

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:

McGowen, Hurst, Clark & Smith, PC
CPA Firm Permit #2017-0347
West Des Moines, Iowa

Respondent.

Case No. 18-21

**COMBINED STATEMENT OF
CHARGES, SETTLEMENT
AGREEMENT, AND FINAL ORDER**

A. Statement of Charges

1. The Iowa Accountancy Examining Board (“**Board**”) has jurisdiction of this disciplinary matter pursuant to Iowa Code chapters 17A, 272C, and 542 (2018).

2. Respondent, McGowen, Hurst, Clark & Smith, PC, was issued Iowa CPA firm permit to practice #2017-0347 on the 7th day of September, 2017. Respondent’s permit is currently active and will next expire the 30th day of June, 2019.

3. In November of 2018 Respondent self reported that in 2013 a former client filed suit against Respondent alleging professional negligence. The allegations focused Respondent’s provisioning of consulting and advisory services. Respondent, making no admission of liability, ultimately settled the claim for \$1,000,000 in 2014.

4. Based on the foregoing, the Board charges Respondent with failing to timely report a judgment, settlement, or arbitration award involving allegations of malpractice or involving Respondent’s practice of public accounting in this State in violation of Iowa Code section 272C.9(3) and Iowa Administrative Code rules 193A—13.2(2)(c), 18.2(1) and (2), and 18.3.

5. The Board and Respondent have agreed to fully resolve these charges through the following Settlement Agreement and Final Order, rather than proceed to contested case hearing.

B. Settlement Agreement and Final Order

1. Respondent admits the above-referenced allegations as set forth in the Statement of Charges.

2. Respondent has a right to a hearing on the charges, but waives Respondent’s right to hearing and all attendant rights, including the right to seek judicial review, by freely and voluntarily entering into this Agreement. This Agreement constitutes discipline against Respondent, and is the final agency order in the contested case, pursuant to Iowa Code section 17A.10 and 193 Iowa Administrative Code 7.4. Respondent acknowledges that Respondent had

an opportunity to review this Agreement with legal counsel before signing it.

3. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any future disciplinary action to be imposed in the event of any future violations.

4. Failure to comply with the provisions of this Agreement shall be grounds for further disciplinary action pursuant to Iowa Code section 272C.3(2)(a). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

5. This Agreement shall not preclude the Board from taking appropriate action in the event the Board receives any further complaints or information against Respondent.

6. This Agreement is a public record available for inspection and copying in accordance with the requirements of Iowa Code chapter 22.

7. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

8. This Agreement is subject to approval of the Board:

- a. If the Board fails to approve this Agreement, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter;
- b. If the Board approves this Agreement, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

- A. **Reprimand.** Respondent is reprimanded for failing to report judgments, settlements, or arbitration awards involving allegations of malpractice or involving Respondent's practice of public accounting in this State in violation of Iowa Code section.
- B. **Civil Penalty.** Respondent shall pay a civil penalty of \$1,000 within thirty days from the date this Agreement is signed by all parties. *See* Iowa Admin. Code r. 193A—16.3(1)(g) ("The board has authority to impose . . . civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed . . . \$10,000 per violation for a firm.").
- C. **Report.** Respondent shall file a report in writing forwarded to the Board office, setting forth the name and address of the client and a copy of the judgment or settlement agreement resulting from the claim. Respondent has already reported the date the claim was originally made and provided a brief description of the circumstances precipitating the claim to the Board. Iowa Admin. Code r.

193A—18.2(2).

- D. Additional Reporting.** Respondent shall, within thirty (30) days of the entry of this Order, report any and all other judgments, settlements, or arbitration awards involving allegations of malpractice or involving Respondent's practice of public accounting in this State which Respondent has not previously reported to the Board in accordance with Iowa Code section 272C.9(3) and Iowa Administrative Code rules 193A—13.2(2)(c) and 18.2(2) and (3).
- E. Additional Terms.** Respondent shall provide the Board with access to its records as is necessary for the Board to verify compliance with this Settlement Agreement.

AGREED AND ACCEPTED:

Respondent

John A. Schmidt, Treasurer
By:

1-9-19
Date

Iowa Accountancy Examining Board

Robert W. Snodgrass
By: Aaron Olson, CPA, Chair
Robert Snodgrass, Chair

Date