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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17134

In the Matter of

TIMOTHY QUINTANILLA, CPA,

Respondent.

THE DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT TIMOTHY QUINTANILLA'S EMERGENCY PETITION TO LIFT THE TEMPORARY SUSPENSION ISSUED BY THE SECURITES AND EXCHANGE COMMISSION

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April 1, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statues

Securities Act of 1933

Securities Exchange Act of 1934

Rules

I. INTRODUCTION

In his Emergency Petition (the "Petition" or "Pet. at __"), Respondent Timothy Quintanilla ("Respondent" or "Quintanilla") requests that the Commission lift the temporary suspension it issued on February 25, 2016, enjoining him from appearing or practicing before the Commission pursuant to Rule 102(e)(3) of the Commission's Rules of Practice. Respondent apparently does not seek to oppose the Commission's temporary suspension or any permanent bar to prevent him from appearing or practicing before the Commission. Rather, Respondent asks the Commission for a novel form of relief: to lift the temporary suspension against him for 30 days so that his client, an unidentified issuer, can file its quarterly Form 10-Q. The Division of Enforcement (the "Division") respectfully submits that Quintanilla's Petition should be rejected and a permanent bar should issue forthwith.

First, Quintanilla cites no precedent – and the Division is aware of none – that has permitted such a carve-out or found it to be in the public interest to allow an accountant, who is subject to a recent anti-fraud injunction, to continue to practice even for a limited purpose. On the contrary, Quintanilla deserves no special treatment here as his conduct involved egregious fraud over a three-year period, and contrary to his assertions, he was not cooperative with the Division. In short, the public interest will not be served by the carve-out Quintanilla is seeking.

Second, Quintanilla's claim of "surprise" that the Commission issued a temporary suspension is disingenuous. Quintanilla, represented by the same attorney who has represented him over the past four years in the federal court enforcement action, admits that when he entered into the settlement in November 2015 he understood that the Division would seek to permanently bar him from practicing before the Commission in a follow-on proceeding. He and his attorney were also on notice of Rule 102(e)(3), which specifically states that such a suspension may

commence within 90 days of the entry of a Final Judgment, which the U.S. District Court for the Southern District of New York entered on December 4, 2015.

Third, the Commission has made clear that accounting professionals similar to Quintanilla, who have consented to fraud injunctions, should be permanently barred from appearing or practicing before the Commission. Quintanilla does not contest that a permanent bar is appropriate here.

The Division respectfully submits that public interest requires that Respondent's Petition be summarily rejected and the Commission should impose a permanent bar.

II. FACTS

A. The District Court Injunctive Action.

On November 8, 2012, the Commission filed a complaint in the United States District Court for the Southern District of New York against Quintanilla, as well as three company executives, in the action captioned *Securities and Exchange Commission v. Lee Cole, Linden Boyne, Kevin B. Donovan and Timothy Quintanilla*, 12 Civ. 8167 (RJS) (S.D.N.Y.). The complaint charged Quintanilla with securities fraud for issuing clean audit opinions for his client, Electronic Game Card Inc. ("EGMI"), based on reckless and deficient audit work. Specifically, the Complaint alleged that Quintanilla and the public accounting firm Mendoza Berger & Co. LLP ("Mendoza Berger"), in which he was a partner, authorized the issuance of unqualified audit opinions for the years 2006 through 2008, even though the financial statements to which those unqualified opinions pertained were riddled with material misstatements and omissions that should have been detected in the course of the audits.

The complaint alleged that at Quintanilla's direction, Mendoza Berger's audit opinions knowingly or recklessly misrepresented that the firm had conducted audits of EGMI's financial statements "in accordance with the standards of the Public Company Accounting Oversight

Board (United States)" ("PCAOB") and that those statements "present[ed] fairly, in all material respects, the financial position" of EGMI. In fact, as the complaint alleged, in the course of their audit work, Quintanilla and the audit team he supervised failed to properly investigate a series of red flags, any number of which, if appropriately pursued, would have quickly uncovered large-scale fraud in EGMI's financial statements. Other evidence indicated that Mendoza Berger simply failed to audit significant portions of EGMI's balance sheet. The Commission's complaint further alleged that to conceal those audit failures from the PCAOB, Mendoza Berger employees, under Quintanilla's supervision, created and backdated audit files pertaining to the EGMI audit shortly before a PCAOB inspection in September and October 2009.

Pursuant to the District Court's Final Judgment and Quintanilla's Consent to the entry of the Final Judgment, as described further below, such allegations are uncontested for the purposes of this administrative proceeding.

B. <u>The Entry of the District Court Injunction.</u>

On November 10, 2015, without admitting or denying the allegations of the Complaint, Quintanilla consented to entry of an anti-fraud injunction, which resolved the Commission's claims against him (the "Consent"). In his Consent, Quintanilla acknowledged that the District Court's "entry of a permanent injunction may have collateral consequences" and that, "in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, [he] understands that he shall not be permitted [in this proceeding] to contest the factual allegations of the complaint in [the District Court] action." (Consent at 3-4.) Quintanilla also agreed he "will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression the complaint is without factual basis . . ." (Consent at 4.)

Following the execution of the Consent, on December 4, 2015, the U.S. District Court for the Southern District of New York entered a Final Judgment against Quintanilla (the "Final Judgment"). The Final Judgment, which incorporated the Consent, (a) permanently enjoined Quintanilla from future violations, direct or indirect, of Section 17(a) of the Securities Act of 1933, Sections 10(b), 10A(a)(1), and 10A(b)(1) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder; and (b) ordered him to pay a $100,000 civil penalty. (Final Judgment at 1-4.)

C. The Administrative Proceedings and Quintanilla's Emergency Petition to Lift the Temporary Suspension

On February 28, 2016, the Commission issued an Order Instituting Proceedings ("OIP") against Quintanilla pursuant to Rule 102(e) of the Commission's Rules of Practice. The Commission found that a court of competent jurisdiction had permanently enjoined Quintanilla from violating the federal securities laws and it was "appropriate and in the public interest that Quintanilla be temporarily suspended from appearing or practicing before the Commission." (OIP at 2.)

On March 24, 2016, Quintanilla filed the instant Petition to lift the temporary suspension against him. In his Petition, Quintanilla asks for a limited 30-day waiver of this suspension so that an unidentified issuer client can file its quarterly report "without further delay." (Pet. at 3-4.) He asks that the Commission grant his request because (1) although the Commission had the authority to immediately suspend him, Quintanilla was not made aware during settlement discussions that the Commission intended to do so; and (2) he has been cooperative with the Division "throughout the underlying District Court lawsuit, and particularly during settlement negotiations." (Pet. at 3.) Neither argument has merit. The Commission should deny Quintanilla's Petition and issue a permanent bar forthwith.

III. ARGUMENT

It is undisputed that Rule of Practice 102(e) authorizes the Commission to suspend Quintanilla from appearing or practicing before the Commission following his fraud injunction.[1] *See* 17 C.F.R. § 201.102(e). Indeed, Quintanilla has agreed to be permanently barred from appearing or practicing before the Commission. (Pet. at 3-4.) The sole issue before the Commission is whether Quintanilla's temporary suspension should be lifted for 30 days to allow his client to file its quarterly report. As explained below, Quintanilla cannot meet his heavy burden "to show cause" why it is in the public interest that his temporary suspension be lifted under the circumstances here. The appropriate remedial sanction at this time is to make Quintanilla's temporary suspension permanent.[2]

A. Respondent's Request for this Novel Relief Should be Denied Because it is Not In the Public Interest.

To determine whether sanctions are in the public interest, and if so what sanctions to impose, the Commission considers the factors enumerated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). As the Commission has previously stated:

> When considering whether an administrative sanction serves the public interest, we consider the factors identified in *Steadman v. SEC*: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name: (A) Permanently enjoined by a court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or the regulations thereunder.

[2] As Quintanilla has agreed to a bar, there is no need for a hearing pursuant to Rule 102(e)(3)(iii), and Quintanilla's suspension should become permanent pursuant to Rule 102(e)(3)(ii).

the likelihood that the respondent's occupation will present opportunities for future violations.

Gary M. Kornman, Commission Opinion, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009). The inquiry is a flexible one, and no one factor is dispositive. *Id.* (citations omitted).

Quintanilla has not made any showing – much less a compelling case – that would support the carve out he is seeking here. Essentially, he seems to be arguing that it would be inconvenient for the client to retain a new accountant at this late date. But he does not explain why he did not apprise the client of his circumstances months ago when he settled the case. Even if there were evidence that his client will be inconvenienced – and there is none – the unfortunate circumstances of the client would have no bearing on the public interest. The whole point of the bar is to ensure that the public receives reliable financial information that has been subject to review by a qualified auditor who has not been barred from practice by the Commission. There is no "client convenience" exception.

Moreover, contrary to his assertions, Quintanilla did not cooperate with the Division during the underlying lawsuit and settlement negotiations. (Pet. at 3.) Quintanilla vigorously contested the charges against him for nearly three years, including by filing a motion for summary judgment and opposing the Division's motion for summary judgment. It was only subsequent to the District Court's order denying the summary judgment motions and on the eve of a jury trial scheduled for January 4, 2016 that Quintanilla agreed to settle with the Division and consented to entry of the fraud injunction.

Nor is there any merit in Quintanilla's claim of "surprise" that the Commission issued a temporary suspension. (Pet. at 2.) Quintanilla admits that when he entered into the Consent he understood that the Division would seek to permanently bar him from practicing before the

Commission and that he had agreed to such a bar during settlement negotiations. (Pet. at 1, 4.) The applicable Rule, Rule 102(e)(3), specifically states that a proceeding to suspend a respondent may commence *no more than* "90 days after the date on which he final judgment . . . has become effective." The District Court issued the Final Judgment on December 4, 2015. The Commission instituted the OIP on February 28, 2016, within the 90-day window. Thus, both Quintanilla and his attorney – the same attorney that has filed papers in this administrative proceeding – were on clear notice of the timing of Quintanilla's probable suspension when the federal court enforcement action was settled in November 2015.

Quintanilla deserves no special treatment here as his conduct involved egregious fraud over a three-year period, which, as discussed above, included issuing false audit opinions. Nor does he, or could he, dispute the allegations that form the basis of the fraud injunction. *See* 17 C.F.R. § 201.102(e)(3)(iv); *Peter Siris*, Commission Opinion, Exchange Act Rel. No. 71068, 2013 WL 6528874, at *8 (Dec. 12, 2013) ("We have repeatedly held that where, as here, respondents consent to an injunction, they may not dispute the factual allegations of the injunctive complaint in [a subsequent] administrative proceeding.") (internal quotations and citations omitted) (citing *John W. Lawton*, Commission Opinion, Investment Advisers Act Rel. No. 3515, 2012 WL 6208750, at *5 (Dec. 13, 2012) ("Having consented to the entry of an injunction on the basis of the Complaint's allegations, [Respondent] may not use this proceeding to collaterally attack the allegations"); *Martin A. Armstrong*, Commission Opinion, Advisers Act Rel. No. 2926, 2009 WL 2972498, at *3 (Sept. 17, 2009) ("We have repeatedly held that a party may not collaterally attack the factual allegations in an injunctive complaint brought by the Commission when, as is the case here, the party has consented to the entry of an injunction on the basis of such allegations.")).

Significantly, aside from his arguments regarding "cooperation" and "surprise," Quintanilla offers no arguments as to why he should not be temporarily or permanently barred. Quintanilla has not provided any evidence recognizing his wrongdoing, nor has he provided any assurances against future violations. It is plainly within the public interest to keep his suspension in place pending a permanent bar. Indeed, temporary suspensions have been upheld in similar follow-on proceedings. *See, e.g., Virginia K. Sourlis, Esq.*, Commission Opinion, Exchange Act Rel. No. 69358, 2013 WL 1453371, at *2 (Apr. 10, 2013) (denying respondent's motion to lift a temporary suspension under Rule 102(e)(3)(i)(B) that was based on findings by a district court that she aided and abetted antifraud violations; determining that continuation of temporary suspension pending a hearing served the public interest and protected the Commission's processes); *Stewart A. Merkin, Esq.*, Commission Opinion, Exchange Act Rel. No. 68981, 2013 WL 661621, at *2 (Feb. 25, 2013) (denying respondent's motion to lift a temporary suspension under Rule 102(e)(3)(i)(B) that was based on findings by a district court that respondent violated antifraud provisions; determining that continuation of temporary suspension pending a hearing served the public interest and protected the Commission's processes); *Michael C. Pattison, CPA*, Commission Opinion, Exchange Act Rel. No. 64598, 2011 WL 2169094, at *2 (June 3, 2011) (denying respondent's motion to lift temporary suspension under Rule 102(e)(3)(i)(B) that was based on both a jury's findings of securities law violations and a district court's imposition of an injunction pending a hearing).

As the Commission explained in *Michael C. Pattison, CPA*, "Rule of Practice 102(e) has been the primary tool available to the Commission to preserve the integrity of its process and ensure the competence of professionals who appear and practice before it." Commission Opinion, Exchange Act Rel. No. 67900, 2012 WL 4320146, at *5 (Sept. 20, 2012) (citing *Chris G. Gunderson, Esq.*, Commission Opinion, Exchange Act Rel. No. 61234 (Dec. 23, 2009),

Marrie v. SEC, 374 F.3d 1196, 1200 (D.C. Cir. 2004) (stating that Rule of Practice 102(e) "is directed at protecting the integrity of the Commission's processes, as well as the confidence of the investing public in the integrity of the financial reporting process")). Continuing Quintanilla's temporary suspension pending a permanent bar serves the public interest by protecting investors from future harm and the Commission's processes. Under the circumstances here, the Commission should reject Quintanilla's plea for a temporary lift of his suspension.

B. <u>The Undisputed Material Facts Compel a Permanent Bar.</u>

The December 4, 2015 fraud injunction against Quintanilla, which was obtained on consent, provides ample basis for the Commission to permanently bar him from appearing or practicing before the Commission as an accountant. Rule 102(e)(3) reflects the Commission's view that "a finding by a court of competent jurisdiction that a respondent has violated securities laws, or that an injunction against future violations is warranted, is a sufficient standard of unfitness for practice before the Commission . . ." absent a showing otherwise. *See Michael C. Pattison, CPA*, Commission Opinion, 2012 WL 4320146, *30. As discussed above, Quintanilla has made no such showing. Moreover, in follow-on proceedings involving a respondent enjoined from violating the antifraud provisions of the federal securities laws, like here, the Commission has repeatedly stated:

> "[C]onduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." As we have previously held, an injunction against violations of the antifraud provisions of the securities laws "has especially serious implications for the public interest," and "ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to ... suspend or bar from participation in the securities industry . . . , a respondent who is enjoined from violating the antifraud provisions."

Vladimir Bugarski, et al., Commission Opinion, Exchange Act Rel. No. 66842, 2012 WL 1377357 at *5 (Apr. 20, 2012) (quoting *Marshall E. Melton*, Commission Opinion, Exchange Act Rel. No. 48228, 2003 SEC LEXIS 1767 at *25-27 (July 25, 2003)).

In this case, Quintanilla's fraud-based violations were egregious, recurrent, and reflected a high degree of scienter. Commission precedent makes clear that a permanent bar is warranted where a respondent like Quintanilla has consented to an injunction from violating antifraud provisions of the federal securities laws. *See Thomas D. Melvin, CPA*, Commission Opinion, Exchange Act Rel. No. 75844, 2015 WL 5172974 (Sept. 4, 2015) (permanently disqualifying accountant who had consented to a fraud injunction from appearing or practicing before the Commission); *Gruber & Company LLC*, Commission Opinion, Exchange Act Rel. No. 74904 (May 7, 2015) (suspending accountant who had consented to a fraud injunction from appearing or practicing before the Commission). *See also Chris G. Gunderson, Esq.*, Commission Opinion, Rel. No. 61234, 2009 WL 4981617 (Dec. 23, 2009) (permanently disqualifying attorney from appearing or practicing before the Commission based on a permanent injunction entered against him for registration and antifraud violations under the federal securities laws).

Indeed, the Commission has permanently barred accounting professionals from appearing or practicing before it for arguably less egregious violations of the federal securities laws. For example, in *Michael Pattison*, the Commission permanently disqualified an accountant from appearing or practicing before it who had violated internal accounting controls and books and records provisions of the securities laws. *See* 2012 WL 4320146. Here, Quintanilla committed actual fraud.

Quintanilla does not dispute the nature of his fraud, has not presented mitigating factors for why he should not be sanctioned, and has agreed to a permanent bar. Therefore, the Commission has more than a sufficient basis to immediately bar Quintanilla from appearing or practicing before it, and it should do so in the public interest.

IV. CONCLUSION

For these reasons, the Division respectfully submits that the Commission should keep Quintanilla's suspension in place and issue an order permanently barring him from appearing or practicing before the Commission.

Dated: April 1, 2016
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2016, I caused to be served true copies of the foregoing by the specified means of delivery:

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Dated: April 1, 2016

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April 1, 2016

VIA FACSIMILE AND UPS OVERNIGHT

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Re: *In the Matter of Timothy Quintanilla*, AP File No. 3-17134

Dear Mr. Fields:

The Division of Enforcement respectfully submits the Division of Enforcement's Opposition to Respondent Timothy Quintanilla's Emergency Petition to Lift the Temporary Suspension and a certificate of service. The overnight mail contains the original and 3 copies of each document.

Respectfully submitted,

Alexander Vasilescu

cc: Jonathan R. Armstrong (by e-mail and UPS w/ encls.)
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