

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2106/December 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15992

In the Matter of

MARC SHERMAN

:
:

ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on July 30, 2014, pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act). The hearing is scheduled to begin on March 2, 2015, in Washington, D.C. Under consideration are Respondent's Motion for More Definite Statement, filed November 4, 2014, and the Division of Enforcement's (Division) Opposition, filed November 10, 2014.¹

The OIP alleges that Respondent Marc Sherman (Sherman) was CEO and Chairman of the Board of Directors of QSGI, Inc. (QSGI), a public company that filed for bankruptcy in July 2009. The OIP contains a number of specific allegations concerning his actions and awareness of the actions of others. The OIP alleges that QSGI employees, lacking an accounting background, improperly recorded changes in inventory on the company's books and records and circumvented controls intended to correct the situation. The OIP alleges that Sherman was aware of the alleged deficiencies and agreed, with other managers, that corrective action was needed. Additionally, the OIP alleges that the company was dependent on a revolving credit facility for operating funds and that Sherman directed early recognition, not in accord with generally accepted accounting principles, of accounts receivable and/or receipt of product into inventory on the company's books and records in order to maximize borrowing. The OIP alleges that Sherman failed to disclose these deficiencies in management representation letters provided to external auditors in connection with the audit of the 2008 financial statements and the review of the financial statements for the quarter ended March 31, 2009.

Sherman argues that the allegations are insufficiently specific, in particular as to the dates when the alleged deficiencies occurred – the OIP refers generally to “2008” and “2009.” Sherman urges that the dates are important because of a potential statute of limitations defense.

Concerning the statute of limitations, the sanctions authorized in the OIP include a cease-and-desist order. Cease-and-desist orders are not subject to the five year statute of limitations

¹ Respondent Marc Sherman did not file a reply.

provided in 28 U.S.C. § 2462. *Riordan v. SEC*, 627 F.3d 1230, 1234-35 (D.C. Cir. 2010); *Johnson v. SEC*, 87 F.3d 484, 491 (D.C. Cir. 1996). As to any sanction that may be subject to the statute of limitations, acts outside the statute of limitations may be considered to establish a respondent's motive, intent, or knowledge in committing violations that are within the statute of limitations. *Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *41 n.47 (Nov. 30, 1998) (citing Fed. R. Evid. 404(b) and *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411 (1960)), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000); *Terry T. Steen*, Exchange Act Release No. 40055, 1998 SEC LEXIS 1033, at *14-15 (June 1, 1998) (citing *H.P. Lambert Co. v. Sec'y of the Treasury*, 354 F.2d 819, 822 (1st Cir. 1965)). Further, such acts may be considered in determining the appropriate sanction if violations are proven. *Steen*, 1998 SEC LEXIS 1033, at *14-17.

The OIP otherwise provides Sherman with legally sufficient notice of the allegations against him. *See Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588, at *4-5 (Nov. 2, 1959) (“We have pointed out on prior occasions that appropriate notice of proceedings is given when the respondent is sufficiently informed of the nature of the charges against him so that he may adequately prepare his defense, and that he is not entitled to a disclosure of evidence.”) The OIP contains a number of specific allegations relating to Sherman and QSGI, as described above.

Accordingly, the Motion for More Definite Statement will be denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge