INITIAL DECISION RELEASE NO. 504
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15012

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

In the Matter of	:	
	:	
S. W. HATFIELD, CPA, and	:	INITIAL DECISION
SCOTT W. HATFIELD, CPA	:	September 10, 2013

APPEARANCES: Jessica B. Magee and Toby M. Galloway for the Division of Enforcement, Securities and Exchange Commission

Jeffrey J. Ansley of Bell Nunnally & Martin LLP for Respondents S.W. Hatfield, CPA, and Scott W. Hatfield, CPA

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision dismisses fraud charges brought against S.W. Hatfield, CPA (SWH), and Scott W. Hatfield, CPA (Hatfield) (collectively, Respondents). The charges concerned Respondents' audit reports that were included in public corporations' filings with the Securities and Exchange Commission (Commission) during a period when SWH's state license had expired and had not yet been renewed.

I. INTRODUCTION

A. Procedural Background

The Commission instituted this proceeding with a November 15, 2012, Corrected Order Instituting Proceedings (OIP), pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (Exchange Act) and Rule 102(e) of the Commission's Rules of Practice (Rule 102(e)). The undersigned granted the parties leave to file motions for summary disposition at a January 7, 2013, prehearing conference, pursuant to 17 C.F.R. § 201.250(a). S.W. Hatfield, CPA, Admin. Proc. No. 3-15012 (A.L.J. Jan. 7, 2013) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on January 31, 2013. Respondents filed an Opposition on March 5, 2013, and the Division, a Reply on March 12, 2013. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's Motion for Summary Disposition; (2) Respondents' Opposition; (3) the Division's Reply; and (4) Respondents' Answer to the OIP. There is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition, pursuant to 17 C.F.R. § 201.250(a). Any other facts in Respondents' pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Respondents violated Exchange Act Section 10(b) and Rule 10b-5 and, thus, do not "possess the requisite qualifications to represent others" within the meaning of Exchange Act Section 4C(a)(1)[1] and Rule 102(e)(1)(i) and "have willfully violated . . . any provision of the Federal securities laws" within the meaning of Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) in connection with thirty-eight SWH audit reports that twenty-one issuers included in periodic reports and registration statements filed with the Commission during a period when SWH's state license had expired and had not yet been renewed. The Division requests that Respondents be ordered to pay disgorgement of $187,222 plus prejudgment interest and second-tier civil money penalties and be denied the privilege of appearing or practicing before the Commission. Respondents argue that the alleged violations are unproven, and, in the alternative, the requested monetary remedies are unwarranted or should be reduced and a bar or suspension is unwarranted.

[1] Exchange Act Section 4C, which was added by the Public Company Accounting Reform and Investor Protection Act of 2002, known as the Sarbanes-Oxley law, codified Rule 102(e), which had been in existence for many years, and provided specific statutory authority for its provisions. Because of this history and the precedent concerning Rule 102(e), the discussion herein will cite Rule 102(e) rather than the identical provisions of Exchange Act Section 4C. "It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" CFTC v. Schor, 478 U.S. 833, 846 (1986) (citations omitted); see also Lorillard v. Pons, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change [and] where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.") (citations omitted); cf. Herman & MacLean v. Huddleston, 459 U.S. 375, 384-85 (1983) (Congress's decision to leave Section 10(b) intact while comprehensively revising the securities laws suggested that Congress ratified the well-established judicial interpretation of the implied private right of action under Section 10(b)); Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 813 (1989) ("When Congress codifies a judicially defined concept, it is presumed, absent an express statement to the contrary, that Congress intended to adopt the interpretation placed on that concept by the courts.").

II. FINDINGS OF FACT

Hatfield, licensed in Texas as a CPA since 1985, is sole proprietor of SWH, a public accounting firm based in Dallas, Texas. Answer at 1-2. During the time at issue, SWH was registered with the Public Company Accounting Oversight Board (PCAOB). Answer at 1. Since then, however, SWH's PCAOB registration has been permanently revoked and Hatfield has been permanently barred from association with a registered public accounting firm. Official notice, pursuant to 17 C.F.R. § 201.323, taken of S.W. Hatfield, C.P.A., Exchange Act Release No. 69930 (July 3, 2013).

Hatfield obtained SWH's initial license to practice as a public accounting firm from the Texas State Board of Public Accountancy (TSBA) in 1994 and renewed it annually through January 2009. Answer at 2. SWH's license expired on January 31, 2010, and was not renewed until May 19, 2011. Answer at 2. SWH issued thirty-eight audit reports during that period, as charged. Opposition at 1. These audit reports, which were titled "Report of Registered Independent Certified Public Accounting Firm," were included in periodic reports and registration statements of twenty-one issuers.[2]

III. CONCLUSIONS OF LAW

The OIP charges that Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and, thus, do not possess the requisite qualifications to represent others within the meaning of Exchange Act Section 4C(a)(1) and Rule 102(e)(1)(i) and have willfully violated the federal securities laws within the meaning of Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii). As discussed below, it is concluded that Respondents did not violate Exchange Act Section 10(b) and Rule 10b-5 and, consequently, there is no basis for sanctioning them under Rule 102(e).

