

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2826 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA,
TIMOTHY W. CARNAHAN, AND
CYIOS CORPORATION

ORDER DENYING CERTIFICATION OF
RULING FOR INTERLOCUTORY REVIEW

The Securities and Exchange Commission instituted this proceeding on February 13, 2015. On June 9, I granted, in part, the Division of Enforcement's motion for summary disposition, denied Respondents' motion, and directed the parties to confer regarding a hearing date in August 2015. *See Traci J. Anderson, CPA*, Admin. Proc. Rulings Release No. 2786, 2015 SEC LEXIS 2280. Respondents now move to certify the June 9 Order to the Commission for interlocutory review.

Standard for Certification

"A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the ruling involved." 17 C.F.R. § 201.400(c). "The hearing officer shall not certify a ruling unless," as relevant here, "(i) [t]he ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and (ii) [a]n immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. § 201.400(c)(2).

Discussion

In their motion, Respondents reargue their position that Traci Anderson (Anderson) did not violate Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002. Based on their interpretation of the relevant statutory provision, they assert that the PCAOB's associational bar against Anderson does not prelude her from working for CYIOS Corp., an issuer, because she "isn't working in the capacity of [a] PCAOB auditor" and is not working for a registered public accounting firm. Motion at 3.

However, as explained in the June 9 Order:

It is unlawful under Sarbanes-Oxley Section 105(c)(7) for a person subject to such an associational bar not only to willfully associate with a registered public accounting firm, but also to willfully associate with “any issuer . . . in an accountancy or a financial management capacity” without the consent of the PCAOB or the Commission. It is also unlawful under Sarbanes-Oxley Section 105(c)(7)(B) for an issuer to permit a person subject to the PCAOB’s associational bar to associate with the issuer in an accountancy or financial management capacity, without the consent of the PCAOB or the Commission, if the issuer “knew, or in the exercise of reasonable care, should have known” of the associational bar.

Traci J. Anderson, CPA, 2015 SEC LEXIS 2280, at *8-9 (internal citations omitted). As further explained, Respondents’ interpretation to the contrary is “plainly incorrect because it reads the issuer associational bar, as distinct from the registered public accounting firm associational bar, entirely out of the statute.” *Id.* at *10-11. “Thus, the undisputed fact that Anderson ‘performs ‘ZERO’ percent in conjunction with the preparation or furnishing of an audit report’ is beside the point.” *Id.* at *11.

To support their disagreement with this ruling, Respondents quote an October 2013 news release from the PCAOB, in which it announced a \$2 million settlement against Deloitte & Touche for permitting a suspended auditor to participate in the firm’s public company audit practice, in violation of the Sarbanes-Oxley Act and PCAOB rules. *See PCAOB Announces Settled Disciplinary Order against Deloitte & Touche for Permitting Suspended Auditor to Participate in Firm’s Public Company Audit Practice* (Oct. 22, 2013), available at http://pcaobus.org/News/Releases/Pages/10222013_Deloitte.aspx.¹ The relevant part of the PCAOB release reads:

The Board found that, in anticipation of the PCAOB suspension, the partner was made a salaried Director and transferred to an audit group in the firm’s National Office. After his transfer, Deloitte permitted the suspended auditor to become or remain an “associated person” by engaging in activities in connection with the preparation or issuance of public company audit reports.

Deloitte knew of the suspension order, but permitted these activities to take place without the consent of the Board or the Securities and Exchange Commission. These activities included work on developing firm-wide policies and audit guidance, as well as participation in three National Office consultations with public company audit engagement teams.

¹ Respondents do not provide the full text of the news release, but based on their quoted language and reference to PCAOB Release No. 105-2013-008, the underlying order discussed in the release, I take official notice of the news release on the PCAOB’s website. *See* 17 C.F.R. § 201.323; *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *25 n.33 (Dec. 5, 2014).

“The Act and the Board’s rules specifically prohibit registered firms from allowing suspended or barred auditors from participating in the firm’s issuer audit practice,” said Claudius B. Modesti, Director of the PCAOB Division of Enforcement and Investigations.

Id.

The PCAOB’s conclusion that a suspended auditor should not have been permitted to participate in a public accounting firm’s audit practice does not mean, as Respondents suggest, that the associational bar extends to only audit work. The PCAOB simply did not address the issuer associational bar, nor would it have as the cited PCAOB matter involved misconduct by a public accounting firm. The issuer associational bar is not limited to audit work or public accounting firms, but prohibits association with an issuer “in an accountancy or a financial management capacity.” 15 U.S.C. § 7215(c)(7)(B).

In summary, although Respondents identify a controlling question of law as to Anderson, they present no authority or persuasive argument establishing that there is “substantial ground for difference of opinion” on it. 17 C.F.R. § 201.400(c)(2). For the same reason, Respondents’ argument that interlocutory review will materially advance the proceeding – that reversal is likely – is not meritorious. Motion at 4.

Order

Accordingly, it is ORDERED that Respondents’ motion to certify the June 9 Order for interlocutory review is DENIED.

Cameron Elliot
Administrative Law Judge