

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91186 / February 23, 2021

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4205 / February 23, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20230

In the Matter of

JENNIFER M. STEWART, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF
1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF
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 Jennifer M. Stewart ("Stewart" or "Respondent") pursuant to Section 4C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

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 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 them and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order, as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds¹ that:

A. SUMMARY

1. Starting as early as 2013, the College of New Rochelle (the "College") began experiencing considerable financial challenges resulting from declining student enrollment and decreasing tuition revenues. During fiscal year 2015, the College's then current Controller, Keith Borge ("Borge"), engaged in a fraudulent scheme that involved numerous fraudulent misrepresentations and omissions in order to conceal the College's financial challenges.

2. KPMG LLP ("KPMG") was the College's independent auditor during the relevant period. For fiscal year 2015, Stewart was the engagement manager assigned to the College's audit. In that capacity, Stewart failed to comply with American Institute of Certified Public Accountants ("AICPA") auditing standards ("AICPA Standards") during the College's fiscal year 2015 audit. Specifically, Stewart's violations of the auditing standards stemmed from her failures to: (1) obtain sufficient appropriate audit evidence; (2) properly prepare audit documentation; (3) properly examine journal entries for evidence of fraud due to management override; (4) adequately assess the risk of material misstatement; and, (5) exercise due professional care and professional skepticism. These numerous and pervasive audit failures significantly reduced the audit team's ability to detect Borge's fraud.

3. Notwithstanding these audit failures, Stewart authorized, and the engagement partner provided final approval for, the issuance of an audit report for fiscal year 2015 stating that the audit was performed in accordance with generally accepted auditing standards² ("GAAS"). This statement was false in that the audit was not performed in accordance with GAAS.

4. Pursuant to a 1999 bond offering, the College was contractually obligated to provide annual continuing disclosure information to investors, including audited financial statements. Stewart should have known that the audit report, along with the College's fiscal year 2015 financial statements, would be submitted to the Municipal Securities Rulemaking Board ("MSRB") for posting in its Electronic Municipal Market Access ("EMMA") system pursuant to the College's annual continuing disclosure requirements.

¹ The findings herein are made pursuant to the Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Generally accepted auditing standards for audits of entities not subject to the oversight authority of the Public Company Accounting Oversight Board (PCAOB) are promulgated by the AICPA.

B. RESPONDENT

5. **Jennifer M. Stewart**, age 34, of North Hempstead, New York, is a Certified Public Accountant (“CPA”) licensed to practice in New York. Stewart began her employment at KPMG in 2008 as an Associate and was subsequently promoted to Senior Associate in 2010, Manager in 2013 and Senior Manager in 2015. Stewart’s employment with KPMG ended in March 2020. Stewart served as the KPMG engagement manager on, and authorized the issuance of the audit report for, the College’s fiscal year 2015 audit engagement. Stewart also served as the KPMG engagement manager on the College’s audit engagements for fiscal years 2013 and 2014.

C. OTHER RELEVANT ENTITIES

6. **KPMG LLP** is a Delaware limited liability partnership headquartered in New York City. KPMG is registered with the PCAOB and is the U.S. member firm of the KPMG global network of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. KPMG was the College’s auditor for fiscal year 2015.

7. **The College of New Rochelle** was a private, not-for-profit education corporation based in New Rochelle, New York, with additional locations in New York City. The College ceased operations and filed for bankruptcy in September 2019 as a result of its financial challenges.

8. **Keith Borge**, age 64, of Brooklyn, New York, served as Controller of the College during fiscal year 2015 and began employment with the College in 1979 as Assistant Controller. Borge was responsible for perpetrating the fraud described herein. Borge pled guilty to criminal securities fraud charges on March 28, 2019 and is currently serving a 3-year sentence in federal prison. On the same day the SEC filed a complaint in the U.S. District Court for the Southern District of New York against Borge which was subsequently settled on July 2, 2019.

D. FACTS

Borge’s Fraud

9. Starting as early as spring 2013, the College began experiencing financial challenges resulting from decreases in student enrollment and tuition revenues. To bridge the increasing gap between the College’s revenues and expenses, Borge began using funds in the College’s endowment to pay for operating expenses. The consumption of these funds resulted in a rapid decrease in the College’s net assets, from approximately \$30.5 million at the conclusion of fiscal year 2012 to negative \$8.8 million at the conclusion of fiscal year 2015³.

10. In order to conceal the precipitous decline in the College’s net assets, Borge engaged in a fraudulent scheme, the result of which overstated assets and understated liabilities of the College. For example, Borge intentionally withheld payroll tax remittances from federal, state and local authorities starting as early as fiscal year 2013. However, instead of reporting the payroll tax liabilities in the College’s financial statements, Borge recorded a series of improper and

³ The College’s fiscal year ended on June 30.

unsupported journal entries, which concealed the payroll tax liabilities in the College's general ledger and financial statements. Borge also hid numerous past due vendor invoices in his office, thereby preventing them from being recorded in the College's financial statements, and allowed receivables to be reported at inflated values.

11. As a result of Borge's fraud, the College's fiscal year 2015 net assets were overstated by \$33.8 million, an overstatement which impacted virtually every amount reported on the College's balance sheet.

KPMG's Audit of the College's Fiscal Year 2015 Financial Statements

12. KPMG performed the College's financial statement audits during the relevant period culminating with the fiscal year 2015 engagement. Stewart was the engagement manager for the fiscal year 2015 audit responsible for the day-to-day supervision of the audit team and executing the audit plan, with a focus on completing work papers and resolving open items. Stewart was a member of KPMG's Higher Education, Research and Other Not-For-Profit ("HERON") dedicated practice group and had extensive experience auditing higher education and not-for-profit entities.

13. In the spring of 2015, the KPMG audit team assigned to complete the College's 2015 audit, including Stewart, met with the College's management team and presented the audit plan to the College's Audit Committee. KPMG's presentation to the Audit Committee included, among other things, an audit timeline with fieldwork scheduled to begin in August 2015 and an expected audit report issuance date of September 2015.

14. Almost from inception, the KPMG audit team encountered significant challenges primarily due to Borge's untimely and inaccurate responses to the requests of the audit team. First, when the audit team arrived to begin fieldwork in August 2015 they discovered large amounts of information which was scheduled to be available, including the critical trial balance, was not yet ready. In addition, the information that the College was able to provide, such as supporting documentation for the College's investment balances, contained reconciling issues and contradictions.

15. The significant challenges encountered by the audit team worsened as the audit progressed. For example, the reconciling issues with the College's investment balances continued to persist even after Stewart and the KPMG engagement partner unsuccessfully attempted to resolve the issue. In other instances Borge, who was the audit team's primary contact at the College, took extended periods of leave during critical times in the audit leaving audit team members without the information necessary to complete the audit.

16. On September 24, 2015, the KPMG engagement partner discussed a draft of the College's fiscal year 2015 financial statements with the Audit Committee. Included in the presentation was a slide explaining that there were still open items and questions that needed to be addressed prior to KPMG's issuance of the audit report. Following the Audit Committee

presentation, Borge failed to provide the audit team with a timely response to the open items and questions and, as a result, work on the audit stalled.

17. The significant challenges related to Borge's untimely and inaccurate responses continued throughout October and November 2015. The challenges to complete the audit became so significant and pervasive throughout October and November 2015 that audit team members sent emails to Stewart that Borge "just makes up numbers from his head" and that the financial statements "are never going to get issued because [Borge] doesn't care." Stewart concluded that these comments were not serious, but failed to communicate the audit team's escalating concerns to the engagement partner.

18. Despite the fact that he had not met the audit team's requests for information, on November 30, 2015, Borge emailed Stewart notifying her that the College had a deadline to provide its audited financial statements to its bank and that the College needed KPMG to issue the audit report that day. In response, Stewart informed Borge that the audit team was still waiting on open items and questions and that the financial statements needed to be reviewed by the engagement partner. Stewart also suggested that they schedule a time the following day to resolve the outstanding issues.

19. Also during the morning of November 30, 2015, the engagement partner received a telephone voicemail from the President of the College informing him of the bank deadline and the need for KPMG to issue the College's audit report that day. Following receipt of that voicemail, the engagement partner approached Stewart to ask her what needed to be done in order for KPMG to issue its audit report. During the next few hours Stewart and the engagement partner reviewed the outstanding open items and unanswered questions and unreasonably concluded that none of the outstanding items or questions should prevent KPMG from issuing its audit report. As a result, KPMG issued its audit report containing an unmodified audit opinion on the College's fiscal year 2015 financial statements by mid-afternoon on November 30, 2015.

20. Although KPMG issued its audit report on November 30, 2015, the audit evidence at that time was not sufficient to support the audit opinion. The audit team, under Stewart's supervision, failed to verify the existence of assets or the completeness of liabilities. In addition, KPMG's electronic work paper repository (the "eAudit file") did not contain any indication that approximately a third of the work papers had been prepared or reviewed as of November 30, 2015.

21. KPMG's work on the College's financial statement audit continued through January 2016. One audit team member spent 2 ½ days in December 2015 unsuccessfully trying to locate work papers and address open items and questions. In early January 2016, a new senior associate was assigned to take over the responsibility to clean-up the audit file but was also unable to locate all of the missing work papers or address all of the open items and questions. Four business days before the audit file was required to be closed pursuant to KPMG policies, the new senior associate emailed Stewart a list of 39 open items as well as 81 additional work papers that required Stewart's review. Stewart then marked the work papers as "reviewed" and closed the audit file on the last day.

22. A few months after the College's audit file was closed, the new senior associate exchanged text messages with Stewart concerning an unrelated audit, saying "at least they are close to truly done too, and not fake done like the . . . CNR audit." In November 2016, after Borge's fraud was discovered, KPMG withdrew its audit opinion on the College's FY15 financial statements.

Failure to Obtain Sufficient Appropriate Audit Evidence

23. GAAS require that auditors should design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence (AU-C §500). Stewart failed to obtain sufficient appropriate audit evidence during the College's fiscal year 2015 audit in multiple areas.

24. For instance, Stewart failed to obtain sufficient appropriate audit evidence to support the College's investment balances. During fieldwork the audit team identified reconciling issues where investment schedules provided by Borge did not tie to the College's brokerage statements or the financial statements. In response, Borge informed the audit team that the reconciling issues were probably due to trades in transit at fiscal year-end. However, the audit team, under Stewart's supervision, was never able to successfully reconcile nor did it perform alternative procedures to substantiate the College's investment balances reported in the College's financial statements.

25. Stewart also failed to obtain sufficient appropriate audit evidence to confirm the completeness of the College's accounts payable balance. The College's accounts payable balance decreased by 59% in fiscal year 2015. This was due to Borge fraudulently preventing vendor invoices from being recorded in the College's accounts payable system. Despite this decrease, the audit team determined the risk of material misstatement for the College's accounts payables to be low, based on its conclusion that "there was very little, if any, change to the characteristics of the account compared to the prior year." As a result, the audit team's ability to detect the fact that Borge was withholding vendor invoices was significantly reduced.

26. Finally, Stewart failed to obtain sufficient appropriate audit evidence to support the College's other accounts receivable balance. Notwithstanding annual increases in the College's other accounts receivable balance going back multiple years, KPMG did not test any of the other accounts receivable to verify its existence during the fiscal year 2015 audit. Instead, KPMG's work papers document that \$3.9 million of other accounts receivable had been tested in prior years (some of which dated back to fiscal year 2011) and that the audit team passed on testing the remaining \$1.8 million because the amount was below the performance materiality threshold. It was later determined that supporting documentation for most of the College's \$5.7 million other accounts receivable reported in fiscal year 2015 did not exist.

Failure to Properly Prepare Audit Documentation

27. GAAS require that the auditor should prepare audit documentation on a timely basis. An auditor is required to prepare audit documentation that is sufficient to enable an

experienced auditor, having no previous connection with the audit, to understand the nature, timing, and extent of the audit procedures performed, the results of the procedures performed, the audit evidence obtained and conclusions reached, who performed and reviewed the work and the date such work was completed (AU-C §230). Finally, AICPA Standards require the auditor's opinion to be in written form and dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that the audit documentation has been reviewed (AU-C §700).

28. Stewart failed to prepare adequate audit documentation during the College's fiscal year 2015 engagement. KPMG manages and monitors the status of its audit documentation through its *eAudit* program. As explained above, as of November 30, 2015, the date of the audit report, approximately a third of the audit work papers were not documented as either being prepared or reviewed in the *eAudit* program. In addition, there was no audit evidence outside of the *eAudit* program that the work papers that were lacking documentation were in fact reviewed prior to the date of the audit report. Instead, the process of preparing and reviewing the work papers that lacked proper documentation as of November 30, 2015 was completed subsequent to the audit report date.

Failure to Properly Examine Journal Entries for Evidence of Fraud Due to Management Override

29. GAAS require that the auditor maintain professional skepticism throughout the audit by recognizing that, regardless of the auditor's prior experience with the client, the possibility of a material misstatement due to fraud always exists. As such, the risk of a material misstatement due to management override is present in all entities and is a significant risk. As a result, auditors are required to, among other things, select and test journal entries and other adjustments made at the end of a reporting period (AU-C §240).

30. Stewart failed to comply with this requirement. During the College's fiscal year 2015 audit, the audit team did not obtain sufficient appropriate audit evidence with respect to journal entries posted at the end of the fiscal year. As a result, the audit team's ability to detect the numerous fraudulent journal entries that Borge posted during the College's year-end financial closing process was significantly reduced.

Failure to Adequately Assess the Risks of Material Misstatement

31. GAAS require that the auditor perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement. Additionally, auditors are required to revise the risk assessment in circumstances in which the auditor obtains audit evidence that is inconsistent with the audit evidence on which the auditor originally based the risk assessment (AU-C §315).

32. Stewart failed to adequately assess and reassess the risks of material misstatement during the College's fiscal year 2015 audit. The audit team's risk analysis appears to have been performed during previous audits without taking into consideration the College's current operating

environment. For example, as described above, despite a 59% decrease in the College's accounts payable balance, the audit team assessed a low risk of material misstatement based on its assessment that "there was very little, if any, change to the characteristics of the account compared to the prior year." In addition, amidst increasing challenges primarily related to receiving timely and credible information from Borge, the audit team never reassessed the risk of material misstatement during the College's fiscal year 2015 audit.

Failure to Exercise Due Professional Care and Professional Skepticism

33. GAAS require that the auditor exercise due professional care and professional skepticism during the planning and performance of an audit (AU-C §200). Professional skepticism is an attitude that includes a questioning mind, being alert to conditions that may indicate possible misstatement due to fraud or error, and a critical assessment of audit evidence.

34. Stewart failed to maintain professional skepticism during the planning and performance of the College's audit. As previously discussed, Stewart failed to exercise professional skepticism with respect to the numerous reconciling issues that the audit team had encountered including the receipt of unreliable audit evidence from Borge. In addition, Stewart failed to communicate the escalating concerns of the audit team to the engagement partner which should have prompted additional inquiry, corroboration or analysis. As the audit progressed, and the audit team continued to encounter challenges with the timing and reliability of the information received from Borge, Stewart did not respond appropriately in order to obtain sufficient appropriate audit evidence.

E. VIOLATIONS

35. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Section 4C(b)(2) and Rule 102(e)(1)(iv)(B) define improper professional conduct to include the following two types of negligent conduct: (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

36. As a result of the conduct described above, Stewart engaged in improper professional conduct under Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) as defined in Rule 102(e)(1)(iv)(B) of the Commission's Rules of Practice.

F. UNDERTAKING

37. Stewart undertakes that she shall not serve as the engagement manager, engagement partner or engagement quality control reviewer in connection with any audit expected to be posted in EMMA until reinstated to appear before the Commission as an independent accountant.

38. In determining whether to accept the Offer, the Commission has considered Stewart's undertaking.

IV.

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

Accordingly, it is hereby ORDERED that:

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

1. After one year from the date of this order, Stewart may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

- a. 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 Exchange Act). Such an application must satisfy the Commission that Stewart's work in her practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or
- b. 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 Exchange Act. 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
- c. an independent accountant.

Such an application must satisfy the Commission that:

- (1) Stewart, or the public accounting firm with which she is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (2) Stewart, or the registered public accounting firm with which she is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in Stewart's or the firm's quality control system that would indicate that Stewart will not receive appropriate supervision;
- (3) Stewart 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
- (4) Stewart acknowledges her responsibility, as long as she 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.

2. The Commission will consider an application by Stewart to resume appearing or practicing before the Commission provided that her state CPA license is current and she 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 Stewart'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