

ADMINISTRATIVE PROCEEDING

File No. 3-17180

SEC Announces Settlement with Florida-based Audit Firm and its Owner Accused of Violating Auditor Independence Rules and Committing Audit Failures

January 3, 2017 – The Securities and Exchange Commission today suspended Florida-based audit firm Berman & Company, P.A., and its sole owner Elliot R. Berman, CPA (collectively “Respondents”), from appearing and practicing before the SEC as accountants, which includes not participating in the financial reporting or audits of public companies. The SEC’s order permits Respondents to apply for reinstatement after two years.

The suspensions arose from proceedings instituted against Berman and his firm alleging violations of auditor independence rules and multiple audit failures relating to Berman & Co.’s 2010 and 2011 year-end audits of MusclePharm Corp. In the order instituting proceedings against Respondents, the Enforcement Division alleged, among other things, that, during Berman & Co.’s 2010 and 2011 year end audits of MusclePharm, Berman & Co. and Berman:

- Audited MusclePharm’s financial statements and issued audit reports while Berman & Co. was not independent because of indemnification provisions in Berman & Co.’s engagement letters; and
- Failed to recognize that MusclePharm improperly accounted for sales incentives, advertising, and promotions, and inappropriately relied on management representations as sufficient audit evidence.

The Enforcement Division further alleged that during Berman & Co.’s 2011 year-end audit of MusclePharm, Berman & Co. and Berman:

- Ignored audit evidence demonstrating that MusclePharm’s largest customer in 2011 was a related party requiring disclosure and inappropriately relied on management representations; and
- Failed to recognize that MusclePharm did not disclose its sponsorship commitments and international sales as required.

A hearing on the Division’s allegations was scheduled for September 12, 2016. Prior to the commencement of the hearing, Respondents submitted an offer of settlement, under which they consented, without admitting or denying the SEC’s findings, to the entry of an order that Respondents cease and desist from committing or causing any violations of and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder and Rule 2-02(b)(1) of Regulation S-X, suspending Berman & Co. and Berman from appearing and practicing before the SEC as accountants, with a right to reapply after two years, and requiring that Respondents jointly and severally pay civil penalties in the amount of \$25,000.

The SEC's investigation was conducted by Kimberly L. Frederick, Michael F. D'Angelo, and Mary S. Brady. Mark L. Williams and Gregory Kasper led the SEC's trial team.

See also: [Order](#)