A. Antifraud Provisions

Respondents are charged with violating the antifraud provisions of the Exchange Act – Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful "in connection with the purchase or sale of any security," by jurisdictional means, to:

> 1) employ any device, scheme, or artifice to defraud;
>
> 2) make any untrue statement of a material fact or any omission to state a material fact necessary to make the statement made not misleading; or

[2] Official notice is taken of the issuers' periodic reports and registration statements pertaining to the events at issue, which are in the Commission's public official records, pursuant to 17 C.F.R. § 201.323. Excerpts of the Forms are also attached to the Division's Motion for Summary Disposition as Ex. 2-F.

3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Scienter is required to establish violations of Exchange Act Section 10(b) and Rule 10b-5. Aaron v. SEC, 446 U.S. 680, 690-91, 695-97 (1980); SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992); Darvin v. Bache Halsey Stuart Shields, Inc., 479 F. Supp. 460, 464 (S.D.N.Y. 1979). It is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron, 446 U.S. at 686 n.5; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 & n.12 (1976); SEC v. Steadman, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. See SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990); David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997). Reckless conduct is "conduct which is 'highly unreasonable' and which represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Material misrepresentations and omissions violate Exchange Act Section 10(b) and Rule 10b-5. The standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); SEC v. Steadman, 967 F.2d at 643.

SWH is accountable for the actions of its responsible officers, including Hatfield. See C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977)). A company's scienter is imputed from that of the individuals controlling it. See SEC v. Blinder, Robinson & Co., 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). Thus, Hatfield's conduct and scienter are attributed to the firm.

B. Respondents Did Not Violate the Antifraud Provisions

Exchange Act Sections 12 and 13(a) and Rule 13a-1 require public corporations to file registration statements and annual reports with the Commission. Absent an exemption, Section 5 of the Securities Act of 1933 (Securities Act) requires an effective registration statement with audited financial statements before selling securities. A frequently used registration statement for domestic issuers is known as Form 10, and the annual report for domestic issuers is known as Form 10-K. Form S-1 is used by domestic issuers to register sales of securities pursuant to the Securities Act. As required by 17 C.F.R. Part 210,[3] financial statements included with these forms must be prepared in accordance with Generally Accepted Accounting Principles (GAAP)[4] and must be

[3] Part 210 of 17 C.F.R. (17 C.F.R. §§ 210.1-.12) is also known as Regulation S-X.

[4] GAAP are the basic postulates and broad principles of accounting pertaining to business enterprises. These principles establish guidelines for measuring, recording, and classifying the

audited by an independent accountant that is registered with the PCAOB. The accountant must be state-licensed and in good standing. 17 C.F.R. § 210.2-01(a).[5] While SWH was undeniably registered with the PCAOB during the time at issue, it was not state-licensed and in good standing then. Therefore, the issuers who included SWH's audit reports with their filings violated the Exchange Act and Securities Act reporting provisions, and Hatfield and SWH were secondarily liable for the violations.[6] However, there is no allegation that the audit reports or the financial statements that were the subject of the audit reports contained misrepresentations, much less that Respondents were in any way liable for misrepresentations in the reports and financial statements. Accordingly, the allegation that Respondents violated Exchange Act Section 10(b) and Rule 10b-5 is unproven.

In light of this conclusion, there is no basis for sanctioning Respondents pursuant to Rule 102(e)(1)(iii). Nor is there any basis for sanctioning them pursuant to Rule 102(e)(1)(i). To the extent that Rule 102(e)(1)(i) is referenced in any litigated case, it is associated with Rule 102(e)(1)(iii) and a respondent's having willfully violated the federal securities laws. There is no litigated case in which a respondent was sanctioned pursuant to Rule 102(e)(1)(i) alone.[7]

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transactions of a business entity. See SEC v. Arthur Young & Co., 590 F.2d 785, 789 n.4 (9th Cir. 1979).

[5] 17 C.F.R. § 210.2-01(a) provides:

> The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

[6] The discussion of Exchange Act Section 13(a) and Rule 13a-1 and Securities Act Section 5 is merely to explain the circumstances by which Respondents' audit reports were included in the issuers' filings. The OIP did not charge Respondents with violating those provisions.

[7] To the extent that settlements are cited in support of sanctioning Respondents, it goes without saying that settlements are not precedent, as the Commission has stressed many times. See Richard J. Puccio, 52 S.E.C. 1041, 1045 (1996) (citing David A. Gingras, 50 S.E.C. 1286, 1294 (1992), and cases cited therein); Robert F. Lynch, 46 S.E.C. 5, 10 n.17 (1975) (citing Samuel H. Sloan, 45 S.E.C. 734, 739 n.24 (1975); Haight & Co. Inc., 44 S.E.C. 481, 512-13 (1971), aff'd without opinion, (D.C. Cir. 1971); Security Planners Assocs., Inc., 44 S.E.C. 738, 743-44 (1971)); see also Mich. Dep't of Natural Res. v. FERC, 96 F.3d 1482, 1490 (D.C. Cir. 1996) and cases cited therein (settlements are not precedent). Indeed, all Commission settlement orders contain disclaimers to this effect: "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."

IV. ULTIMATE CONCLUSIONS

It is concluded that SWH and Hatfield did not violate Exchange Act Section 10(b) and Rule 10b-5 thereunder, and consequently, there is no basis to sanction them pursuant to Exchange Act Section 4C(a)(1), (3) and Rule 102(e)(1)(i), (iii). Accordingly, the proceeding will be dismissed as to both Respondents.

V. ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that this administrative proceeding IS DISMISSED as to S.W. Hatfield, CPA, and Scott W. Hatfield, CPA.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge