

BEFORE THE STATE BOARD OF ACCOUNTANCY

STATE OF COLORADO

Case Nos. 2023-8630 & 2023-8632

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF A DISCIPLINARY ACTION AGAINST THE CERTIFICATE TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT IN THE STATE OF COLORADO OF BENJAMIN FITZPATRICK BORGERS, CERTIFICATE NO. CPA.25067,

IN THE MATTER OF A DISCIPLINARY ACTION AGAINST THE REGISTRATION TO PRACTICE CERTIFIED PUBLIC ACCOUNTING IN THE STATE OF COLORADO OF BF BORGERS CPA PC, FIRM NO. FRM.13157.

Respondents.

The State Board of Accountancy (the "Board") and Benjamin Fitzpatrick Borgers ("Respondent") BF Borgers CPA PC ("Respondent Firm") (together, "Respondents") hereby enter into this Stipulation and Final Agency Order ("Order") and agree as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was issued a certificate to practice as a certified public accountant ("CPA") on November 3, 2006, being issued certificate number CPA.25067, which Respondent has held continuously since that date.

2. Respondent Firm was issued a registration to practice certified public accounting on March 31, 2010, being issued certificate number FRM.13157. which Respondent Firm has held continuously since that date.

3. The Board has jurisdiction over Respondent, his certificate to practice, Respondent Firm, its registration to practice, and the subject matter of this action.

4. The Board received a complaint regarding Respondent's professional conduct. The Board notified Respondent of the complaint and gave him the opportunity to provide the Board with written data, views, and arguments concerning the complaint. Respondent responded to the complaint and provided his written data, views, and arguments.

5. At its regularly scheduled meeting on January 17, 2024, the Board considered the complaint and Respondent's response, and found reasonable grounds to

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refer Respondent to hearing for license law violations.

6. It is the intent of the parties and the purpose of this Order to provide for a settlement of all matters arising out of Case Nos. without the necessity of holding a formal hearing.

WAIVERS

7. Respondent understands that:

a. Respondent has the right to be represented by an attorney of Respondent's choice, and Respondent has voluntarily chosen to proceed without representation;

~~b. Respondent has the right to a formal hearing conducted pursuant to Sections 12-100-123 and 24-4-105, C.R.S.;~~

c. By entering into this Order, Respondent knowingly and voluntarily gives up the right to a hearing, admits the facts contained in this Order, and relieves the Board of its burden of proving such facts;

d. By entering into this Order, Respondent knowingly and voluntarily gives up the right to present a defense by oral and documentary evidence, to cross-examine witnesses who would testify on behalf of the Board, and to have subpoenas issued upon request; and

e. By entering into this Order, Respondent knowingly and voluntarily waives the right to seek judicial review of this Order.

8. Respondent understands that counsel for the Board may communicate directly with the Board regarding this Order, without notice to or participation by Respondent. By signing this Order, Respondent understands and agrees that if the Board rejects this Order and this case proceeds to hearing, Respondent shall not claim in any forum that the Board was prejudiced by its review and discussion of this Order or of any records related hereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent specifically admits, and the Board hereby finds that:

a. The Employee Benefits Security Administration, U.S. Department of Labor, reviewed independent qualified public accountant (IQPA), Respondent, reports pertaining to plans for the year ending December 31, 2021 and reported the following deficiencies:

b. Not presented in accordance with generally accepted auditing standards (GAAS) as required by ERISA. Not presented in compliance with AU-C section 703 as it did not contain the required content elements and appropriate

language for an auditor's report issued as a result of an audit of financial statements.

c. Respondent failed to exercise due care in the performance of professional services.

d. Respondent failed to meet generally accepted accounting principles or generally accepted auditing standards in the profession..

10. Respondent admits and the Board finds that the conduct described above violates Section 12-100-120(1)(d) and (j), C.R.S., and Board Rule 1.12.E.1.b, and is grounds for discipline pursuant to Section 12-100-120(1), C.R.S.:

COLORADO REVISED STATUTE

12-100-120. Grounds for disciplinary action -administrative penalties. (1)
After notice and hearing as provided in section 12-100-123, the board may take disciplinary or other action as authorized in section 12-20-404 and impose other conditions or limitations for any of the following causes:

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article 100;

(j) An act or omission that fails to meet generally accepted accounting principles or generally accepted auditing standards in the profession;

BOARD RULE

1.12 RULES OF PROFESSIONAL CONDUCT

E. PROFESSIONAL COMPETENCE AND COMPLIANCE WITH APPLICABLE TECHNICAL STANDARDS

1. General Standards.

b. Due Care - A licensee shall exercise due care in the performance of professional services.

