive a waiver. On January 6, 2016, Board staff communicated with Mr. Sawhney and asked if he had any other continuing education documentation he wished to submit. On February 1, 2016, Mr. Sawhney submitted additional continuing education documentation for courses completed after 2013, but nothing else for 2013, and requested that his waiver application be reviewed again. The next communication Mr. Sawhney received from the Board was the June 1, 2017, Notice of Complaint.

5) Mr. Sawhney is currently 77 years old and is the caretaker for his 90 year old mother.

III. Evaluation of the Evidence.

The Board believes that the charges in this case are supported. The uncontroverted evidence demonstrates that Mr. Sawhney prepared 431 returns while registered but prior to passing the examination after the examination requirement was in effect.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Sawhney 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 nor 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. Sawhney 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 February 1, 2016 through May 22, 2017, potentially taking business from registered individuals who had complied with the examination requirement. However, it also appears that Mr. Sawhney reasonably, if mistakenly, believed, based on

his communications with the Board, that he had done everything necessary to satisfy the requirements for an Examination waiver. Nonetheless, without evidence of continuing education courses taken in 2013, in light of the requirements in COMAR 09.38.01.02D, the Board could not grant the Examination waiver.

With respect to good faith, Mr. Sawhney did communicate with the Board concerning his decision not to appear for the hearing, and the Board will not hold that against him. Apparently, after it became clear to him that he had not received a waiver of the examination requirement, Mr. Sawhney also took and passed the Maryland Individual Tax Preparers Examination on November 5, 2017, prior to the hearing in this matter. Finally, Mr. Sawhney has no disciplinary history with the Board. The Board finds that, after weighing all the factors, and in light of the substantial mitigating evidence, only a minor 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 Respondent Surinder Sawhney violated Business Occupations and Professions Article, Ann. Code of Maryland, § 21-302, 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 6th day of December 2,

2017 ORDERED:

1) That Surinder Sawhney 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 violations of Business Occupations and Professions Article, Ann. Code of Maryland, § 21-302 and COMAR 09.38.01.02B;

2) That this sanction is effective thirty (30) days from the date of this order unless Mr. Sawhney obtains a judicial stay of enforcement pursuant to Md. State Gov. Code Ann., § 10-222; 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**

Signature of File

By

Amy P. Hennen
Chair