UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99832 / March 21, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21897

In the Matter of **ELLEN MCCARTHY, Esq.** **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 Ellen McCarthy ("Respondent" or "McCarthy") pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(l)(ii) of the Commission's Rules of Practice.[2]

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[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 thereunder.

[2] Rule 102(e)(l)(ii) provides, in pertinent part, that:

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

II.

In anticipation 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 her and the subject matter of these proceedings and the findings contained in Sections III.1 and III.2 below, which are admitted, Respondent consents to the entry of this 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 ("Order"), as set forth below.

III.

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

1. McCarthy, age 60, was admitted to the practice of law in the state of New York on December 13, 1989, and is currently licensed to practice there. Throughout her career, McCarthy has focused on regulatory and compliance work—first as an attorney in the enforcement division of self-regulatory organizations and then as a compliance professional in the private sector. From late April 2019 until July 21, 2023, she served as the Head of Risk & Compliance US and Global Chief Risk Officer Issuer Services for a transfer agent registered with the Commission. McCarthy has stated to staff that she is retired and does not intend to do further legal or compliance work.

2. On May 17, 2018, the Commission entered an order requiring, among other things, that Manhattan Transfer Registrar Company ("Manhattan Transfer" or "MTR") comply with certain undertakings, including retaining an independent consultant to prepare a report identifying deficiencies and weaknesses in Manhattan Transfer's policies, procedures, supervisory controls, or in the implementation thereof. *In re Manhattan Transfer Register Co. and John Ahearn*, A.P. File No. 3-18491 ("2018 Order"). Manhattan Transfer hired an independent consultant ("IC") and IC retained McCarthy to serve as engagement manager in preparing the report.

3. IC and McCarthy submitted their independent consultant report to Commission staff on or about September 13, 2018, thus completing IC's and McCarthy's engagement with Manhattan Transfer. Both McCarthy and IC were required to remain independent of Manhattan Transfer (*i.e.*, do no further work for Manhattan Transfer) during the engagement and for a period of two years following completion of the engagement.

4. However, from at least late September 2018 to late April 2019, McCarthy violated her two-year obligation to remain independent of Manhattan Transfer following submission of the independent consultant report. Moreover, McCarthy took actions that she knew or should have known would hide from the Commission her continued work for Manhattan Transfer during the work itself, in response to information requests from Commission staff following completion of the work, and by making false or inaccurate statements during testimony she provided during staff's formal investigation into potential non-compliance with the undertakings in the 2018 Order.

McCarthy's Work in Violation of the Independence Requirements

5. In August 2018, McCarthy asked staff whether they would permit her and IC to implement the recommendations made in the independent consultant report they were preparing at the time.

6. Before receiving a response from staff, McCarthy agreed to serve as the engagement manager on revising Manhattan Transfer's written policies and procedures (referred to as "Phase 2") and in closing Manhattan Transfer's Colorado office (referred to as "Phase 3"). On or about September 14 and 19, respectively, Manhattan Transfer and IC entered into separate statements of work ("SOWs") for Phases 2 and Phase 3, each listing McCarthy as engagement manager. IC further found consultants to work on Phases 2 and 3 and entered into a formal subcontractor agreement with at least one of these consultants prior to receiving a response from staff.

7. On or about September 21, 2018, staff informed McCarthy that they would not waive or modify the independence requirements and reiterated that neither McCarthy nor IC were permitted to do further work for Manhattan Transfer for two years.

8. Notwithstanding the restrictions in the 2018 Order and staff's refusal to waive or modify the independence requirements, McCarthy worked for IC as engagement manager for Phases 2 and 3. Among other work, she reviewed and revised the work product prepared by the consultants working on Phases 2 and 3, including the certifications they submitted to the Commission, and participated in many calls and meetings relating to this work. McCarthy's work violated her obligation to remain independent of Manhattan Transfer for two years following completion of the independent consultant report. IC paid McCarthy $3,800 for Phase 2 and $6,275 for Phase 3. While the work was being done throughout Fall 2018, McCarthy was aware that IC paid the other consultants working on Phases 2 and 3 as well as a contractor who regularly provided administrative support to IC's projects, and that IC earned a profit from this work.

9. McCarthy also did additional work for Manhattan Transfer that was wholly unrelated to her work as a consultant writing the independent consultant report. Beginning in December 2018 and until she left IC to accept other employment in late April 2019, McCarthy functioned as a member of the IC team working to broker the sale of Manhattan Transfer (a project referred to as "Big Apple"). Her work included editing and advising on various legal documents (such as non-disclosure agreements, an asset purchase agreement, and board consents), advising on various business issues (such as efforts to find an auditor), participating on regular internal calls relating to the project, and participating on calls with potential purchasers or their representatives. Originally, McCarthy was to have received one-third of IC's commission on the Big Apple project (equally split with the two other IC consultants working on the project), but she was ultimately paid approximately $3,500 because her work on the project ended in late April 2019 before the transaction closed. McCarthy's other work for Manhattan Transfer included speaking with local counsel handling a bankruptcy lawsuit against Manhattan Transfer filed in Florida and doing a small amount of legal research to assist said counsel in November 2018 for which she was paid $250 by IC.

10. McCarthy's work for Manhattan Transfer from September 2018 to April 2019 violated her obligation to remain independent of Manhattan Transfer for a two-year period.

Concealment of McCarthy's Work for Manhattan Transfer

11. McCarthy took steps that she knew or should have known would hide the work she performed for Manhattan Transfer subsequent to the issuance of the independent report.

12. Conduct that McCarthy knew or should have known would conceal her continued work for Manhattan Transfer began immediately after staff refused her request to waive or modify the independence requirements. On or about September 22, 2018, McCarthy participated in the development of a "solution to Phase 2 & [P]hase 3." This "solution" was to make it appear that another entity ("Alternative Entity") had replaced IC for the Phase 2 and 3 work. To sever the direct financial link between Manhattan Transfer and IC, Manhattan Transfer paid Alternative Entity for the Phase 2 and 3 work; however, Alternative Entity then sent the entire payment to IC and therefore functioned as nothing more than a pass through for the funds. McCarthy also advised the consultants they could only use an IC email address for internal communications and client communications should be done with personal email accounts. Although Alternative Entity had purportedly taken over the project, on or about September 24, 2018, Manhattan Transfer and IC, not Alternative Entity, signed revised SOWs for Phases 2 and 3 that purportedly removed McCarthy as engagement manager on both projects. However, there is no evidence that the SOWs issued by Manhattan Transfer to IC were ever canceled in lieu of the purported SOWs between Manhattan Transfer and Alternative Entity. Additionally, McCarthy functioned as engagement manager working for IC, not Alternative Entity, on Phases 2 and 3 notwithstanding her purported removal from that position.

13. In 2019, Division of Examinations ("Examinations") staff conducted an examination of Manhattan Transfer. After Manhattan Transfer produced the September 24, 2018 SOWs between Manhattan Transfer and IC, on or about September 20, 2019, staff asked Manhattan Transfer to explain why it believed that IC was permitted to start the Phase 2 and 3 work less than two weeks after completing the independent consultant report, given the independence requirements.

14. Shortly after Manhattan Transfer received this inquiry from Examinations staff, on September 20, 2019, McCarthy participated in an email exchange in which she emailed operative language to the President of Alternative Entity and an administrator at IC for an agreement between Manhattan Transfer and Alternative Entity and labeled the effective date as "September 24, 2018." The language McCarthy drafted was included nearly verbatim in the engagement agreement between Manhattan Transfer and Alternative Entity that was dated and purportedly signed on September 27, 2018 and submitted to Commission staff by Manhattan Transfer.

15. In addition to her role in drafting language that was included in the backdated engagement agreement, McCarthy participated in drafting and editing the cover email that Manhattan Transfer sent to Commission staff attaching the backdated engagement agreement. McCarthy received a draft cover email prepared by others and then revised it.

The version of the draft cover email that McCarthy sent (which is similar to what Manhattan Transfer ultimately emailed to staff) falsely or inaccurately stated that Manhattan Transfer realized "it could NOT hire [IC] to implement the recommendations in the IC Report. Those SOWs were subsequently cancelled. MTR then hired [Alternative Entity]'s independent contractors to assist MTR in" implementing the recommendations. However, as explained above, IC, not Alternative Entity, helped Manhattan Transfer implement the recommendations in the independent consultant report. The cover email sent by McCarthy further stated that "Attached is the executed engagement agreement between [Alternative Entity] & MTR," without mentioning in any way that the agreement dated September 2018 was actually drafted and signed in September 2019. The draft cover email sent by McCarthy also misleadingly stated that Manhattan Transfer paid Alternative Entity directly for Phases 2 and 3, ignoring the fact that Alternative Entity funneled the money received in its entirety to IC.[3] An additional misleading statement was added to the cover email after McCarthy last reviewed it.

16. After receiving Manhattan Transfer's response, the Division of Enforcement ("Enforcement") opened a formal investigation to determine whether Manhattan Transfer and John Ahearn ("Ahearn"), former President of Manhattan Transfer, violated the 2018 Order.[4] Staff took McCarthy's sworn testimony during its investigation. Key parts of McCarthy's testimony were false or inaccurate, including:

a. When asked whether she did "anything else besides the independent compliance consultant's work for Manhattan Transfer," McCarthy answered, "No;"

b. When asked whether she was "involved in any capacity in helping broker the sale of Manhattan Transfer," McCarthy answered, "I was not;"

c. McCarthy further claimed that a payment she received pursuant to an invoice she drafted entitled "Big ApplePlus" did not relate to any work she performed on Big Apple, and that the portion of the payment relating to Big Apple instead reflected payment for a referral fee, notwithstanding evidence showing the payment was at least in significant part for her work brokering the sale of Manhattan Transfer;[5] and

d. McCarthy repeatedly asserted that it was her understanding that the Phase 2 and Phase 3 work was done by Alternative Entity, not IC, even though she had been privy to and drafted numerous contemporaneous documents showing that the work was

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[3] This sentence was removed at the behest of Alternative Entity's President before the email was sent to staff.

[4] This subsequent Enforcement investigation resulted in final judgments being entered against Ahearn and Manhattan Transfer for violations of the 2018 Order. *SEC v. Manhattan Transfer Registrar Company, et al.*, 22-cv-81457, Dkt. Nos. 5 and 6 (S.D. Fla. Oct. 26, 2022).

[5] For example, the only referral agreements that existed provided for payments between IC and Alternative Entity and were irrelevant to the work on Big Apple and any payment to McCarthy.

done by IC (and that IC paid her and the other consultants involved in the work) and the lack of documentation that would support an assertion that Alternative Entity did the work.

17. As a result of the conduct above, Respondent has thus engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Securities Exchange Act of 1934 and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, in that Respondent violated New York Rule of Professional Conduct 8.4, which states in relevant parts that:

> "A lawyer or law firm shall not * * * (d) engage in conduct that is prejudicial to the administration of justice; * * * (h) engage in any other conduct that adversely reflects on a lawyer's fitness as a lawyer."

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that McCarthy is denied the privilege of appearing or practicing before the Commission.

By the Commission.

Vanessa A. Countryman
Secretary