

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97259 / April 6, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4396 / April 6, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21361

In the Matter of

James Fitts, 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 James Fitts, CPA (“Respondent” or “Fitts”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) 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 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”), 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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:

A. SUMMARY

1. In July 2021, the Commission filed a settled cease-and-desist proceeding against Tandy Leather Factory, Inc. (“Tandy”) and its former CEO finding accounting, reporting, and control failures related to inventory that resulted in a multi-year restatement by Tandy. These failures stemmed in part from Tandy’s use of a manual inventory valuation system (“manual system”) that failed to properly track inventory on a first-in, first out (“FIFO”) basis, which Tandy disclosed as a significant accounting policy. The manual system was a key source of information for the inventory figure that Tandy inaccurately reported in its financial statements.

2. Fitts was the audit engagement partner on Tandy’s fiscal year 2018 audit (“2018 audit”), in which a restatement was necessary. During the 2018 audit, Fitts never obtained a sufficient understanding of the design or implementation of Tandy’s manual system. Fitts failed to follow several Public Company Accounting Oversight Board (“PCAOB”) auditing standards when he failed to: (1) obtain sufficient understanding of Tandy’s internal control over financial reporting (“ICFR”) regarding inventory valuation, including to sufficiently evaluate the design effectiveness of those controls; (2) evaluate, respond to, and/or resolve inconsistent audit information; (3) sufficiently evaluate company-produced audit evidence; and (4) exercise due professional care, as required by the PCAOB.

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.

3. As a result, Fitts engaged in improper professional conduct within the meaning of Section 4(C)(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“Rule 102(e”).

4. Fitts prepared and approved the audit report for fiscal year 2018 that misstated that the audit was conducted in accordance with PCAOB standards. Tandy filed the audit report with its annual report on Form 10-K for fiscal year 2018. Thus, Fitts was a cause of Tandy’s violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

B. RESPONDENT

5. **Fitts**, age 49, of Grapevine, TX, is a Certified Public Accountant (“CPA”) licensed to practice in Texas. Fitts is a partner in a national audit firm (“Outside Audit Firm”). Fitts served as the engagement partner responsible for the quarterly reviews and audit of Tandy’s financial statements for fiscal year 2018.

C. OTHER RELEVANT ENTITIES

6. **Outside Audit Firm** is a certified public accounting firm registered with the PCAOB. Outside Audit Firm was the auditor for Tandy’s 2018 financial statements.

7. **Tandy** is a Fort Worth-based retailer of leather goods and leathercraft related items. Tandy’s common stock was traded on Nasdaq under the ticker “TLF” until August 13, 2020. Tandy’s shares are currently trading on the OTC Link under the symbol “TLFA.”

D. FACTS

8. On July 21, 2021, the Commission filed a settled cease-and-desist proceeding (Adm. Proc. File No. 3-20403) against Tandy and its former CEO finding accounting, reporting, and control failures related to inventory that resulted in a multi-year restatement.

9. Because Tandy’s inventory tracking systems were incapable of maintaining historical costs, Tandy did not maintain inventory valuations consistent with FIFO. Tandy used at least three information systems as a basis for its external reporting, including to track and value its inventory. A key issue with one system, known to Tandy, was that it could only track a single price per stock keeping unit (“SKU”) at a time and was unable to retain any details about the historical price for each SKU. As a workaround, and in an attempt to value inventory on a FIFO cost basis, Tandy’s management implemented the manual system. However, this manual system failed to value inventory at FIFO. The data and information maintained within the manual system was a key source of information for the inventory figure that Tandy inaccurately reported in its financial statements, including for 2018. As a result, these inaccurate inventory valuations impacted Tandy’s calculations for inventory, net income, and gross profit.

10. Fitts, the engagement partner for Tandy’s 2018 audit, failed to sufficiently understand this manual system and failed to comply with multiple PCAOB auditing standards, as discussed further below. Fitts failed to (1) obtain sufficient understanding of Tandy’s ICFR regarding inventory valuation, including to sufficiently evaluate the design effectiveness of those controls; (2) evaluate, respond to, and/or resolve inconsistent audit information; (3) sufficiently evaluate company-produced audit evidence; and (4) exercise due professional care, as required by the PCAOB. Fitts engaged in repeated instances of unreasonable conduct indicating a lack of competence to practice before the Commission.

Failure to Obtain Sufficient Understanding of Tandy’s ICFR Regarding Inventory Valuation, Including to Sufficiently Evaluate the Design Effectiveness of Those Controls

11. PCAOB Auditing Standard No. (“AS”) 2110, *Identifying Risks of Material Misstatement*, states in section 2110.18 that an auditor should obtain a sufficient understanding of internal control to (a) identify the types of potential misstatements, (b) assess the factors that affect the risks of material misstatement, and (c) design further audit procedures. Further, under AS 2110.20, obtaining an understanding of internal control includes evaluating the design of controls that are relevant to the audit and determining whether the controls have been implemented.

12. The 2018 audit team’s workpapers did not demonstrate sufficient understanding of Tandy’s ICFR regarding inventory valuation as required by AS 2110. The AS 2110 standard notes that procedures the auditor performs to obtain evidence about design effectiveness include inquiry of appropriate personnel, observation of the company’s operations, and inspection of relevant documentation. In addition, it states that a walkthrough that includes these procedures is ordinarily sufficient to evaluate design effectiveness. The Fitts-led audit team did not conduct sufficient procedures to understand Tandy’s inventory process, including the manual system.

13. There was no audit documentation indicating that Fitts understood the procedures, data, or information input into and transferred from Tandy’s manual system, as required. Neither Fitts nor others on the 2018 audit team obtained sufficient understanding of the design of the manual system used to value Tandy’s inventory during the audit.

14. Fitts failed to perform sufficient audit procedures to obtain evidence sufficient to understand Tandy’s manual system for inventory. Regarding the manual system, there is no mention in the audit workpapers about: (1) whether the 2018 audit team spoke to any of the relevant individuals at Tandy about the manual system, (2) the date of any such inquiry and responses provided, (3) the identifying characteristics of any documents inspected, and (4) the audit team’s observations. Other than the mention of a walkthrough in the inventory control risk memo, there is no evidence that the team actually performed sufficient audit procedures, walkthrough or otherwise, to understand Tandy’s manual system.

15. In the risk assessment phase for inventory, the audit team identified deficiencies in Tandy's controls with this internal notation:

[W]hile it appears these controls are being performed, based on discussions with client, no formal documentation exists that these controls have been performed. No initials or sign-offs are evident in review in all situations, therefore these controls are not able to be verified and are considered an MLC.⁴

Tandy's lack of review and evidence of the performance of the control should have been a red flag to Fitts, yet he failed to follow-up or evaluate whether this deficiency extended to how Tandy mitigated its risk of improper inventory valuation.

16. As a result, Fitts failed to obtain a sufficient understanding of Tandy's ICFR regarding inventory valuation, including his failure to evaluate the design effectiveness of those controls, in violation of AS 2110.

Failure to Evaluate, Respond to, and/or Resolve Inconsistent Audit Information

17. There are at least two instances in which Fitts failed to evaluate, respond to, or resolve inconsistent audit information within the 2018 audit file. First, during the risk assessment phase of the audit, the Fitts-led 2018 audit team documented that Tandy had inventory differences that represented either an inventory gain *or* inventory loss, and cited to an internal Tandy email chain noting the CFO's "approval to book inventory gain/loss." The possible existence of inventory *gains* at Tandy could have been a red flag for potential non-compliance with FIFO. There is not sufficient further documentation in the audit file that Fitts investigated this to determine the cause of any gains and the potential effect on other aspects of the audit.

18. Second, Fitts testified that he was vaguely aware that Tandy used a manual system involving supplemental records to help determine inventory valuation. This information was contradictory to the inventory process the Fitts-led audit team evaluated during the audit. Fitts, however, failed to document the existence of this manual system in the audit file, or revise the audit procedures in light of his knowledge of a manual system. The existence of a manual system to determine inventory valuation was a red flag that Fitts should have investigated further to determine the potential effect on other aspects of the audit, but he failed to follow-up.

19. In both instances, Fitts failed to perform sufficient additional audit procedures, revise the risk assessment to consider inventory valuation as an elevated risk, or modify the overall audit strategy over inventory valuation. Thus, Fitts failed to (1) perform auditing procedures necessary to resolve differences in conclusions that were inconsistent and contradictory, and (2) modify the overall audit strategy, revise its risk assessment, and/or modify the planned audit procedures as required by AS 1105.29, AS 2101.15, AS 2110.74, and AS 2301.46.

⁴ The engagement quality reviewer defined "MLC" as a control deficiency.

Failure to Sufficiently Evaluate Company-Produced Audit Evidence

20. AS 1105 states that when using information produced by the company as audit evidence, the auditor should evaluate whether the information is sufficient and appropriate for purposes of the audit by performing procedures to (1) test the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information; and (2) evaluate whether the information is sufficiently precise and detailed for purposes of the audit.

21. As detailed above, Fitts failed to obtain sufficient understanding of Tandy's ICFR regarding the manual system, yet used data and information derived from this manual system during the substantive testing phase for inventory (e.g., price testing). Fitts relied on this information even though it was not sufficiently evaluated for accuracy, completeness, and precision for use as audit evidence, in accordance with AS 1105.

Failure to Exercise Due Professional Care

22. AS 1015 states that auditors are required to exercise due professional care throughout the audit. In the 2018 audit, Fitts did not act with due professional care because he did not sufficiently understand and document Tandy's manual system. As a result, Fitts violated AS 1015.

E. VIOLATIONS

23. 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, a registered public accounting firm, or associated person 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.

24. Based on the conduct described above, the Commission finds that Fitts engaged in improper professional conduct as defined under Rule 102(e)(1)(iv)(B)(2) pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

25. Based on the conduct described above, Fitts was a cause of Tandy's violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require issuers of securities registered under Section 12 of the Exchange Act to file with the Commission accurate annual reports that have been audited by an independent public

accountant registered with the PCAOB. Tandy filed an annual report on Form 10-K for fiscal year 2018 and included the audit report that was ultimately prepared and approved by Fitts. This audit report misstated that the audit was conducted in accordance with PCAOB standards.

F. FINDINGS

26. Based on the foregoing, the Commission finds that Fitts engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

27. Based on the foregoing, the Commission finds that Fitts was a cause of Tandy's violations of Sections 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder.

IV.

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

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

A. Fitts shall cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder.

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

C. After one year from the date of the Order, Fitts may request that the Commission consider Fitts's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

D. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be 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, Respondent shall submit a written statement attesting to an undertaking to have Respondent's work reviewed by the independent audit committee of any public company for which Respondent works or in some other manner acceptable to the Commission, as long as Respondent practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.

E. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the

Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Respondent shall submit a statement prepared by the audit committee(s) with which Respondent will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondent will be associated;
2. A description of Respondent's role on the specific audit committee(s) with which Respondent will be associated;
3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
4. A description relating to the necessity of Respondent's service on the specific audit committee; and
5. A statement noting whether Respondent will be able to act unilaterally on behalf of the Audit Committee as a whole.

F. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Respondent must be associated with a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") and Respondent shall submit the following additional information:

1. A statement from the public accounting firm (the "Firm") with which Respondent is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
2. A statement from the Firm with which the Respondent is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm's quality control system that would indicate that Respondent will not receive appropriate supervision; and
3. A statement from Respondent indicating that the PCAOB has taken no disciplinary actions against Respondent since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

G. In support of any application for reinstatement, Respondent shall provide documentation showing that Respondent is currently licensed as a certified public accountant ("CPA") and that Respondent has resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondent is not currently licensed as a CPA, Respondent shall provide

documentation showing that Respondent's licensure is dependent upon reinstatement by the Commission.

H. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings, including any orders in In the Matter of James Fitts, CPA, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Respondent undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
3. That Respondent, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
4. That Respondent, since the entry of the Order:
 - (a) has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
 - (b) has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;
 - (c) has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
 - (d) has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral

turpitude, except for any finding concerning the conduct that was the basis for the Order; and

(e) has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

5. That Respondent's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.
6. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.

I. Respondent shall also provide a detailed description of:

1. Respondent's professional history since the imposition of the Order, including
 - (a) all job titles, responsibilities and role at any employer;
 - (b) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Respondent reported for such work; and
2. Respondent's plans for any future appearance or practice before the Commission.

J. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

K. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under Paragraph J, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that

reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

L. If Respondent is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph J, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Respondent for cause shown.

M. If the Commission declines to reinstate Respondent pursuant to Paragraphs K and L, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an accountant.

N. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Fitts as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Eric Werner, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

O. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary