

BOARD OF TAX PRACTITIONERS

SPECIAL BOARD MEETING *(Telephone Conference Call)*

March 14, 2008
Morrow Crane Building
Salem, Oregon

MISSION: Protecting the Consumer by insuring Oregon Tax Practitioners are competent and ethical in their professional activities.

Pursuant to notice made by press release to newspapers of general and local circulation throughout the state, persons on the interested party list and members of the Tax Board; a meeting was held via teleconference call at the Morrow Crane Building, Salem, Oregon.

BOARD MEMBERS

Marilyn Johnston (Board Chair)
Donna Gilmour (Vice-Chair)
Toni Ellsworth
Jess Gutierrez
Merry VanAtta
Dorothy Hudson
Alan Twombly (excused)

GUESTS

Kelly M. Gabliks, Assistant Attorney General

STAFF

Ron A. Wagner, Executive Director
Monica J. Walker, Senior Compliance Specialist

Tape 1 - Side 1

Roll Call:

Johnston called the meeting to order at 7:05 a.m.

Roll called. Board members present: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Executive Session:

Johnston called the meeting into Executive Session at 7:06 a.m. to discuss information exempt from public disclosure under ORS 673.730(4) pursuant to 192.660(2)(f) to discuss pending case files and alleged violations. This Executive Session was closed to members of the public.

Johnston called the meeting out of Executive Session at 8:49 a.m.

~COMPLIANCE REPORT~

Case Files Discussed:

Gerard Berardi ~ Fraudulent Representation / Violation of Trust & Unprofessional Conduct / Lack of Fitness to Perform (Preparer License) ~ Tigard, Oregon

Motion: Gilmour moved that the Board issue a Notice of Intent to Revoke License and Right to Hearing to **Gerard Berardi** of Tigard, Oregon, for violations(s) of ORS 673.700; by failing to disclose his voluntary relinquishment of his Oregon Chiropractic License and provide the Board with a detailed explanation of the circumstances surrounding the relinquishment when making application for initial preparer licensure on December 11, 2004. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly

Gerard Berardi ~ Fraudulent Representation / Violation of Trust & Unprofessional Conduct / Lack of Fitness to Perform (Consultant Licensure) ~ Tigard, Oregon

Motion: Gilmour moved that the Board deny licensure as a Tax Consultant to **Gerard Berardi** of Tigard, Oregon should he successfully complete the Board's Consultant State Only examination. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly

Bryan C. Kellar ~ Fraudulent Representation & Negligence Incompetence / Code of Professional Conduct ~ Portland, Oregon

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a Final Order by Default to **Bryan C. Kellar** of Portland, Oregon in the amount of \$2,500 for one (1) violation of ORS 673.705(2), for representing that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed, and one (1) violation of 673.700(3)(7), for negligence or incompetence in tax consultant or tax preparer practice and for violation of the code of professional conduct prescribed by the Board.

Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson.
Excused: Twombly.

Emanuel Etuks ~ Fraudulent Representation ~ Vancouver, Washington

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a final Order by Default to **Emanuel Etuks** of Vancouver, Washington in the amount of \$4,000 for one (1) violation of ORS 673.705(2), for representing that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Emanuel Etuks ~ Failure to Register Business ~ Vancouver, Washington

Motion: Gilmour moved that the Board accept the Settlement Offer made by **Emanuel Etuks** of Vancouver, Washington in the amount of \$100, for one (1) violation of OAR 800-025-0020 for failing to register a tax preparation business. Motion failed. Nays: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Elroy A. Ashmore, Jr ~ Return of Records (Consultant) ~ Portland, Oregon

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a Notice of Intent to Impose Discipline and Right To Hearing to **Elroy A. Ashmore, Jr.** of Portland, Oregon for one (1) violation of OAR 800-010-0025(6) for failing upon written request by a client, to make available or return within a reasonable amount of time to the client, personal papers or source material in the manner furnished to the licensee by the client. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Damon L. Mayer ~ Unlicensed Activity ~ Salem, Oregon

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a Notice of Intent to Impose Discipline and Right To Hearing to **Damon L. Mayer** of Salem, Oregon for seven (7) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Jose L. Monteblanco ~ Practicing while Unlicensed ~ Hillsboro, Oregon

Gilmour moved that the Board revise the original Settlement Agreement and Stipulated Final Order served on December 20, 2007, and enter into a Settlement Agreement and Stipulated Final Order with **Jose L. Monteblanco** of Hillsboro, Oregon in the amount of \$6,100 for six hundred (600) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. In addition to the payment of \$6,100, **Jose L. Monteblanco** must take and pass the preparer examination and satisfy all other requirements before he can obtain licensure. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Jose L. Monteblanco ~ Unlicensed Activity / Advertising / Prohibited Acts / Consider to Deny Future Licensure ~ Hillsboro, Oregon

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a Cease and Desist order against **Jose L. Monteblanco** of Hillsboro, Oregon ordering him to cease and desist in violation of ORS 673.615(1); practicing while unlicensed; and for violation of OAR 800-010-0050(2) for advertising or soliciting clients in a false, fraudulent, deceptive or misleading manner; for violation of ORS 673.700(7) the Board may refuse to issue or renew a Tax Consultant or Tax Preparer license, or may suspend or revoke a Tax Consultant or Tax Preparer license, or may reprimand any person licensed as a Tax Consultant or Tax Preparer for violation of the code of professional conduct prescribed by the Board; for violation of 673.700(10) for cancellation, revocation or refusal to renew by any state or federal agency, or entry of a consent order, stipulated agreement or judgment related to a business's authority to conduct operations related to the practice of law, certified public accountancy, public accountancy or other services, on the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment involving the conduct or action of the licensee or applicant and were related to income tax preparation or involved dishonesty, fraud or deception; for violation of ORS 673.705(2) for representing that he is licensed as a Tax Consultant or Tax Preparer if the person is not so licensed; and violation of 673.705(5) for falsely impersonating a licensee under ORS 673.605 and 673.640 and impose a civil penalty to a maximum of \$22,000 for his actions. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

John S. Bell ~ Advertising ~ Beaverton, Oregon

Motion: Gilmour moved that the Board accept the Settlement Offer made by **John S. Bell** of Beaverton, Oregon in the amount of \$50, for (1) violation of OAR 800-010-0050(2) for advertising or soliciting clients in a false, fraudulent, deceptive or misleading manner. Motion failed. Nays: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

John S. Bell ~ Advertising / Incompetence & Negligence / Integrity & Objectivity / Accountability / Prohibited Acts / Consider Suspending License (Consultant) ~ Beaverton, Oregon

Motion: Gilmour moved that the Board rescind their original motion, made on January 10, 2008, to issue a Cease and Desist order against **John S. Bell** of Beaverton, Oregon ordering him to cease and desist in violation of ORS 673.615(1) using unlicensed employees and OAR 800-010-0050(2) for advertising or soliciting clients in a false, fraudulent, deceptive or misleading manner; for violation of OAR 800-010-0017(1) for engaging in conduct which evidenced a lack of ability or fitness to perform his professional function; for violation of OAR 800-010-0025(7) for engaging in fraudulent deceptive or dishonest conduct relating to the licensee's profession; for violation of OAR 800-010-0025(8) for violating a position of trust, including positions of trust outside the licensee's profession; for violation of OAR 800-010-0030(1) for permitting a registered business to allow a person to practice in the name of the business name who is not licensed as a Tax Consultant or Tax Preparer or as described under ORS 673.610; for violation of ORS

673.705(6) for engaging in dishonesty, fraud or deception relating to the preparation of personal income tax returns, and impose a civil penalty to a maximum of \$28,000 for his actions. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Joshua Adkins ~ Settlement Offer ~ Vancouver, Washington

Motion: Gilmour moved to enter into a Settlement Agreement with **Joshua Adkins** of Vancouver, Washington in the amount of \$4,317 for sixty-eight (68) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns in or from Oregon or for Oregon residents for valuable consideration without being licensed by the Board. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Christy Maciel ~ Settlement Offer ~ Vancouver, Washington

Motion: Gilmour moved that the Board enter into a Settlement Agreement and Stipulated Final Order with **Christy Maciel** of Vancouver, Washington in the amount of \$200 for (1) violation of OAR 800-025-0020, failure to register her tax preparation business, which offered personal tax preparation services to the public. In addition, to the payment of \$200 **Christy Maciel** must provide proof to the Board that the twelve (12) returns prepared when her business was not registered were reviewed by a Designated Consultant. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Gutierrez, and Hudson. Excused: Twombly.

Adjournment

Johnston adjourned the board meeting at 9:10 a.m.