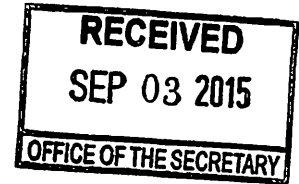


ORIGINAL

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**



Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC.,
HAMID KABANI, CPA,
MICHAEL DEUTCHMAN, CPA,
and
KARIM KHAN MUHAMMAD, CPA

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S
MOTION FOR AND BRIEF IN SUPPORT OF TERMINATION OF THE STAY
IMPOSED BY SECTION 105(e)(1) OF THE SARBANES-OXLEY ACT OF 2002**

September 2, 2015

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I. INTRODUCTION

Under Section 105(e) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7215(e), and Rule of Practice 401(e) of the Securities Exchange Commission (Commission or SEC), 17 C.F.R. 201.401(e), the Public Company Accounting Oversight Board (Board or PCAOB) requests that, in certain respects, the Commission lift the stay on the Board's imposition of sanctions in this case. As pertinent to this motion, the Board issued a disciplinary order revoking the PCAOB registration of Kabani & Company and barring three of its associated persons from associating with a PCAOB-registered public accounting firm—Hamid Kabani permanently and Michael Deutchman and Karim Khan Muhammad with leave to petition to associate with such a firm in two years or 18 months, respectively. The Board also censured all four of these parties. They all filed an application for Commission review, which has the effect, under Sarbanes-Oxley Act Section 105(e), of staying the imposition of the sanctions and countering the statute's requirement that the Board report the sanctions to the public, unless and until the SEC orders that the stay shall not continue to operate. Briefing in this appeal was completed on August 19, 2015. The Board makes this motion because, despite a full opportunity for Applicants to present their best defense to the SEC, the violations found and the sanctions ordered remain undisturbed by any serious challenge, while the risk Applicants pose to the investing public has come only more sharply into focus. As more fully discussed below, the Board urges the Commission to lift the stay either summarily, pursuant to Commission Rule of Practice 401(e)(2), or pursuant to the expedited process described in Rule 401(e)(3).^{1/}

^{1/} The Board also imposed civil money penalties on Kabani, Deutchman, and Khan, but those sanctions are not the subject of the present motion.

II. BACKGROUND AND OVERVIEW

In the April 22, 2014 amended initial decision (I.D.) in this case, the hearing officer found that, in advance of a PCAOB inspection commencing on October 20, 2008, Applicants, a PCAOB-registered public accounting firm (Kabani & Co. or the Firm) and three associated persons of the Firm (Kabani, Deutchman, and Khan), undertook a “wide-spread and resource-intensive effort” to—in the words of a Firm employee helping to coordinate the task—“cleanup” Firm audit files by adding, altering, and backdating numerous work papers to “deceive [the] inspectors” about “the deficiencies in the Firm’s audit work papers” for three securities issuers (Issuers A, B, and C). Index to the Record, Record Document (R.D.) 195. Specifically, after learning the Board would inspect its files, Kabani instructed Rehan Saeed, a concurring reviewer for the Firm, to review certain audit files and ultimately to focus on those files identified by PCAOB inspectors as the engagements to be reviewed. Saeed reviewed those files and identified multiple problems with them, after which Firm personnel, including Applicants, changed them after the deadline under Board standards had passed for finalizing those files, and made the doctored files available to the Board inspectors without informing them of the changes. The misconduct did not come to the PCAOB’s attention until after Saeed left the Firm in September 2009 and reported his concerns about the Firm’s pre-inspection activities to the PCAOB’s Division of Enforcement and Investigations (DEI), which launched an investigation in 2010.

The hearing officer found that this conduct constituted an egregious violation of PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and Auditing Standard (AS) No. 3, *Audit Documentation*, determined that Kabani’s and Deutchman’s conduct was “intentional and knowing” and Khan’s was “knowing, intentional, or at a minimum, reckless,” and imposed

strong sanctions. All told, the hearing officer held six days of hearings, received extensive briefing by the parties, and based his findings on a rich record that included audit work paper files, emails, witness testimony, stipulations and admissions, and an 800-plus-page report and testimony of a data forensics expert whose “methodologies were reasonable,” “findings were detailed and meticulous,” and “conclusions were well-reasoned and well-supported.” I.D. 26.

On January 22, 2015, the Board, after de novo review of the record and review of all petitions for review and motions on appeal, issued a 20-page order summarily affirming under PCAOB Rule 5460(e) the hearing officer’s above-noted findings of violations and imposition of sanctions. R.D. 206. In doing so, the Board noted that DEI had requested expedited review of the case and had supported the need for it by arguing that “[t]he evidence [against Applicants] is so extensive and unequivocal, and the Petitions for Review so patently meritless, that it is difficult to conclude that the Petitions have been filed for any purpose other than to delay sanctions and public revelation of [their] improper conduct.” *Id.* at 2. The Board determined that “no issue raised in the petitions for review regarding the Rule 4006, AS No. 3, and resulting Rule 3100 violations found in the initial decision warrants further consideration by the Board” and that “the changing, conflicting, and patently incredible explanations for [the] document alterations offered by [Applicants] throughout this proceeding accentuate the gravity of the misconduct and underscore how meritless [their] arguments to the contrary now are.” *Id.* at 3. On March 31, 2015, in a further seven-page order, the Board denied two motions for reconsideration, one by Khan and one by the other Applicants. R.D. 209. That order explained that the motions “consist[ed] primarily of restated arguments that were made before the hearing officer or in their petitions for review, which have already been appropriately rejected.” *Id.* at 3.

Now on appeal to the Commission, Applicants have raised yet again many of these same arguments without further development and without any serious attempt to address the wealth of evidence and law that contradicts them. Applicants refuse to engage the detailed evidence against them, offer no explanation for their shifting defenses, and rely on a flurry of newly contrived procedural arguments that are not only waived but patently baseless. Most troubling, their appeal briefing advances a wholly new defense that all three of the issuer audit files at issue were unreadable and recreated by the Firm as a “good deed” done for the PCAOB, and that sanctioning Applicants for this “act of grace” is an injustice, relying as their only support for this theory on documents of unspecified origin in an “Appendix” to their opening appeal brief (Br.) that were totally discredited by the Board’s opposition appeal brief (Opp.) and promptly abandoned by their reply appeal brief (Rep.). *See, e.g.*, Br. 35, 44-45; Opp. 24-25; Rep. 4-5, 17.

Furthermore, Applicants state in their motion for a protective order (Mtn.), filed shortly after their reply brief on August 26, 2015, and addressed separately by the Board in a response filed today (Resp.), that Applicants “continue to practice as public auditors while the sanctions are under review.” Mtn. 4. According to public filings from the SEC’s EDGAR database, available on the SEC’s website, Kabani & Co. has issued at least eight audit reports for seven public company issuers since the issuance of the amended initial decision on April 22, 2014.^{2/}

^{2/} *See* Form 10-K filed by Great China International Holdings Inc. on April 15, 2015; Form 20-F for Fuwei Films (Holdings) Co., Ltd. on Apr. 9, 2015; Forms 10-K/A and 10-K by China Green Agriculture, Inc. on April 3, 2015, and Sept. 15, 2014; Form 10-K by Concierge Technologies Inc. on October 10, 2014; Form 10-K by Netsol Technologies, Inc. on September 16, 2014; Form 10-K by Aura Systems, Inc. on June 13, 2014; and Form 10-K by VelaTel Global Communications, Inc. on May 14, 2014. *See also* R.D. 199, Appendix A thereto.

The need to protect the public from the danger Applicants pose is immediate and compelling. The record evidence establishes that the misconduct here, which undermined the inspection process through deception, was extraordinarily serious, was marked by a highly culpable state of mind, and was antithetical to the Board's statutory mission to further the public interest in the preparation of informative, accurate, and independent issuer audit reports and to protect the interests of investors, who currently continue to be at risk of audits of public companies by Applicants. And far from showing any recognition of the wrongfulness of their conduct, Applicants actually now ask to be "applaud[ed]" for it. Rep. 1. Under these circumstances, with no likelihood of Applicants' success on the merits and a serious, continuing risk to the public, the SEC should lift the stay of the sanctions that are the subject of this motion.

III. ARGUMENT

Under Sarbanes-Oxley Act Section 105(e)(1), 15 U.S.C. 7215(e)(1), application to the SEC for review of any disciplinary sanction imposed by the Board "operate[s] as a stay" on the imposition of such sanction, "unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate." Pursuant to Section 105(e), and SEC Rule of Practice 401(e), the SEC may lift the stay summarily or on consideration, which may be expedited, of a motion to lift the stay. Thus, upon application for SEC review of a Board sanction, Section 105(e) preserves, through the stay of the sanction's effectiveness, the status quo at imposition of the sanction until the Commission has the opportunity to consider whether that status quo should prevail. "[O]nce any stay on the imposition of such sanction has been lifted," the Board "shall report the sanction" to the public. Sarbanes-Oxley Act Sections 105(d)(1) & (d)(1)(C), 15 U.S.C. 7215(d)(1) & (d)(1)(C).

The Commission's determination of whether to lift a stay pursuant to its authority under Sarbanes-Oxley Act Section 105(e) is "based on the factors the Commission previously has considered in evaluating similar requests for stays in connection with self-regulatory organization proceedings." *Davis Accounting Group, P.C.*, Admin. Proc. File No. 3-14370 at 3 (June 14, 2011) (Corrected Order Partially Lifting Stay) (attached). Those factors are: "(1) whether there is a strong likelihood that the applicant will succeed on the merits; (2) whether, absent a stay (or, as here, continuation of the stay), the applicant will suffer irreparable injury; (3) whether a stay will result in substantial harm to the public; and (4) whether a stay will serve the public interest." *Id.* at 2 (citing *Navistar Int'l Corp.*, SEC Rel. No. 34-55304, 2007 WL 505770, *2 (Feb. 13, 2007)). All these factors strongly weigh in favor of lifting the stay here.

A. Applicants Are Unlikely To Succeed on the Merits.

As detailed in the Board's merits brief in this appeal, Applicants have vigorously litigated this case since its inception but have never come up with a coherent or supportable defense that defeats the overwhelming evidence and arguments against them. Their briefs to the Commission attempt to challenge the sufficiency of the evidence, the appropriateness of the sanctions, and certain procedural aspects of the proceeding, but none of their arguments has any likelihood of success on the merits, as discussed below.

1. On appeal to the Commission, Applicants persist in their far-fetched contention that Saeed was not reviewing final files for deficiencies, but instead was engaging in an internal review exercise using draft files. Br. 17-18; Rep. 13-16. This unsupported claim is contradicted by record evidence, including Kabani's own investigative testimony that he engaged Saeed to inspect final work papers and an item on Saeed's checklist instructing him to make sure the files had been complete before the 45-day deadline in AS No. 3. The claim also defies logic, as there

would be no possible benefit from reviewing files to identify deficiencies in old files that may have been already corrected in later versions. *See* Opp. 18-21. Applicants' attempt to salvage their argument by asserting that "Saeed's quality control exercise included issuers that were not a part of the PCAOB investigation" (Rep. 15) ignores that this was before Kabani narrowed the list of files to review once he learned which ones the inspectors wanted to see. *See* Opp. 6.

2. Applicants have asserted that the Issuer A audit file produced to DEI in 2011 as a replacement for the unreadable original of that file was not the same as the final version provided to the PCAOB inspectors in 2008 (Br. 25, 43-44, 50; Rep. 1, 4-6, 16-19), a claim that was discussed and refuted in great detail in the Board's opposition brief. Among other things, the claim is contradicted by Kabani's investigative testimony and by the replacement file itself, and is offered so late in litigation as to indicate fabrication. *See* Opp. 21-23.

3. Applicants' opening brief attempted to explain away the evidence of backdating in the Issuer A file by making a new claim that Applicants converted some JPEG files to PDF files. Br. 43-45. But this argument, which appears to obfuscate whether the time period to which it is referring is the inspection (2008) or the investigation (2010-2011), does not comport any better with the record evidence. Opp. 8, 23-25. If Applicants are suggesting that, to provide DEI with this file, Applicants had to convert documents from one file type to another, then the documents in the Issuer A file would all bear 2011 modification dates, but there are no metadata dates later than 2008 in the Issuer A, Issuer B, or Issuer C audit files. If Applicants are suggesting instead that, when visiting the Firm in 2008, the PCAOB inspectors found they could not access certain documents, then that, too, is totally unsupported by the record and facially implausible, for there is no reason why a JPEG file made available to the inspectors on the

Firm's own laptops would be unreadable on its own computers, as well as undercutting Applicants' claim that the Issuer A replacement file was not the final Issuer A audit file.

4. The only would-be support Applicants cite for this new claim about the file conversion glitch is a purported table of metadata of unidentified origin in an "Appendix" to their opening brief, which data was completely discredited by the Board's opposing brief (Opp. 23-25) and then abandoned, without any explanation, by Applicants' reply brief. Furthermore, through careless or disingenuous use of the plural "files" instead of the singular "file," Applicants' appeal briefing implies (*see, e.g.*, Rep. 1-2, 4-6, 10-13, 18-19; *see also* Br. 5-6, 24-25, 35) that their file conversion claim applies not just to the Issuer A file—the only audit file in this case that the evidence shows was ever "unreadable" (*see* Opp. 8-9, 23)—but also to the Issuer B and Issuer C files (which were stipulated as being the same files given to inspectors, *see* I.D. 26 n.155 (citing R.D. 115 ¶¶ 145-46), and were also proven to have been altered).

5. Additionally, Applicants asserted as a defense in their opening merits brief that it would have been impossible to make certain late additions to correct deficiencies in the Issuer A audit file due to a supposed "tie back" problem. Br. 2 n.2, 41-42. This claim has repeatedly been raised and rejected, and Applicants' reply brief makes no attempt to respond to the detailed refutation of the claim, most recently in the PCAOB's opposition brief. *See* Opp. 25-26.

6. In their opening brief, Applicants also attempted to create confusion about the date by which the Issuer A audit documentation was required to be complete under AS No. 3, but do not even mention the argument in their reply brief, after the Board's opposition brief demonstrated that it was an inaccurate and irrelevant distraction. *See* Opp. 26-27.

7. On appeal here, Applicants again object to the hearing officer's determinations to credit Saeed's testimony over theirs. Br. 17-18; Rep. 19-21. Yet Applicants have still offered no

basis for overturning these credibility determinations, where the hearing officer was aware of all of Applicants' attacks on Saeed's credibility and "came to a detailed, fair, and reasoned conclusion—relying importantly on the fact that Saeed's testimony was corroborated by other record evidence, whereas Applicants' testimony was not—about the relative credibility of Saeed and Applicants." *See* Opp. 27-28. Although Applicants cite the results of a lie detector test Kabani claims to have taken after the initial decision issued (Br. 17 & n.9; Rep. 20-21), the Board explained in detail why those materials were inadmissible as untimely and immaterial. R.D. 206 at 9-10. Applicants' only response is to claim that they are entitled to keep adding new materials to the record, in trial and error fashion, long after any evidentiary hearing in the case, regardless of whether the materials could have been presented at the proper time before the hearing officer and regardless of whether the substance of the materials meets basic standards of admissibility. *See* Rep. 21. More generally, Applicants fail to explain how the materials refute the mass of record evidence against them, which includes not only Saeed's testimony, but their own admissions, stipulations, testimony, emails, and forensic data.

8. Applicants continue to complain that the hearing officer "misplaced the burden of proof" when he rejected one of their ill-founded attacks on the evidence (*see* Br. 17-18; Rep. 21-22), but their briefing makes clear that their complaint is based on nothing more than a misreading of one sentence in the amended initial decision. The decision clearly and consistently explained how DEI proved the violations at issue and then noted in detail all the failings in Applicants' various defenses, none of which they have rehabilitated. *See* Opp. 28-29.

9. Applicants claim that bias was introduced into the adjudication of this case by a Board settlement with Saeed. Br. 10-11, 30-31. Having no response to the well-established authority that settling a case against one respondent does not give rise to a claim of prejudgment

or bias as to the remaining respondents (*see* Opp. 29-30), Applicants “clarify” in their reply brief that their concern is not with the fact of the settled order—which did not mention Applicants, except Kabani & Co., as the firm for which the settling party worked as an employee or independent contractor; did not refer to any disciplinary proceeding against Applicants; did not involve the issuer audits at issue here; and expressly stated that the order’s findings other than as to jurisdiction were neither admitted nor denied and “are not binding on any other person or entity in this or any other proceeding”—nor with the fact that it was known to the Board and the hearing officer while adjudicating the case against Applicants, but instead with the Board’s disclosure of the order to the public under Sarbanes-Oxley Act Section 105(d), 15 U.S.C. 7215(d). *See* Rep. 23-25. This illogical, insubstantial argument is no basis for voiding the findings of liability here, which were grounded in the extensive evidence adduced in the proceeding, not publication of a settled order that was binding only on Saeed and that neither the Board nor hearing officer considered in adjudicating the case against Applicants. *See* Opp. 30.

10. Applicants object to the hearing officer’s denial of their belated request to switch experts who would testify at the hearing. Br. 31-35; Rep. 25-27. This argument, aired and properly rejected by the hearing officer and the Board, ignores a tribunal’s wide latitude in regulating the course of a hearing; the numerous delays Applicants introduced into the case; the several extensions of time they received to submit their expert report; the accommodations made by the hearing officer to give them every reasonable opportunity to secure expert testimony; the fact that Applicants initially sought to replace their expert only after the latest in a series of changes of attorney, which had already caused multiple delays, and simply because they claimed to have identified a new expert who was better qualified; and the fact that, despite plentiful opportunities, Applicants have never indicated how an expert could have countered even some

portion of the evidence against them and supported some theory of defense. *See* Opp. 30-33; R.D. 206 at 12-14; R.D. 128 (hearing officer order). Indeed, despite arguing elsewhere, with emphasis, that “[t]he administrative proceeding is intended to be an *expedited* proceeding” (Rep. 23-24, citing PCAOB Rule 5400, referring to the “expeditious” conduct of hearings), Applicants’ position on the expert fails to recognize any interest in the orderly, “timely progression” of the hearing (*see* R.D. 128 at 6; *Price v. Seydel*, 961 F.2d 1470, 1474 (9th Cir. 1992)).

11. On appeal to the Commission, Applicants claim for the first time that they were denied their rights to a jury trial and a speedy trial. Br. 39-41, 42-43. Applicants’ only answers to why they have not waived these defenses by failing to timely raise them, as the Board’s brief pointed out (Opp. 33-34), are apparently that they had no basis for asserting them under the Sixth and Seventh Amendments in the first place (Rep. 27), which eviscerates their merits argument, and that they “were required to exhaust their administrative remedies before the PCAOB” (*id.*), which does not explain why they did not properly preserve their defenses in the PCAOB proceeding. Unable to respond to the Board’s arguments that those Amendments are not a basis for Applicants’ claims of right (*see* Opp. 33, 34-35), Applicants retreat to a hazy, unsupported assertion that “generally accepted rules designed to protect constitutionally protected due process rights while not binding do or should give direction to executive agencies as to how to conduct trials.” *See* Rep. 27, 29. Yet Applicants have no support for a claim that any due process right was violated. They merely assert, with italics, that “the PCAOB waited nearly *5 years* to bring charges against [them] for their 2007 audits” (Rep. 29-30), ignoring the fact that the charges were brought not based on the “2007 audits” but on Applicants’ noncooperation with an October 2008 inspection, which deceptive conduct by them did not come to light until well after it had occurred. In fact, there was no undue delay at any stage of this case. Applicants make no

showing that the time taken to conduct a diligent investigation, prosecute hotly contested litigation, and adjudicate all the issues and arguments raised in this case prejudiced them or represented “lackadaisical conduct” or some sort of intentional delaying tactic. *See* Opp. 35-36.

12. On appeal to the Commission, Applicants argue for the first time that the PCAOB had and breached a duty to create unspecified defenses for Applicants out of the Firm’s own files. Br. 5-6, 20, 25, 35-36, 51; Rep. 30-32. This is no defense at all because Applicants waived the argument by not raising it in a timely manner, they fail to show that the Board had any such duty, and their argument is entirely speculative. *See* Br. 36-37.

13. Applicants’ challenges to the sanctions consist of meritless arguments that they did not engage in any violations; that, contrary to *Gately & Associates, LLC*, SEC Rel. No. 34-62656, 2010 SEC LEXIS 2535, *26 (Aug. 5, 2010), violation of PCAOB Rule 4006 requires that Applicants acted with “scienter” (Rep. 9-10); that, again contrary to *Gately*, 2010 SEC LEXIS 2535, *33 & n.32, and other authority (*see* Opp. 39-40), imposition of heightened sanctions under Sarbanes-Oxley Act Section 105(c)(5), 15 U.S.C. 7215(c)(5), for violation of PCAOB rules and auditing standards requires proof of deliberate or reckless commission of securities fraud (Br. 20-25; Rep.7-11); and that, as discussed in detail below (at 14-15), their misconduct was a mere inconsequential, paperwork technicality about “the maintenance and storage” of audit files and “procedures for assisting the PCAOB” with investigations and that they should be “applaud[ed]” for their “extra effort” (*e.g.*, Rep. 1, 11-12).

None of Applicants’ litany of defenses carries any force against the extensive, weighty evidence and arguments against them, even after Applicants have had a full opportunity to consider the Board’s analysis, to attempt to rehabilitate any flaws in their defenses, and to brief

the defenses anew to the Commission. Thus, there is no likelihood, strong or otherwise, that Applicants will succeed on the merits of this case.

B. Applicants Will Not Suffer Irreparable Injury.

If the stay on the nonmonetary sanctions is lifted, Applicants will be censured, and, due to the revocation of the Firm's registration and of the associational bars on Kabani, Deutchman, and Khan, Applicants may not lawfully prepare or issue, or participate in the preparation or issuance of, audit reports with respect to, at most, any issuer, broker, or dealer; may not lawfully, "in connection with the preparation or issuance of any audit report," "(i) share in the profits of, or receive compensation in any other form from, any registered public accounting firm, or (ii) participate as an agent on behalf of such a firm in any activity of that firm"; and may not lawfully associate with, at most, any issuer, broker, or dealer in an accountancy or a financial management capacity. *See* Sarbanes-Oxley Act Sections 102(a) & 105(c)(7), 15 U.S.C. 7212(a) & 7215(c)(7) (originally and as amended); Board Rule 5301(a) & note; PCAOB Rel. No. 2003-015, A2-79 to A2-82 (Sept. 29, 2003). This does not constitute irreparable injury.

Contrary to Applicants' unsupported assertions of loss of business or income (*see* Br. 33; Rep. 3-4; Opp. 32-33; Mtn. 12, 14), financial detriment caused by inability to engage in a particular line of business does not rise to the level of irreparable injury warranting a stay. *See, e.g., Atlantis Internet Group Corp.*, SEC Rel. No. 34-70620, 2013 SEC LEXIS 3121, *18 (Oct. 7, 2013) (citing *Harry W. Hunt*, SEC Rel. No. 34-68755, 2013 SEC LEXIS 297, *16 n.27 (Jan. 29, 2013)); *John Montelbano*, SEC Rel. No. 34-45107, 2001 WL 1511604, *3 (Nov. 27, 2001); *Robert J. Prager*, SEC Rel. No. 34-50634, 2004 SEC LEXIS 2578, *2 (Nov. 4, 2004); *see also William Timpinaro*, SEC Rel. No. 34-29927, 1991 SEC LEXIS 2544, *8 (Nov. 12, 1991) ("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of

money, time, and energy necessarily expended in the absence of a stay, are not enough.”) (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

C. The Stay Is Substantially Harming, and Does Not Serve, the Public Interest.

Consideration of the last two *Davis* factors—whether there is substantial harm to the public from a stay and whether a stay serves the public interest—also weighs strongly in favor of lifting the stay. This case involves conduct antithetical to the public interest in the preparation of informative, accurate, and independent issuer audit reports and to the protection of the interests of investors, who currently continue to be at risk of audits of public companies by Applicants.

Applicants’ conduct at issue undermined requirements on which the quality and integrity of an issuer audit largely depend, which are fundamental to performing issuer audits. As the Commission held in *Gately*, cooperation with PCAOB inspections is “pivotal to the Board’s ability to enhance investor protection and the accuracy of issuer auditor reports through Board oversight of registered accounting firms,” and noncooperation poses an “obvious” risk of harm to investors and the market. 2010 SEC LEXIS 2535, *3, *24, *43; *see, e.g.*, Opp. 38-39.

Applicants did so in an egregious manner, through deception, altering and backdating audit work papers, and thereby delaying discovery of the misconduct, rendering the audit documentation utterly unreliable, and thwarting the detection of defects in the audit work itself. *See, e.g.*, Opp. 4-17, 35, 40-41. They “acted with a highly culpable state of mind, have shown no recognition of the wrongful nature of their conduct, have provided no assurances that they would not engage in further violations, and have the opportunity to engage in such violations.” Opp. 39.

Applicants, far from showing that they appreciate these fundamental responsibilities of an issuer auditor, incredibly assert that this case is “limited to administrative sanctions regarding [their] work papers, not the audit opinions themselves, or the conclusions reached by the

auditors” (Mtn. 12); that nothing more is at stake than “the maintenance and storage of original audit files and proper procedures for assisting the PCAOB with its after-the-fact-investigations” (Rep. 12); and that the Board “made th[e] determination” that the “subject audit work” was “consist[ent] with [PCAOB] standards” and that “there is no dispute that the audits that were performed were accurate” (Rep. 1, 11; *see* Br. 1, 5, 9, 25), completely failing to recognize that altered and unreliable work papers frustrate the ability to determine whether or not the audit work complied with the rules and standards. In fact, Applicants go so far as to boast in their reply brief that their conduct was an “act of grace” and “good deed” that should be “applaud[ed]” (Rep. 1, 5, 17). This highlights the importance of the sanctions to the public interest. *See, e.g., Horning v. SEC*, 570 F.3d 337, 346 (D.C. Cir. 2009); *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004); *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 100 (2^d Cir. 1978).

Moreover, Applicants state that they “continue to practice as public auditors while the sanctions are under review” (Mtn. 4; *see* Br. 33; Rep. 3-4; note 2 above), plainly placing investors and public companies at current and continuing risk of issuer audits by those unfit to perform them. Lifting the stay would also enhance the important benefits to the public of the SEC’s website disclosure of Commission orders and party applications, notices, motions, and briefs in an SEC review proceeding, discussed in the Board’s opposition to Applicants’ motion for a protective order (*see* Resp. 5-6), by allowing the Board to report the sanctions to the public.

Thus, there is a strong public interest in the immediate effectiveness of the revocation of registration, the associational bars, and the censures imposed by the Board in this case. *See, e.g., North Woodward Financial Corp.*, SEC Rel. No. 34-72828, 2014 SEC LEXIS 2894, *16 & n.16 (Aug. 12, 2014) (holding that stay of bar for failure to cooperate with FINRA requests for information would be unjustified and describing the violation as warranting stringent sanctions

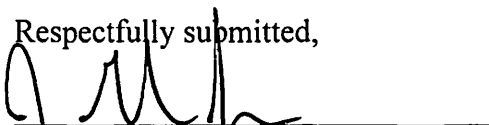
because noncooperation “subverts [FINRA’s] ability to execute its regulatory responsibilities”); *Gregory W. Gray, Jr.*, Admin Proc. File No. 3-13344 (Feb. 19, 2009) (denying stay of bar), *later order*, SEC Rel. No. 34-60361, 2009 WL 2176836, n. 2 (July 20, 2009); *Janet Gurley Katz*, Admin. Proc. File No. 13279 (Nov. 3 & 25, 2008) (same), *later order*, SEC Rel. No. 34-61449, 2010 WL 358737, n.5 (Feb. 1, 2010); *Prager*, 2004 WL 2480717, n.2; *Montelbano*, 2001 WL 1511604, n.3 (citing *Michael Galasso, Jr.*, Admin. Proc. File No. 3-1042 (Mar. 15, 2001)); *Pasquale Schettino*, Admin Proc. File No. 9921 (July 9, 1999), *later order*, SEC Rel. No. 44329, 2001 WL 600444, n.2 (May 21, 2001); *Stratton Oakmont, Inc.*, SEC Rel. No. 34-38026, 1996 WL 707982 (Dec. 6, 1996); *Prime Investors, Inc.*, Admin. Proc. File No. 3-8820 (Sept. 28, 1995), *later order*, SEC Rel. No. 34-38487, 1997 WL 163992, n.3 (Apr. 8, 1997).

IV. CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Commission lift the stay on the revocation of Kabani & Co.’s registration, the associational bars against Kabani, Deutchman, and Khan, and the censures against each Applicant.

Dated: September 2, 2015

Respectfully submitted,



J. Gordon Seymour
General Counsel

Luis de la Torre
Associate General Counsel

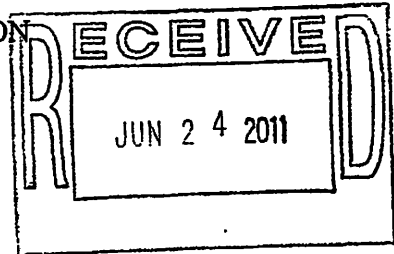
Jodie J. Young
Assistant General Counsel

Public Company Accounting Oversight Board
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202-207-9100 (phone)
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Attachment

ADMINISTRATIVE PROCEEDING
FILE NO. 3-14370

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
June 14, 2011



In the Matter of the Application of

DAVIS ACCOUNTING GROUP, P.C. and
EDWIN R. DAVIS, JR. CPA
c/o Elliot N. Taylor, Esq.
Brian A. Lebrecht, Esq.
The-Lebrecht Group, APLC
406 West South Jordan Parkway, Suite 160
South Jordan, Utah 84095

For Review of Disciplinary Action Taken by

PCAOB

CORRECTED
ORDER
PARTIALLY
LIFTING
STAY

I.

Edwin R. Davis, Jr. and Davis Accounting Group, P.C.,¹ a registered public accounting firm ("Firm" and together with Davis, "Applicants"), filed an application pursuant to Section 107(c) of the Sarbanes-Oxley Act of 2002² for review of disciplinary action taken by the Public Company Accounting Oversight Board ("Board" or "PCAOB"). The Board found that Applicants refused to cooperate with an investigation by the Board's Division of Enforcement and Investigations for which sanctions were warranted under Sarbanes-Oxley Act Section 105(b)(3) and Board Rule 5300(b).³ In doing so, the Board rejected Applicants' contention that Davis suffered from depression that "was so severe that it prevented him from producing any documents in response to [accounting board demands] for more than 20 months,"

¹ The firm changed its name, effective October 1, 2010, to Etania Audit Group P.C. Because the disciplinary action here was instituted before that date, we continue to use the name Davis Accounting Group, P.C.

² 15 U.S.C. § 7217(c).

³ 15 U.S.C. § 7215(b)(3), Rule 5300(b) *available at* http://pcaobus.org/Rules/PCAOBRules/Pages/Section_5.aspx#rule5300.

particularly in light of the fact that Applicants issued more than thirty audit reports during that time period.

The Board barred Davis from associating with any registered public accounting firm, imposed on him a \$75,000 civil money penalty, and permanently revoked the Firm's registration. Applicants filed an application for Commission review, which automatically stays the Board's action pursuant to Sarbanes-Oxley Act Section 105(e) "unless and until the Commission orders" that "no such stay shall continue to operate."⁴ In connection with Applicants' appeal, the PCAOB requests that the Commission lift the stay of the Board's order, which Applicants oppose. For the reasons stated below, the request to lift the stay is partially granted.

II.

Applicants present three main arguments in response to the Board's motion. They assert that the "documents and information in connection with a PCAOB inspection or investigation" receive "confidential and privileged treatment" unless and until they are "presented in connection with a public proceeding," and that the PCAOB is attempting to circumvent Applicants' "right of confidentiality" by seeking to lift the stay. Applicants further claim that the stay "is not harming the public because Applicants' prior public company audit clients and the public are on notice," given that the clients acknowledged having received a resignation letter from the Firm. Finally, Applicants argue that the Board's motion is inconsistent with precedent, citing review proceedings in *Gately and Associates, LLC*,⁵ where the Commission upheld Board disciplinary action but allowed the automatic stay to remain in place until issuance of the Commission opinion. Applicants assert that the Commission "has established its position regarding the timing for terminating the stay" and should therefore "wait until it has finalized its review and issued its Opinion."

In support of its motion, the Board notes that "[n]either the Act nor the Commission's rules describe the test the Commission should apply in considering whether to terminate a stay imposed pursuant to Section 105(e), and the Commission has not yet ruled on this issue." The Board further notes that, in considering stay requests in connection with appeals of self-regulatory action under the Exchange Act, the Commission focuses on the following factors: (1) whether there is a strong likelihood that the applicant will succeed on the merits; (2) whether, absent a stay (or, as here, continuation of the stay), the applicant will suffer irreparable injury; (3) whether a stay will result in substantial harm to the public; and (4) whether a stay will serve the public interest.⁶ The PCAOB contends that application of these factors is "appropriate in this context as well and weigh[s] strongly in favor of lifting the stay in this case."

⁴ 15 U.S.C. § 7215(e)(3).

⁵ Securities Exchange Act Rel. No. 63167 (Oct. 22, 2010), 99 SEC Docket 33752.

⁶ See *Navistar Int'l Corp.*, Exchange Act Rel. No. 55304 (Feb. 13, 2007), 89 SEC Docket 3384, 3387.

The PCAOB argues that there is no likelihood that Applicants will succeed on the merits because Applicants "cannot reconcile their issuance of more than 30 audit reports" with their claim that, during the same period, Davis's depression prevented them from cooperating with the Board. The PCAOB asserts that the Commission rejected a similar argument in *Gately* and "routinely upholds bars imposed by SROs in cases, like this one, of a total failure to cooperate."⁷ With respect to the issue of irreparable harm, the PCAOB notes that Applicants are no longer licensed to practice in any state and therefore cannot lawfully engage in public company auditing. According to the PCAOB, Applicants would therefore suffer no injury if the stay is lifted because it would not "restrict their conduct any more than it is already restricted by state and federal law."

The Board further contends that the public interest strongly supports lifting the stay. Pointing to Commission filings of three public companies that identify the Firm as their auditor, the PCAOB claims that "Applicants have demonstrated that they are unlikely to let their unlicensed status stop them from attempting to conduct additional public company audits." In turn, unknowing "investors, issuers, and ultimately the markets will continue to be harmed" until the stay is lifted, at which point the public would be notified about the PCAOB disciplinary sanction imposed on Applicants pursuant to Sarbanes-Oxley Act Section 105(d)(1)(C).⁸ The PCAOB argues that the public will suffer further harm in the likely event that issuers will need to audit financial statements for a second time to address the first audit conducted by Applicants improperly.

III.

It appears appropriate to consider the motion, as the Board argues, based on the factors the Commission previously has considered in evaluating similar requests for stays in connection with self-regulatory organization proceedings. A consideration of those factors supports the Board's position.

Final resolution must await the Commission's determination on the merits of Applicants' appeal, but there does not appear to be a strong likelihood, at this point, that Applicants will succeed on appeal. Nor, based on the fact that Applicants are no longer licensed to practice, do

⁷ The PCAOB does not address Applicants' argument that *Gately* stands for the proposition that a stay should remain in place until the Commission has issued an opinion. In *Gately*, however, the PCAOB did not seek to lift the stay of sanction pending the Commission's consideration of the appeal. *Gately* therefore is inapposite. No other Commission decision has addressed this issue.

⁸ 15 U.S.C. § 7215(d)(1)(C) (requiring the PCAOB to report the imposition of a disciplinary sanction to the public once any stay on the sanction has been lifted).

they appear likely to suffer irreparable harm.⁹ Any detriment that Applicants may incur from lifting the stay is outweighed by the danger that Applicants would pose to the investing public, particularly given that Davis was convicted in state court on two counts of unlawful professional conduct in a case arising out of charges for practicing without a license.¹⁰ Therefore, under the circumstances, the granting of the PCAOB's request to lift the stay is warranted. With respect to the civil money penalty, however, it appears appropriate, and consistent with Commission precedent, to deny the lifting of the stay of that sanction, pending the Commission's determination of this appeal.¹¹

Accordingly, IT IS ORDERED that the request of the Public Company Accounting Oversight Board to lift the stay of the order permanently revoking the registration of Davis Accounting Group, P.C. and permanently barring Edwin R. Davis, Jr. from association with a registered public accounting firm, pending Commission review of their appeal, be, and it hereby is, granted, and it is further

⁹ To the extent that Applicants are concerned about preserving the confidentiality of certain "documents and information" in connection with this proceeding, they may file a motion for a protective order pursuant to Commission Rule of Practice 322. Under Commission Rule 322, any party "may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information." 17 C.F.R. § 201.322(a).

¹⁰ See 15 U.S.C. § 7215(d)(1)(C) (requiring the PCAOB to report the imposition of a disciplinary sanction to the public once any stay on the sanction has been lifted); cf. *Andrew P. Gonchar*, Order Denying Stay, Admin. Proc. File No. 3-13243 (Oct. 14, 2008) (denying request for stay of sanctions in self-regulatory organization proceeding in part because detriment was "outweighed by the danger [applicants'] continued presence in the securities industry posed to the investing public" (citations omitted)); *David Henry Disraeli*, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 876-77 (finding that public interest in imposing bar outweighed impact of bar on respondent's clients because his clients "remain[ed] free to choose another investment adviser" and the Commission "has an obligation to protect the investing public" in general).

¹¹ See, e.g., *Guy P. Riordan*, Partial Stay Order, Admin. Proc. File No. 3-12829 (Jan. 11, 2010) (denying request for stay as to disgorgement order and fine pending the filing and determination of an appeal with a Court of Appeals); *David Henry Disraeli*, Partial Stay Order, Admin. Proc. File No. 3-12288 (Jan. 16, 2008) (denying request for stay as to bar and revocation orders, but granting *sua sponte* stay of financial sanctions pending appeal); *Valicenti Advisory Servs., Inc.*, Partial Stay Order, Admin. Proc. File No. 3-8854 (Dec. 3, 1998) (staying financial sanctions pending appeal).

ORDERED that the request of the Public Company Accounting Oversight Board to lift the stay of the civil money penalty imposed on Edwin R. Davis, Jr. by Public Company Accounting Oversight Board pending Commission review of Applicants' appeal be, and it hereby is, denied.

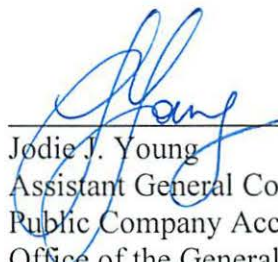
For the Commission by the Office of the General Counsel pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

CERTIFICATION OF COMPLIANCE WITH RULE 154(c)

I, Jodie J. Young, certify that the foregoing brief of the Public Company Accounting Oversight Board filed in opposition to Applicants' application for Commission review complies with the word count limitations set forth in Rule 154(c) of the Commission's Rules of Practice, 17 C.F.R. 201.154(c), and that the foregoing brief contains 5,223 words, exclusive of pages containing the Table of Contents, Table of Authorities, and attachment, as counted by the Word Count feature of our Microsoft Word word-processing program used to prepare the brief.



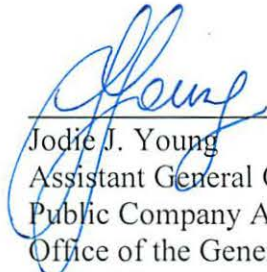
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2015, I caused to be sent to John R. Armstrong and Matthew S. Henderson via Federal Express a copy of the PCAOB's foregoing motion for and brief in support of termination of the stay of sanctions (the original and three copies of which were filed today via hand delivery with the Commission's Office of the Secretary) addressed as follows:

John R. Armstrong
Matthew S. Henderson
Horwitz + Armstrong, LLP
26475 Rancho Parkway South
Lake Forest, CA 92630

I am also transmitting today courtesy copies of the PCAOB's filing to the above-named counsel at jarmstrong@horwitzarmstrong.com and mhenderson@horwitzarmstrong.com.



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