

**STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
BOARD OF ACCOUNTANCY**

IN THE MATTER OF:

**MARTIN S. ELLER,
Licensee.**

CONSENT AGREEMENT

Case No. 105-23

Certificate No. 3335

In consideration of the above-captioned matter and as the full and final resolution of this matter, the undersigned parties do hereby consent and agree to the following:

1. The South Dakota Department of Labor and Regulation, Board of Accountancy (Board) has jurisdiction over this matter pursuant to SDCL Chapter 36-20B.
2. ARSD 20:75:04:11 requires Board licensees to submit to verification of their continuing professional education (CPE) credits claimed during a reporting period, which includes cooperating with random audits.
3. ARSD 20:75:04:14 and 20:75:04:15 require Board licensees to document their CPE credits.
4. ARSD 20:75:05:16 requires Board licensees to respond to communications from the Board, when requested, within 30 days after the mailing of the communication by registered or certified mail to the licensee's address on record with the Board.
5. SDCL 36-20B-27 requires a licensed CPA to complete 120 hours of continuing professional education (CPE) in each three-year renewal cycle.
6. SDCL 36-20B-40(3) authorizes the Board to impose discipline upon a licensee for "failure to maintain compliance with the requirements for issuance or renewal of such license".

7. SDCL 36-20B-40(6) authorizes the Board to impose discipline upon a licensee for a violation “of any provision of this chapter or rule, promulgated by the board pursuant to chapter 1-26, or violation of professional standards”.
8. MARTIN S. ELLER (ELLER) is a certified public accountant with the Board. ELLER has been certified since September 29, 2017 and his certificate number is 3335.
9. As a licensee of the Board, ELLER is required to report his continuing professional education (CPE) to the Board in accordance with Board requirements.
10. For the period commencing July 1, 2019 through June 30, 2020, ELLER reported 60 CPE hours.
11. For the period commencing July 1, 2020 through June 30, 2021, ELLER reported 40 CPE hours. This includes an administrative extension that the Board granted to ELLER which extended this period through September 30, 2021.
12. For the period commencing July 1, 2021 through June 30, 2022, ELLER reported 28 CPE hours.
13. On September 16, 2022, the Board office mailed to ELLER a letter notifying him that he was selected for a CPE audit for the three-year renewal period commencing July 1, 2019 through June 30, 2022. The letter informed ELLER that his deadline to submit documentation to verify his claimed CPE was October 31, 2022.
14. ELLER did not submit any CPE documentation to the Board office by October 31, 2022.
15. On November 4, 2022, the Board office mailed to ELLER, at his address on file, a certified letter inquiring about his failure to submit the required CPE documentation

for the audit. The letter also informed ELLER that he had 10 additional days to submit the requested documentation.

16. As of December 20, 2022, the Board office had not received any documentation from ELLER related to his CPE Audit.
17. On December 20, 2022, this Board initiated a Formal Complaint, against ELLER for the above-listed violations.
18. On January 6, 2023, ELLER answered the Board's complaint via email and provided partial documentation for his CPE hours as follows:
 - a. For the annual reporting period ending June 30, 2020, 40 CPE hours.
 - b. For the annual reporting period ending June 30, 2021, 40 CPE hours.
 - c. For the annual reporting period ending June 30, 2022, 28 CPE hours.
19. The documentation provided by ELLER supports only 108 CPE hours for the last three reporting years, which is less than the required 120 hours.
20. The above-described conduct constitutes grounds for discipline under SDCL 36-20B-40(3) and (6).
21. ELLER is aware that he may choose to be represented by an attorney in this matter. ELLER is waiving that right and agreeing to represent himself in this matter.
22. ELLER is aware of and understands the nature of this matter and has been informed of his right to counsel, notice, hearing, and appeal, and that by agreeing to and signing this Consent Agreement, Applicant waives all procedures and proceedings before the Board to which he may be entitled under state or federal law.
23. ELLER understands that by entering into this Consent Agreement, the Board is making a finding that ELLER violated SDCL 36-20B-27 and ARSD 20:75:04:11 and

20:75:05:16 and is subject to discipline pursuant to SDCL 36-20B-40(3) and (6).

ELLER further understands by entering into this Consent Agreement, the Board is taking formal disciplinary action against ELLER.

24. In return for ELLER's agreement to the provisions of this Consent Agreement, the Board agrees not to proceed to a formal hearing and this matter will be resolved pursuant to the terms of this Consent Agreement.
25. ELLER and the Board agree this Consent Agreement, if executed, will serve as the full and final Board disposition and resolution of this matter, including any appeal.
26. ELLER agrees, in lieu of further contesting this matter, that his license shall be **suspended** for a period of **one year** which shall be **stayed** for a period of **three years** upon the following terms and conditions:
 - a. ELLER shall complete and provide proof of completion to the Board office of 12 hours of CPE within 90 days of the effective date of this Consent Agreement. ELLER shall only receive credit for these hours toward the period ending June 30, 2022. This shall serve as an extension of the CPE period ending June 30, 2022. The Board office shall credit 20 hours from ELLER's current total of 108 for the period ending June 30, 2022 to the period ending June 30, 2021 thus completing that period's requirements. This shall serve as an extension of the period ending June 30, 2021 for the purpose of reallocating the CPE hours.
 - b. ELLER shall pay a fine of **\$550** to the Board office. The fine shall be due in six installments consisting of five payments of \$100 per month followed by one payment of \$50. The payments shall be due on the following dates in 2023: April 17th, May 15th, June 15th, July 17th, August 15th, and September 15th.

- c. ELLER shall submit proof of completion for all claimed CPE courses for each reporting year to the Board office by August 1st of each of the following years: 2023, 2024, and 2025.
 - d. ELLER shall be ineligible for any CPE extensions for the reporting periods ending in the years: 2023, 2024, and 2025. The Board office may deny any requests for extensions based solely on this Consent Agreement.
 - e. ELLER shall comply with all provisions of SDCL Chapter 36-20B and ARSD Article 20:75.
27. If ELLER fails to comply with the terms or conditions of this Consent Agreement, the Board may initiate formal disciplinary action against ELLER to revoke the stay of his license suspension.
28. ELLER agrees and understands that nothing in this Consent Agreement will be deemed to restrict the Board from raising facts in reference to either party outside of those set forth in this Consent Agreement, if there are other material facts related to the matters under investigation that have not been set forth or disclosed herein.
29. ELLER consents, agrees, and acknowledges that this Consent Agreement must be submitted to the Board for acceptance or rejection. In the event the Board rejects the recommendations for resolution by Consent Agreement, ELLER waives any right to claim prejudice of the Board by reason of any factual basis submitted to the Board in an effort to resolve this matter by Consent Agreement rather than by formal proceeding.
30. ELLER understands that the terms of this Consent Agreement will be public, which includes publishing a summary of the action taken on the Board's website.

31. ELLER understands that this Consent Agreement may be considered in any future licensing procedures with the Board and for the purposes of determining the appropriate sanctions in any future actions by the Board for any violations of laws or regulations of the State of South Dakota or for failing to abide by any order of the Board.
32. ELLER has read, understands, and agrees to this Consent Agreement and is freely and voluntarily signing it. This Consent Agreement contains the entire agreement between the parties relating to the matters referenced in the Consent Agreement. ELLER is not relying on any other representations of any kind, verbal or otherwise.
33. If this Consent Agreement is approved by the Board, a copy of the executed Consent Agreement will be served by electronic mail on ELLER at his email address on file with the Board.
34. The effective date of this Consent Agreement shall be the date on which it is signed by the Board Chair.

Dated this 22 day of March 2023.
(month)



Deidre Budahl
Board Chair

CONSENT AND ACKNOWLEDGMENT

By signing below, I accept and agree to the terms of this Consent Agreement. I agree that I have read and understand the terms of this Consent Agreement and I understand that I am waiving my due process rights and my right to a hearing. I am freely and voluntarily entering into this agreement.

Dated this 15th day of March 2023.
(month)



Martin S. Eller
Licensee