

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88896 / May 18, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4142 / May 18, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19804

In the Matter of

MICHAEL BELLACH, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE 102(e)
OF THE COMMISSION’S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Michael Bellach, CPA (“Respondent” or “Bellach”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found to be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the 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, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

SUMMARY

1. This matter involves misconduct by a now-former KPMG audit partner in connection with an examination on an internally-administered training course. The purpose of the examination was to test whether KPMG audit professionals understood certain accounting and auditing principles. In late 2018, the former audit partner, Michael Bellach, sent pictures of questions and answers to the examination that he had failed to a colleague, a now-former lead audit engagement partner on one of Bellach’s engagements, at the lead partner’s request.

2. After learning of KPMG’s internal investigation of its audit professionals’ cheating on internal training exams, the lead partner encouraged Bellach to delete his text messages with the lead partner in which Bellach had relayed the questions and answers to the exam. Bellach did so after receiving a notice from the firm requiring him to preserve them.

3. Bellach is required, both by the rules of the Public Company Accounting Oversight Board (“PCAOB”) and by the Code of Professional Conduct of the American Institute of Certified Public Accountants (“AICPA”), to act with integrity in connection with performing professional

Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

services.⁴ Certified public accountants are required to “be, among other things, honest and candid within the constraints of client confidentiality.”⁵ Additionally, Bellach is prohibited from committing acts “discreditable to the profession.”⁶ By the misconduct described herein, Bellach failed to meet these standards.

RESPONDENT

4. Michael Bellach, 45, of New York, New York was a partner in KPMG’s audit practice until March 2019. Bellach is licensed as a CPA in Connecticut and New York.

OTHER RELEVANT PERSON AND ENTITY

5. Timothy Daly, 53, of Weston, Connecticut was a partner in KPMG’s audit practice until March 2019. Daly is licensed as a CPA in New York and was previously licensed in Connecticut. The Commission has charged Daly for his role in the misconduct described in this Order.

6. KPMG LLP is a Delaware limited liability partnership and PCAOB-registered accounting firm. Headquartered in New York, New York, KPMG is the U.S. member firm of KPMG International Cooperative, a Swiss entity.

FACTS

A. Professional Education Requirements for KPMG Auditor Personnel

7. As an accountant licensed in Connecticut and New York, Bellach was required to complete a minimum number of continuing professional education (“CPE”) courses. KPMG requires its audit professionals, including Bellach, to complete additional training in excess of state requirements and to take examinations generally not mandated by state accountancy boards. These training requirements vary by position, role, and industry, and are designed by the firm to be relevant to the audit work its professionals are performing.

8. To help its audit professionals satisfy these requirements, KPMG administers its own set of online training programs that also qualify for CPE credit. KPMG requires its auditors to pass an examination at the conclusion of each online training program. Audit professionals are given three opportunities to pass each examination. If one of KPMG’s audit professionals is

⁴ PCAOB Rule 3500T requires Bellach to maintain integrity when performing any professional service in connection with the preparation or issuance of any audit report. As an AICPA member, Bellach is required to comply with the AICPA’s Code of Professional Conduct, which requires him to maintain integrity in connection with all professional services.

⁵ See “Principles of Professional Conduct,” ET Section 54 (available at <https://www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2011June1CodeOfProfessionalConduct.pdf>). Codified as AICPA Code 0.300.040.

⁶ AICPA Code of Professional Conduct 1.400.001 (“Acts Discreditable Rule”).

unable to pass after two attempts, their Performance Management Leader is notified. If they are unable to pass after three attempts, the consequences are more significant: they are required to re-take the training; they are prohibited from conducting audit work until they pass the exam; and others at the firm may be notified. Audit professionals also understood that failing to pass an exam could lead to their compensation being reduced.

B. Daly Solicits Test Answers from Bellach

9. In 2017 Daly, as lead partner on a significant KPMG engagement, added Bellach as the second partner on the audit. By late summer 2018, Bellach understood that Daly intended to recommend Bellach become lead audit engagement partner when Daly rotated off the engagement.

10. In the fall of 2018, KPMG required its audit staff to complete trainings and exams related to a new lease accounting standard. In late September, in response to Daly asking about his progress on the KPMG lease testing, Bellach told Daly he had completed the last lease exam, and it was difficult. Bellach also told Daly he had pictures of the questions and his responses that he had taken after he failed his first attempt for his own use in preparing to retake the exam. In early October, Daly sent Bellach a text message asking for the photographs of the failed lease exam, and Bellach texted the images back to Daly.

C. Daly Encourages Bellach to Delete the Text Containing the Test Photos

11. After learning of potential cheating on internal training exams, KPMG leadership began an internal investigation. The firm's Board of Directors then formed a Special Committee led by an independent board member to oversee an investigation of this conduct.

12. As part of its investigation, KPMG's Office of General Counsel emailed an "Urgent Request" to all KPMG personnel to preserve all documents related to KPMG's training requirements or training sessions. The November 1, 2018 email emphasized the importance of "strict compliance" with the document preservation order, cautioning that failure to comply could expose individuals and the firm to serious consequences.

13. After receiving the November 1 document preservation notice, Daly deleted the text message and photos of the failed lease exam Bellach had sent him and encouraged Bellach to do the same. After repeated inquiries from Daly, Bellach also deleted the texts with Daly, but not the pictures of the exam. Bellach later told counsel representing the Special Committee overseeing KPMG's internal investigation about his deletion of the text.

VIOLATIONS

14. As a result of the conduct described above, Bellach willfully⁷ violated PCAOB Rule 3500T, which requires Bellach to comply with ethics standards, including to maintain integrity, as described in the AICPA's Code of Professional Conduct when performing any professional service in connection with the preparation or issuance of any audit report,⁸ within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

15. The AICPA Code of Professional Conduct requires that a member not commit any act discreditable to the profession. AICPA Code of Professional Conduct 1.400.001. As a result of the conduct described above, Bellach failed to comply with AICPA Code of Professional Conduct 1.400.001 within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

FINDINGS

16. Based on the foregoing, the Commission finds that Bellach willfully violated PCAOB Rule 3500T within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

17. Based on the foregoing, the Commission finds a basis to impose remedies against Bellach pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, because Bellach engaged in conduct within their purview. Those provisions allow the Commission to impose remedies when a person has been found to have engaged in conduct "lacking in character or integrity or [has] engaged in unethical or improper professional conduct."

⁷ "Willfully," for purposes of imposing relief under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

⁸ The rule requires auditors to comply with the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003. Although PCAOB Rule 3500T references the AICPA Code as in existence on April 16, 2003, the definition of integrity remains identical to the current definitions in the Code of Professional Conduct promulgated by the AICPA and applicable to current members of the AICPA.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Bellach's Offer.

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

A. Bellach shall cease and desist from committing or causing any violations and any future violations of PCAOB Rule 3500T.

B. Bellach is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After two years from the date of this order, Bellach 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Bellach's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Bellach, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

- (b) Bellach, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB 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 Bellach will not receive appropriate supervision;
- (c) Bellach has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and
- (d) Bellach acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Bellach 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 Bellach's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

By the Commission.

Vanessa A. Countryman
Secretary