

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74233 / February 9, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3633 / February 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-13722

In the Matter of :
Mark V. Sever, CPA : ORDER GRANTING APPLICATION FOR
: REINSTATEMENT TO APPEAR AND PRACTICE
: BEFORE THE COMMISSION AS AN ACCOUNTANT

On December 17, 2009, Mark V. Sever, CPA (“Sever”) was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Sever pursuant to Section 4C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.¹ This order is issued in response to Sever’s application for reinstatement to practice before the Commission as an accountant.

From 1997 through the third quarter of 2001, Sever was a Professional Practice Director in Ernst & Young LLP’s (“E&Y”) National Office, and served as the Independent Review Partner for E&Y’s audits of Bally Total Fitness Holding Corporation’s (“Bally”) financial statements. Then, as the National Director of Area Professional Practice, Sever remained involved with Bally’s 2001-2003 audits. In connection with Bally’s 2001-2003 financial statements, Bally engaged in fraudulent financial accounting and, further, made false and misleading disclosures regarding a \$55 million special charge in its 2002 Form 10-K. During the relevant period, the Commission found that Sever knew or should have known that E&Y’s unqualified audit opinions regarding Bally’s 2001-2003 financial statements, which stated that E&Y had conducted its audits in accordance with auditing standards generally accepted in the United States (“GAAS”) and that Bally’s financial statements were presented in conformity with accounting principles generally accepted in the United States (“GAAP”), were false because E&Y’s audits of Bally’s financial statements were not performed in accordance with GAAS and

¹ See Accounting and Auditing Enforcement Release No. 3084 dated December 17, 2009. Sever was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

Bally's financial statements were not presented in conformity with GAAP. As a result of Sever's conduct relating to the false and misleading audit opinions, the Commission found that Sever was a cause of Bally's violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 and was a cause of and willfully aided and abetted Bally's violations of Sections 13(a) and 13(b)(2)(A) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. The Commission further found that Sever was a cause of E&Y's violation of Section 10A(b) of the Exchange Act.

Sever has met all of the conditions set forth in the original order and, in his capacity as an independent accountant, has stated that he will comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to all requirements relating to registration, inspections, concurring partner reviews and quality control standards. In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Sever attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."² This "good cause" determination is necessarily highly fact specific.

On the basis of the information supplied, representations made, and undertakings agreed to by Sever, it appears that he has complied with the terms of the December 17, 2009 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Sever, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, and that Sever, by undertaking to comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards, in his practice before the Commission as an independent accountant has shown good cause for reinstatement. Therefore, it is accordingly,

² Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Mark V. Sever, CPA is hereby reinstated to appear and practice before the Commission as an accountant.

By the Commission.

Brent J. Fields
Secretary