

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3970/July 7, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17228

In the Matter of

DAVID S. HALL, P.C.
d/b/a THE HALL GROUP CPAs,
DAVID S. HALL, CPA,
MICHELLE L. HELTERBRAN COCHRAN, CPA,
and SUSAN A. CISNEROS

ORDER REGARDING DAVID S.
HALL'S MOTION FOR SUMMARY
DISPOSITION

The Securities and Exchange Commission issued an order instituting proceedings (OIP) in this matter on April 26, 2016. On July 1, 2016, Respondents David S. Hall, P.C. d/b/a The Hall Group CPAs, and David S. Hall, CPA (collectively, Hall), filed a motion for summary disposition.

Hall argues that this proceeding is barred by collateral estoppel (issue preclusion) and res judicata (claim preclusion), based on *The Hall Group, CPAs and David S. Hall, CPA*, PCAOB Release No. 105-2016-015 (Apr. 26, 2016) (PCAOB Order) (available at <https://pcaobus.org/Enforcement/Decisions/Documents/105-2016-015-Hall.pdf> (last accessed July 7, 2016)). See Motion at 1-3, 14. The PCAOB Order, of which I take official notice, was the result of a settled proceeding, the substantive findings of which Hall neither admitted nor denied. See PCAOB Order at 2; 17 C.F.R. § 201.323. The PCAOB Order found that Hall violated certain PCAOB rules and auditing standards in connection with the audits of three issuers in 2012 and 2013. See PCAOB Order at 3. The PCAOB therefore ordered a censure against both Respondents, a three-year associational bar as to David S. Hall, CPA, a three-year registration revocation as to The Hall Group, CPAs, and a civil penalty of \$10,000. See *id.* at 14-15.

Collateral estoppel bars relitigation of an issue actually litigated and resolved in a valid court determination essential to a prior judgment, even if the issue arises in a different claim. See *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). Collateral estoppel requires proof that: (1) the issue at stake was identical to the one involved in the prior action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that earlier action. See *RecoverEdge L.P. v. Pentecost*, 44 F.3d 1284, 1290 (5th Cir. 1995). Issues resolved by consent typically are not presented to a court to be “actually litigated and determined,” or made a necessary part of the judgment. *I.A.M. Nat'l*

Pension Fund, Benefit Plan A v. Indus. Gear Mfg. Co., 723 F.2d 944, 949 (D.C. Cir. 1978). There are exceptions, such as follow-on Commission enforcement actions based upon consent judgments, where the judgments “unambiguously bar[] [the respondent] from making any future challenge to the allegations in the complaint.” See *Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014). But in general, consent judgments are not accorded collateral estoppel effect in either the United States Court of Appeals for the Fifth Circuit or the United States Court of Appeals for the District of Columbia Circuit. See *Amador Cty. v. Salazar*, 640 F.3d 373, 384 (D.C. Cir. 2011); *Avondale Shipyards, Inc. v. Insured Lloyd’s*, 786 F.2d 1265, 1272 (5th Cir. 1986) (citing *Kaspar Wire Works, Inc. v. Leco Eng’g & Mach., Inc.*, 575 F.2d 530, 539 (5th Cir. 1978)); *I.A.M. Nat. Pension Fund*, 723 F.2d at 949.

The PCAOB Order was unquestionably entered by consent, and Hall’s contention that “[t]he issues were actually litigated” is patently wrong. See PCAOB Order at 2; Motion at 12. Nor does the PCAOB Order unambiguously bar Hall from making any future challenge to its findings in non-PCAOB proceedings. See PCAOB Order at 2. Therefore, no aspect of the present proceeding is barred by collateral estoppel, and there is no need for further briefing on the issue.

Whether res judicata applies here is a more difficult question. “Res judicata bars litigation of any claim for relief that was available in a prior suit between the parties or their privies, whether or not the claim was actually litigated.” See *Gordon Brent Pierce*, Securities Act of 1933 Release No. 9555, 2014 WL 896757, at *9 (Mar. 7, 2014) (internal quotation marks omitted), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015). Res judicata requires proof of: (1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits. See *id.*; see also *Russell v. SunAmerica Sec., Inc.*, 962 F.2d 1169, 1172-73 (5th Cir. 1992) (adding requirement that the prior judgment must have been rendered by a court of competent jurisdiction). There is overlap in the underlying transactions, although the OIP encompasses sixteen audits and thirty-five engagement quality reviews rather than just the three audits and reviews described in the PCAOB Order. See OIP at 12-14. Moreover, privity between the PCAOB and the Commission in this context appears to be a question of first impression. See Motion at 5-9; *cf. Jones v. SEC*, 115 F.3d 1173, 1180-81 (4th Cir. 1997) (Commission and NASD, FINRA’s predecessor, are not in privity for res judicata purposes). Resolution of Hall’s res judicata argument would benefit from full briefing.

It is therefore ORDERED that the motion for summary disposition filed by Respondents David S. Hall, P.C. d/b/a The Hall Group CPAs, and David S. Hall, CPA, is DENIED IN PART as outlined above. The Division’s response to the motion need only address res judicata.

Cameron Elliot
Administrative Law Judge