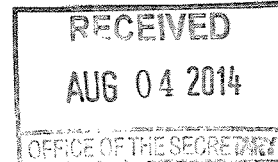


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71161 / December 20, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3521 / December 20, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15659



In the Matter of

Thomas D. Melvin, CPA

**RESPONDENT'S OPPOSITION
TO SUMMARY DISPOSITION**

Respondent.

Summary disposition against Respondent is inappropriate in this case because (1) the Commission was untimely in instituting these proceedings and (2) there is a dispute of material fact concerning whether the staff of the Commission entered into a binding agreement as to any suspension to be imposed upon Mr. Melvin. That binding agreement was that Mr. Melvin would not be suspended in excess of three years.

i. The Commission was untimely in instituting these proceedings.

Commission Rule of Practice 102(e)(3) states: "No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this rule more than 90 days after the date on which the final judgment or order entered in a judicial...proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available."

Pursuant to a consent agreement signed on April 10, 2013 and June 28, 2013¹, Mr. Melvin consented to entry of a final judgment against him by the United States District Court and agreed not to appeal from the entry of the Final Judgment. (Motion for Summary Disposition, Tab 2, ¶¶ 2 and 5). The district court entered final judgment on August 14, 2013, (Motion for Summary Disposition, Tab 3) and Mr. Melvin had no right to appeal per his waiver in the consent agreement. The order instituting proceedings in this case was not issued until December 20, 2013, more than 90 days after the district court's order. The 90th day for the Commission to act ran on November 12, 2013. Accordingly, summary disposition for Respondent and against the Commission is appropriate.

ii. **There is a dispute of material fact about Mr. Mayes' agreement.**

In the period from June 27, 2013 (the day before the second Consent Agreement was signed) to July 2, 2013, counsel for Mr. Melvin discussed with Division Counsel Joshua Mayes an agreement that Mr. Melvin, in conjunction with his settlement in the civil enforcement action, not be banned from practicing in front of the Commission for any period in excess of three years. (Affidavit of Brian Jarrard attached hereto as Exhibit "B"). On July 2, 2013, Mr. Mayes conveyed his consent to this agreement to defense counsel who in turn on that day informed Mr. Melvin of the agreement. (Id.). On July 8, 2013, while discussing deposition scheduling in the civil enforcement proceeding, Mayes informed defense counsel that he would be sending defense counsel the paperwork on the resolution of the administrative matter. (Id.). Mr. Mayes' first mention of not honoring the agreement came on January 15, 2014 in a telephone call with

¹ Respondent notes that an additional Consent Agreement was signed by Mr. Melvin in conjunction with additional negotiations with the Commission's division counsel Mr. Mayes on June 28, 2013. (Exhibit "A" attached hereto.) That additional consent contained the same pertinent provisions regarding entry of a final judgment and an agreement not to appeal. Respondent notes that the June 2013 timeframe is also when the agreement about a three year ban was discussed with Mr. Mayes as discussed in section ii below.


defense counsel after the Commission issued its December 2013 order instituting proceedings.
(Id.).

Though Respondent does not dispute the basic factual premises recited in the motion for summary disposition, that motion in no way addresses the disputed material facts about Mr. Mayes' agreement to a maximum three year ban. Thus, summary disposition should be denied.

WHEREFORE, Mr. Melvin requests that summary disposition for the Commission be denied and, in turn, rendered for Respondent.

This 1st day of August, 2014.

C. Brian Jarrard, LLC
230 Third Street
Macon, GA 31201
(478) 745-0111



C. BRIAN JARRARD
Ga. Bar No. 389497

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

**Civil Action No.
1:12-CV-02984-CAP**

v.

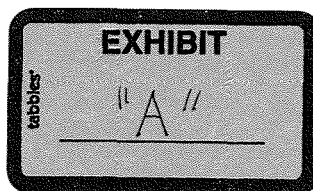
**THOMAS D. MELVIN, MICHAEL S.
CAIN, JOEL C. JINKS and PETER C.
DOFFING,**

Defendants.

CONSENT OF DEFENDANT THOMAS D. MELVIN

1. Defendant Thomas D. Melvin (“Melvin”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Melvin admits), Melvin hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:



- (a) permanently restrains and enjoins Melvin from violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];
- (b) permanently restrains and enjoins Melvin from violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder;
- (c) orders Melvin to pay disgorgement in the amount of \$36,991.20 (of which he is jointly and severally liable with Michael S. Cain), plus prejudgment interest thereon in the amount of \$4,181.37 (of which he is jointly and severally liable with Michael S. Cain);
- (d) orders Melvin to pay disgorgement in the amount of \$24,840.75 (of which he is jointly and severally liable with Joel C. Jinks), plus pre-judgment interest thereon in the amount of \$2,813.22 (of which he is jointly and severally liable with Joel C. Jinks);
and

(e) orders Melvin to pay a civil penalty in the amount of \$108,930.05 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Melvin agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Melvin pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Melvin further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Melvin pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Melvin waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Melvin waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Melvin enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the

Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Melvin agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Melvin will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Melvin waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to him of its terms and conditions. Melvin further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Melvin in this civil proceeding. Melvin acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Melvin waives any claim of

Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Melvin further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Melvin understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Melvin understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Melvin agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing

of this Consent, Melvin hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Melvin breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Melvin's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Melvin hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Melvin to defend against this action. For these purposes, Melvin agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

13. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Melvin (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or

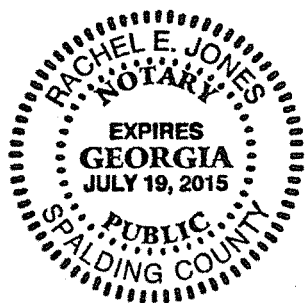
subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Melvin's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iv) consents to personal jurisdiction over Melvin in any United States District Court for purposes of enforcing any such subpoena.

14. Melvin agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Melvin agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 6-28-2013 Thomas D. Melvin
Thomas D. Melvin

On June 28, 2013, Thomas Melvin, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Rachel E. Jones
Notary Public
Commission expires:
July 19, 2015

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71161 / December 20, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
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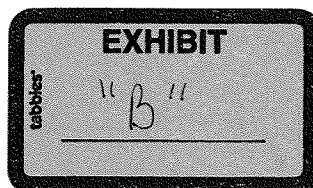
In the Matter of

Thomas D. Melvin, CPA
Respondent.

AFFIDAVIT OF BRIAN JARRARD

COMES NOW Brian Jarrard, Esq., after being sworn by the undersigned attesting officer, and gives the following sworn Affidavit to be used in connection with the above-captioned action. I give this Affidavit based on my own personal knowledge. I am over 18 years of age and competent to give this affidavit. I am counsel for Mr. Melvin in this matter as well as the civil enforcement proceedings filed by the Commission in United States District Court.

In the period from June 27, 2013 (the day before a second Consent Agreement was signed) to July 2, 2013, I discussed with Division Counsel Joshua Mayes an agreement that Mr. Melvin, in conjunction with his settlement in the civil enforcement action, not be banned from practicing in front of the Commission for any period in excess of three years. On July 2, 2013, Mr. Mayes conveyed to me his consent to this agreement and I in turn on that day informed Mr. Melvin of the agreement. On July 8, 2013, while discussing deposition scheduling in the civil enforcement proceeding, Mayes informed




me that he would be sending me the paperwork on the resolution of the administrative matter. Mr. Mayes' first mention of not honoring the agreement came on January 15, 2014 in a telephone call with me after the Commission issued its December 2013 order instituting proceedings.

Having been duly sworn by the undersigned attesting officer, I do hereby state under oath that the foregoing is true and correct. If called upon to testify, these are the facts to which I would testify.



BRIAN JARRARD, ESQ.

Sworn to and subscribed before me
this 15th day of August, 2014.



NOTARY PUBLIC
STATE OF GEORGIA
My Commission Expires:
