

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59155 / December 23, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2912 / December 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13318

In the Matter of

Ira Yohalem, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Ira Yohalem, CPA (“Respondent” or “Yohalem”) pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

A. SUMMARY

Yohalem was a partner and served as chairman of the executive committee of Yohalem Gillman & Co. (“Yohalem Gillman”), an accounting firm that audited and reviewed the financial statements of a Massachusetts-based public company (hereinafter referred to as “Company A”) from at least 2000 through 2004 (the “Relevant Period”). In 2001 and 2003, an officer, director, and significant shareholder of Company A made two investments totaling \$160,000 in restaurants of which Yohalem was a managing partner. As a result of receiving the investments, Yohalem engaged in improper professional conduct by failing to maintain independence from Yohalem Gillman’s audit client under generally accepted auditing standards (“GAAS”), ethics and independence standards, and Regulation S-X.

B. RESPONDENT

Yohalem, a resident of New York, New York, has been a CPA for over 30 years; he has been licensed as a CPA by the state of New York since 1967. Yohalem is currently a partner of an accounting firm which combined businesses with Yohalem Gillman in or around January 2005. Yohalem was not involved in the audits or reviews of Company A’s financial statements during the Relevant Period.

C. FACTS

1. Company A is a Delaware corporation headquartered in Massachusetts, and its common stock was registered with the Commission pursuant to Section 12 of the Exchange Act at all relevant times.

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. At all relevant times, Yohalem Gillman audited and reviewed the financial statements which were included in Company A's filings with the Commission on Forms 10-QSB and 10-KSB.

3. At all relevant times, Yohalem chaired Yohalem Gillman's executive committee and with others rated the performance of the Yohalem Gillman partners, including the engagement partners who provided auditing and review services to Company A. Yohalem and the engagement partners who provided auditing and review services to Company A worked out of the same office in New York, as did other Yohalem Gillman personnel.

4. On February 14, 2001, a significant shareholder, officer, and director of Company A ("the Company A Director") invested \$100,000 in a restaurant of which Yohalem was a managing partner. Yohalem was aware of this investment.

5. On October 3, 2003, Yohalem sent a letter offering an investment opportunity to the Company A Director in another restaurant of which Yohalem was a managing partner.

6. On October 29, 2003, the Company A Director invested \$60,000 through his family's limited partnership pursuant to the October 3, 2003 offer. Yohalem was aware of this investment.

7. Also on October 29, 2003, Yohalem signed and submitted an independence disclosure statement to Yohalem Gillman's managing partner. The independence statement, as regularly used by Yohalem Gillman, required Yohalem to report, among other things, "[a]ny investment, business venture or other financial interest in common with clients or their management, principals or affiliates, or relating to any enterprise or venture with which any such parties are affiliated or in which they have any interest." Nonetheless, Yohalem failed to disclose either of the investments by the Company A Director.

8. GAAS requires auditors to maintain strict independence from their audit clients. Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants ("AICPA"), states, in pertinent part, that a "member in public practice shall be independent in the performance of professional services."

9. At the time of the events described above, the applicable Commission auditor-independence rule, Regulation S-X, Section 210.2-01(c)(3), stated, in pertinent part:

- (a) Business relationships. An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the accounting firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders.

10. Yohalem had a business relationship with a person in a decision making capacity associated with Yohalem Gillman's audit client, Company A, because the Company A Director was an officer, director, and substantial stockholder of Company A. Yohalem was a covered person as defined in Rule 2-01(f)(11)⁴ because he was in Yohalem Gillman's chain of command⁵ since he, as a member of the executive committee, rated the performance of the engagement partners on Company A's audits and reviews. Furthermore, Yohalem was a covered person because Yohalem and the engagement partners who provided auditing and review services to Company A worked out of the same office in New York, as did other Yohalem Gillman personnel.

11. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice provide, in pertinent part, that the Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter to have engaged in improper professional conduct.

Based on the foregoing, the Commission finds that Yohalem engaged in improper professional conduct pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Yohalem's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Yohalem is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After one year from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or

⁴ Rule 2-01(f)(11) defines a covered person as "the following partners, principals, shareholders, and employees of an accounting firm: (i) The 'audit engagement team'; (ii) The 'chain of command'; (iii) Any other partner . . . who has provided ten or more hours of non-audit services to the audit client . . .; and (iv) Any other partner, principal or shareholder from an 'office' of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit."

⁵ Rule 2-01(f)(8) defines the "chain of command" as "all persons who: (i) Supervise or have direct management responsibility for the audit, including at all successively senior levels through the accounting firm's chief executive; (ii) Evaluate the performance or recommend the compensation of the audit engagement partner; or (iii) Provide quality control or other oversight of the audit."

review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary