

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74208 / February 4, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3626 / February 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16375

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	:	
In the Matter of	:	
	:	ORDER INSTITUTING ADMINISTRATIVE
STEVEN NEIL, CPA,	:	PROCEEDINGS PURSUANT TO RULE
	:	102(e) OF THE COMMISSION’S RULES OF
Respondent.	:	PRACTICE, MAKING FINDINGS, AND
	:	IMPOSING REMEDIAL SANCTIONS
	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Steven Neil (“Respondent” or “Neil”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Neil, age 62, is and has been a certified public accountant licensed to practice in the State of California. He served as Chief Financial and Administrative Officer of Diamond Foods, Inc. ("Diamond"), from 2008 until he was placed on administrative leave in February 2012 and terminated from his position in November 2012. Neil's California license is currently inactive.

2. Diamond was, at all relevant times, a Delaware corporation with its principal place of business in San Francisco, California. Diamond was engaged in the business of producing and selling packaged foods, including walnuts. At all relevant times, Diamond's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the NASDAQ National Market.

3. On January 9, 2014, the Commission filed a complaint against Neil in SEC v. Steven Neil (N.D. Cal. Civil Action No. 14-cv-122). On February 2, 2015, the court entered an order permanently enjoining Neil, by consent, from future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder, and Section 17(a) of the Securities Act of 1933. Neil was also ordered to pay a \$125,000.00 civil money penalty, and prohibited for five years from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

4. According to the Commission's complaint, Neil directed an effort to fraudulently underreport money paid to walnut growers by delaying the recording of payments into later fiscal periods. By manipulating walnut costs, Diamond correspondingly reported higher net income and inflated earnings to exceed analysts' estimates for fiscal quarters in 2010 and 2011. After Diamond restated its financial results in November 2012 to reflect the true costs of acquiring walnuts, the company's stock price slid to just \$17 per share from a high of \$90 per share in 2011.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Neil's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Neil is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Brent J. Fields
Secretary