

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88731 / April 22, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4130 / April 22, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-16212; 3-17180

	: ORDER GRANTING APPLICATION FOR : REINSTATEMENT TO APPEAR AND PRACTICE : BEFORE THE COMMISSION AS AN ACCOUNTANT : RESPONSIBLE FOR THE PREPARATION OR : REVIEW OF FINANCIAL STATEMENTS REQUIRED : TO BE FILED WITH THE COMMISSION
In the Matter of Elliot R. Berman, CPA	

On October 24, 2014, the Commission issued an order denying Elliot R. Berman, CPA (“Berman”) the privilege of appearing or practicing before the Commission as an accountant as a result of settled administrative proceedings instituted by the Commission against him pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.¹ On January 3, 2017, the Commission issued a second order denying Berman the privilege of appearing or practicing before the Commission as an accountant as a result of separate settled administrative proceedings instituted by the Commission against him pursuant to Rules 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice.² This order is issued in response to Berman’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

With respect to the 2014 order, the Commission found that Berman willfully violated Section 10A(j) of the Securities Exchange Act of 1934, willfully aided and abetted and caused violations of Rule 2-02 of Regulation S-X, caused violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, and engaged in improper professional conduct. The Commission’s findings related to Berman’s putative appointment of an unqualified person as lead partner of an audit engagement while Berman continued to provide the services of a lead partner for the same engagement for more than five consecutive years.

¹ See Accounting and Auditing Enforcement Release No. 3592 dated October 24, 2014. Berman was permitted, pursuant to the order, to apply for reinstatement after one year upon making certain showings.

² See Exchange Act Release No.79723 January 3, 2017. Berman was permitted, pursuant to that order, to apply for reinstatement after two years upon making certain showings.

With respect to the 2017 order, the Commission found that Berman willfully aided and abetted and caused violations of Rule 2-02(b)(1) of Regulation S-X, Section 13(a) of the Exchange Act, and Rule 13a-1 thereunder and engaged in improper professional conduct. The Commission's findings related to Berman's failures to adhere to Public Company Accounting Oversight Board audit standards with respect to the 2010 and 2011 audits of MusclePharm Corporation by Berman & Company, P.A., while also causing Berman & Company, P.A. to lack independence from MusclePharm Corporation during the same period.

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, Berman 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. Berman is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension orders in this regard. Therefore, Berman's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension orders.

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."³ This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Berman, it appears that he has complied with the terms of the October 24, 2014 and January 3, 2017 orders 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 Berman, 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, has shown good cause for reinstatement. Therefore, it is accordingly,

³ 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 rule 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 Elliot R. Berman, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Vanessa A. Countryman
Secretary