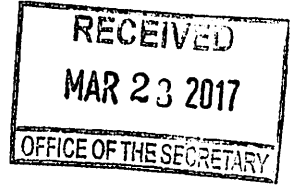


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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-16518



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In the Matter of Application of : :
: :
Kabani & Company, Inc., Hamid Kabani, CPA, Michael : :
Deutchman, CPA, and Karim Khan Muhammad, CPA : :
: :
For Review of Action Taken by : :
: :
PCAOB : :
: :
-----:

**KABANI & COMPANY, INC., HAMID KABANI, CPA, MICHAEL
DEUTCHMAN, CPA, AND KARIM KHAN MUHAMMAD, CPA'S
EMERGENCY NOTICE OF MOTION AND MOTION FOR STAY OF
SANCTIONS PENDING APPEAL TO THE NINTH CIRCUIT**

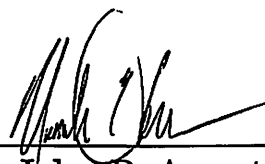
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Appellants Kabani & Co., Hamid Kabani, Michael Deutchman, and Karim Khan Muhammad (collectively, "Appellants") will and hereby do move for a stay of sanctions under Rule 401 of the United States Securities and Exchange Commission's Rules of Practice pending judicial review.

Dated: March 22, 2017

HORWITZ + ARMSTRONG^{APC}

By: _____



John R. Armstrong,
Matthew S. Henderson,
Attorneys for Appellants

Horwitz + Armstrong^{APC}
14 Orchard, Suite 200
Lake Forest, CA 92630
Tel: 949.540.6540
Fax: 949.540.6578

Memorandum

1. Introduction

After consideration of Appellants' petition for review, the Commission sustained the Public Company Accounting Oversight Board's ("PCAOB") sanctions which effectively bar the Appellants from further public company practice. Appellants have appealed that decision to the Ninth Circuit Court of Appeals, and move for a stay of these sanctions while the matter is pending judicial review.

There is good cause for issuing a stay of sanctions as Appellants and their audit clients will be substantially prejudiced and irreparably harmed if they are unable to continue their audit practice pending appellate review. In the event the appellate court were to reverse the Commission's ruling, the damage to Appellants reputation and business would be devastating if these sanctions remain in place pending appeal.

2. The SEC is Authorized to Issue a Stay Pending Judicial Review

Under Rule 401(c) of the SEC's Rules of Practice, "[a] motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A

motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.” Moreover, under the Administrative Procedure Act (“APA”), the Commission and other administrative agencies possess the authority to postpone the effective date of action taken by them pending judicial review. 5 U.S.C., § 705. The circumstances for issuing a stay under the APA arise when “justice so requires” and “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury....” *Id.*

The Commission’s consideration of a motion for stay is guided by the following four factors:

- (1) Whether the stay applicant has made a strong showing that he or she is likely to succeed on the merits;
- (2) Whether the applicant will be irreparably injured absent a stay;
- (3) Whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) Where the public interest lies.

See *Bernerd E. Young*, Exchange Act Release No. 78440, 2016 WL 4060106, at *1 (July 29, 2016).

On or about April 27, 2015, Appellants filed a notice of intent to appeal the PCAOB's sanctions to the Commission. Thereafter, Appellants and the PCAOB filed briefs supporting their respective positions as to the appropriateness of the sanctions. Since then, the Commission has proposed amendments to its Rules of Practice designed to modernize its rules and to provide more procedural safeguards to litigants.

Appellants and the Commission disagree mightily as to the merits of the PCAOB's findings. Moreover, Appellants contend that they were not provided a fair and impartial hearing and that the disciplinary proceedings were unconstitutional and violated Appellants' procedural due process rights. Appellants contend that the violation of their due process rights coupled with the insufficient evidence upon which the sanctions were based warrants reversal by the Court of Appeals. Although the Commission may disagree, the Commission "has at times stayed...sanctions pending appeal without reference to the applicant's likelihood of success on the merits." See *Bernerd E. Young*, *supra*, 2016

WL 4060106, at *1. In light of the above and the other factors that will be discussed below, Appellants believe their likelihood of success on the merits should be strongly considered the Commission, or alternatively be disregarded for purposes of determining this motion.

Should the sanctions remain in place, Appellants will be irreparably harmed pending their appeal. That is, Appellants business will cease operations and they will be saddled with cash flow problems which may inhibit their ability to retain legal counsel to oppose the PCAOB/SEC sanctions. If Appellants prevail in their appeal, they will have already lost all their clientele and will have had their reputations damaged among their peers and clients.

Appellants' clients will be similarly harmed if a stay is not issued. Appellants' clients will be forced to retain new auditors and may incur additional fees and costs for work that was recently performed, but now may not be relied upon. Again, if Appellants prevail in their appeal, then their clients will have incurred needless costs that could have been abated by instituting a stay pending judicial review.

Finally, the public interest factor weighs incredibly in Appellants favor. Appellants notified the Commission of their intent to file a


petition for review in April of 2015 and the briefing concluded no later than September of 2015. If the public interest was substantially served by denying a stay of sanctions, then the Commission would have expedited its decision of the PCAOB sanctions more expeditiously and certainly not 18 months after the briefs were submitted.

3. Conclusion

For the foregoing reasons, Appellants respectfully request that this motion be granted and that a stay be issued pending judicial review.

Dated: March 22, 2017

HORWITZ + ARMSTRONG^{APC}

By: 

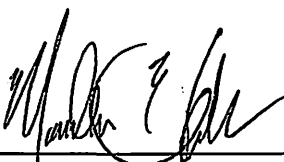
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CERTIFICATE OF WORD COUNT

This motion complies with the type-volume limitation of Rule 154(c) because this brief contains 1,811 words excluding the parts of the brief exempted by subdivision (c), as counted by the Microsoft Word® word-processing program used to generate this motion.

Dated: March 22, 2017



Matthew Henderson

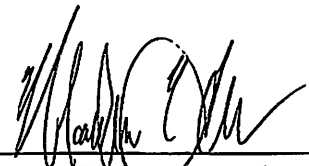
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **KABANI & COMPANY, INC., HAMID KABANI, CPA, MICHAEL DEUTCHMAN, CPA, AND KARIM KHAN MUHAMMAD, CPA'S EMERGENCY NOTICE OF MOTION AND MOTION FOR STAY OF SANCTIONS PENDING APPEAL TO THE NINTH CIRCUIT** on this 22nd day of March, 2017, to the following party by Fed Ex overnight mail:

PCAOB
c/o Phoebe W. Brown, Esq.
1666 K. Street, N.W.
Washington, DC 20006

An original and three copies of this motion will be delivered by Fed Ex overnight mail to the Office of the Secretary of the SEC in accordance with its Rules of Practice as follows:

United States Securities and Exchange Commission
Office of the Secretary
c/o Brent Fields
100 F Street, NE
Washington, DC 20549


Matthew Henderson