ORDER

10. The Board imposes and Respondent accepts the discipline set forth below.

LETTER OF ADMONITION

11. This Order shall constitute a Letter of Admonition pursuant to Sections 12-100-120(1) and 12-100-124(2)(b)(IV), C.R.S. Respondent is hereby admonished for the acts and omissions described above and warned that repetition of such conduct could lead to formal disciplinary action against Respondent's certificate, including probation,

suspension, or revocation.

12. By signing this Order, Respondent agrees to waive the rights provided by Section 12-20-404(4)(b)(II), C.R.S., to have formal disciplinary proceedings initiated to adjudicate the propriety of the conduct upon which this Letter of Admonition is based.

FINE

13. Respondent shall pay a fine of five thousand dollars (\$5,000.00) in United States funds drawn on a United States Bank, as authorized by Section 12-100-120(3), C.R.S. Respondent understands and acknowledges that, pursuant to Section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of fifteen percent (15%) of this fine. Thus, Respondent shall pay a total amount of five thousand seven hundred and fifty dollars (**\$5,750.00**) in United States funds drawn on a United States Bank. ~~The total amount shall be due and payable~~ to the State of Colorado within ninety (90) days that the Respondent signs this Order and shall be submitted to the Program Director, State Board of Accountancy, 1560 Broadway, Suite 1350, Denver, Colorado 80202.

OTHER TERMS

14. Respondent shall bear the expenses of complying with this Order.

15. All information provided by Respondent pursuant to this Order shall be accurate, complete, and truthful. Respondent agrees that it shall be a violation of this Order if Respondent knowingly provides information that is false or misleading or fails to provide information required pursuant to this Order.

16. This Order shall become an order of the Board when it is accepted and signed by the Program Director or authorized Board representative.

17. This Order shall become effective upon (a) mailing by first-class mail to Respondent at Respondent's address of record with the Board, or (b) service by electronic means on Respondent at Respondent's electronic address of record with the Board. Respondent hereby consents to service by electronic means if Respondent has an electronic address on file with the Board.

18. This Order and its terms shall have the same force and effect as an order entered after a formal hearing conducted pursuant to Section 12-100-123 and 24-4-105, C.R.S, except that it may not be appealed. Any violation of this Order may result in discipline against Respondent's certificate to practice. Further, any violation proven at a hearing conducted pursuant to Section 24-4-105, C.R.S. shall be deemed a violation of a valid agency order in violation of Section 12-100-120(1)(c), C.R.S.

19. Once effective, this Order shall be admissible as evidence at any future proceeding before the Board.

20. In the event this Order is not signed by the Board's Program Director, it shall

be void.

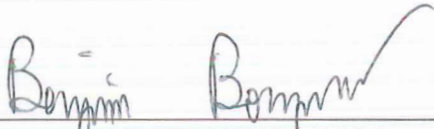
21. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which provisions shall remain in full force and effect.

22. Colorado law governs this Order. Any claims or causes of action arising out of or based upon this Order shall be commenced in the Colorado Department of Personnel and Administration, Office of Administrative Courts or before the Board as appropriate. Respondent hereby consents to the jurisdiction, venue and process of the Colorado Department of Personnel and Administration, Office of Administrative Courts and the Board.

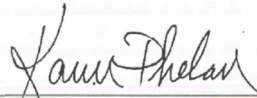
23. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, that modify, interpret, construe or affect this Order.

24. Upon the effective date, this Order shall be a permanent public record in the Board's custody.

FOR THE STATE BOARD OF ACCOUNTANCY



BENJAMIN FITZPATRICK BORGERS
BF BORGERS CPA PC
Respondents



KAREN PHELAN
Program Director

Date 2/8/24

Effective this 14th day of March,
2024.