

BEFORE THE STATE BOARD OF ACCOUNTANCY

STATE OF COLORADO

Case Nos. 2018-140 & 2018-142

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF A DISCIPLINARY ACTION AGAINST THE CERTIFICATE TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT OF BENJAMIN FITZPATRICK BORGERS, CERTIFICATE NO. 25067, AND 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, REGISTRATION NO. 13157,

Respondents.

The State Board of Accountancy (the "Board") and Benjamin Fitzpatrick Borgers ("Respondent") and 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 on November 3, 2006, being issued certificate number 25067, which Respondent has held continuously since that date.
2. Respondent Firm was issued a registration to practice as a public accounting firm with the Board on March 31, 2010, being issued registration number 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, and the subject matter of this action.
4. The Board initiated a complaint regarding Respondents' professional conduct. The Board notified Respondents of the complaint, and gave them the opportunity to provide the Board with written data, views, and arguments concerning the complaint. Respondents provided a response to the Board's letter.
5. At its regularly scheduled meeting on June 20, 2018, the Board considered the complaint and found reasonable grounds to refer Respondents 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. 2018-140 and 2018-142, without the necessity of holding a formal hearing.

WAIVERS

7. Respondents understand that:

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

b. Respondents have the right to a formal hearing conducted pursuant to Sections 12-2-125 and 24-4-105, C.R.S.;

c. By entering into this Order, Respondents knowingly and voluntarily give up the right to a hearing, and relieve the Board of its burden of proving such facts;

d. By entering into this Order, Respondents knowingly and voluntarily give 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, Respondents knowingly and voluntarily waive the right to seek judicial review of this Order.

8. Respondents understand that counsel for the Board may communicate directly with the Board regarding this Order, without notice to or participation by Respondents. By signing this Order, Respondents understand and agree that if the Board rejects this Order and this case proceeds to hearing, Respondents 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. Respondents specifically admit, and the Board hereby finds that:

a. Respondent is the responsible party for Respondent Firm.

b. Respondent Firm's principal place of business is Colorado.

c. Respondent Firm contracted with PM, a certified public accountant licensed in the state of South Carolina.

d. PM did not hold a certificate to practice as a certified public accountant in the state of Colorado.

e. Respondent Firm allowed PM to sign the Public Company Accounting Oversight Board ("PCAOB") audit reports for a public company in 2014, 2015, and 2016, in violation of Security and Exchange Commission Rule, 17 CFR 210.2-01(3)(a), CFR.

10. Respondents specifically admit, and the Board hereby finds that the conduct described above violates Section 12-2-123(1)(d), C.R.S, and Rule 9.14.A, and is grounds for discipline pursuant to Section 12-2-123(1), C.R.S.

ORDER

11. The Board imposes and Respondents accept the discipline set forth below.

LETTER OF ADMONITION

12. This Order shall constitute a Letter of Admonition as set forth in Sections 12-2-123(1) and 12-2-126(1)(b)(II)(D), C.R.S. Respondents are hereby admonished for the acts and omissions described above and warned that repetition of such conduct could lead to additional formal disciplinary action against Respondent's certificate and Respondent Firm's registration, including probation, suspension, or revocation.

13. By signing this Order, Respondents agree to waive the right provided by Section 12-2-126(1)(b)(III)(B), C.R.S., to have formal disciplinary proceedings initiated to adjudicate the propriety of the conduct upon which this Letter of Admonition is based.

FINES

14. Respondent shall pay a fine of one thousand dollars (\$1,000.00) in United States funds drawn on a United States bank, as authorized by Section 12-2-123(5), 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 one thousand one hundred fifty dollars (\$1,150.00) [fine + 15%] in United States funds drawn on a United States bank. The total amount shall be due and payable to the State of Colorado at the time Respondent signs this Order, and shall be submitted together with this signed Order to the Program Director, State Board of Accountancy, 1560 Broadway, Suite 1350, Denver, Colorado 80202.

15. Respondent Firm shall pay a fine of three thousand dollars (\$3,000.00) in United States funds drawn on a United States bank, as authorized by Section 12-2-123(5), C.R.S. Respondent Firm 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 Firm shall pay a total amount of three thousand four hundred fifty dollars (\$3,450.00) [fine + 15%] in United States funds drawn on a United States bank.

The total amount shall be due and payable to the State of Colorado at the time Respondent signs this Order, and shall be submitted together with this signed Order to the Program Director, State Board of Accountancy, 1560 Broadway, Suite 1350, Denver, Colorado 80202.

16. Respondent and Respondent Firm shall submit each fine payment separately.

OTHER TERMS

17. Respondents shall bear the expenses of complying with this Order.

18. All information provided by Respondents pursuant to this Order shall be accurate, complete, and truthful. Respondents agree that it shall be a violation of this Order if Respondents knowingly provide information that is false or misleading, or fail to provide information required pursuant to this Order.

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

20. This Order shall become effective upon (a) mailing by first-class mail to Respondents at Respondents' addresses of record with the Board, or (b) service by electronic means on Respondents at Respondent's electronic addresses of record with the Board. Respondents hereby consent to service by electronic means if Respondents have electronic addresses on file with the Board.

21. This Order and its terms shall have the same force and effect as an order entered after a formal hearing conducted pursuant to Sections 12-2-125 and 24-4-105, C.R.S, except that it may not be appealed. Any violation of this Order may result in additional action being taken by the Board. 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 12-2-123(1)(c), C.R.S.

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

23. In the event this Order is not signed by the Board's Program Director or authorized representative, it shall be void.

24. 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.

25. 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. Respondents hereby consent to the jurisdiction, venue, and process of the

Colorado Department of Personnel and Administration, Office of Administrative Courts, and the Board.

26. 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.

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

RESPONDENT

FOR THE STATE BOARD OF ACCOUNTANCY

Benjamin Borgers
BENJAMIN FITZPATRICK BORGERS
Certificate No. 25067

Karen Phelan
KAREN PHELAN
Program Director

Date: 12/26/18

EFFECTIVE this 7th day of Jan, 2019.

RESPONDENT FIRM

Benjamin Borgers
BENJAMIN FITZPATRICK BORGERS
SIGNING ON BEHALF OF FIRM
BF BORGERS CPA PC
Registration No. 13157

Date: 12/26/18