



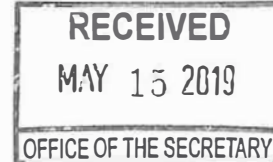
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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May 14, 2019

Via Email and United Parcel Service

The Honorable Carol Fox Foelak
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, NE, Mail Stop 2557
Washington, DC 20549



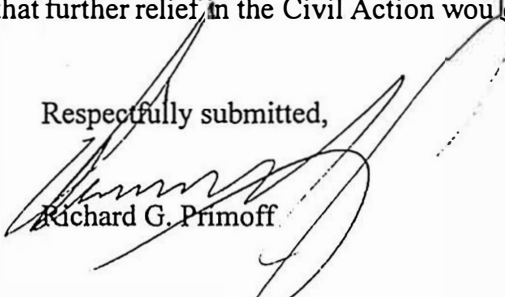
Re: In the Matter of Joseph S. Amundsen, et al. (3-18994)

Dear Judge Foelak:

I write on behalf of the Division of Enforcement to correct the record regarding the status of *SEC v. Joseph S. Amundsen*, No. C 83-00711 (WHA) (N. D. Cal.) (the "Civil Action"), which at last week's conference Respondent Amundsen represented he had prevailed on. The Court in the Civil Action yesterday issued an Order (copy enclosed) granting the Commission's motion for civil contempt against Amundsen, after it determined that he acted as Engagement Quality Reviewer ("EQR") on more than a dozen recent audits, and therefore had violated the 1983 consent injunction barring him from appearing or practicing before the Commission.

The Court also determined that Amundsen should not be afforded relief from the 1983 injunction. The Court, based on supplemental briefing, noted that Amundsen had acted as EQR on the year-end 2014 audit of the broker-dealer Profor, and had affirmed in audit documentation that he "possess[ed] the competence, independence, integrity and objectivity to perform the engagement quality review (EQR)," even though his daughter was Profor's financial and operations principal. The Court concluded therefore that "defendant has remained tone deaf when it comes to his professional responsibilities and that the injunction should remain in place." The Court directed Amundsen to file a list of all broker-dealers for which he has served as EQR since 2015 by June 14, and otherwise directed that further relief in the Civil Action would await the completion of the instant proceeding.

Respectfully submitted,


Richard G. Primoff

cc: Counsel for Michael Remus CPA and Michael T. Remus, CPA (Email)
Respondent Joseph S. Amundsen (Email and UPS)

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MAY 15 2019
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

No. C 83-00711 WHA

Plaintiff,

**ORDER FINDING DEFENDANT
IN CIVIL CONTEMPT**

v.

JOSEPH S. AMUNDSEN,

Defendant.

INTRODUCTION

In this civil action for violations of federal securities laws, the Securities and Exchange Commission moves for an order finding defendant in civil contempt for violating a consent decree he entered in 1983. To the extent set forth below, the motion is **GRANTED**.

STATEMENT

In 1983, the Securities and Exchange Commission filed a complaint against defendant Joseph Amundsen, then a certified public accountant, alleging that defendant misrepresented material facts in audit reports he had prepared in connection with securities of Olympic Oil and Gas, Inc. The complaint further alleged that defendant had made false statements under oath to the SEC staff investigating him. Defendant, proceeding *pro se*, voluntarily signed a consent "Final Judgment of Permanent Injunction." The 1983 consent judgment permanently enjoined defendant from "appearing or practicing before the Commission in any way" (Dkt. Nos. 1-3).

United States District Court
For the Northern District of California

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1 From 1983 until at least 1998, defendant was not licensed as a certified public
2 accountant and prepared no documents filed with the Commission. By 2003, however, he had
3 regained his license and began a niche practice of auditing financial statements of broker-
4 dealers, which financial statements, together with his audit reports, were then filed with the
5 Commission. He did so more than one thousand times at approximately three dozen broker-
6 dealers (Dkt. No. 39).

7 In November 2011, after an order denied defendant's first request to vacate the 1983
8 injunction, the SEC brought a motion to find defendant in civil contempt, alleging that
9 defendant had been appearing and practicing before the SEC as an accountant by (1) performing
10 audits of securities broker-dealers registered with the SEC and (2) signing forms for those
11 broker-dealers knowing that they were required to be, and would be, filed with the SEC (Dkt.
12 Nos. 5, 14, 24).

13 An order dated January 19, 2012, granted in part and denied in part the SEC's motion to
14 find defendant in contempt. The January 2012 order found that defendant's auditing of
15 financial statements of broker-dealers that would be filed with the SEC constituted "'appearing
16 or practicing before the Commission' in violation of the injunction" and ordered defendant "to
17 cease preparation of all audit reports destined for filing with the Commission, including audit
18 reports on financial statements for broker-dealers so destined for filling with the Commission."
19 The January 2012 order declined to resolve the Commission's additional contention that
20 defendant could not prepare unaudited financial statements to be filed by others (Dkt. No. 39).

21 Since the January 2012 order, defendant has filed numerous additional motions to vacate
22 the injunction, all of which have been denied. Defendant's multiple requests to reconsider the
23 denials of those motions have also been rejected by the undersigned judge (*see, e.g.*, Dkt. Nos.
24 46, 62, 75, 81, 87, 101).^{*}

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26

27 ^{*} Since the SEC filed the instant motion, defendant has responded by filing three "petitions for
28 summary judgment" (Dkt. Nos. 119, 125, 129). Because final judgment has already been entered in this case,
this order construes these filings as motions to vacate the injunction. These motions, however, merely rehash
old arguments that have been rejected on numerous occasions in prior orders. The motions are therefore
DENIED.

1 The SEC now moves for a second order finding defendant in contempt for violating the
2 1983 injunction. The motion concerns activities in 2015 and 2016, during which time
3 defendant served as the engagement quality reviewer ("EQR") on over a dozen audits of
4 broker-dealers. To encourage compliance with the 1983 injunction in the future, the SEC seeks
5 an order requiring defendant to disgorge all profits he received in connection with these audits
6 (Dkt. No. 111). This order follows full briefing and oral argument.

7 ANALYSIS

8 "A court has power to adjudge in civil contempt any person who willfully disobeys a
9 specific and definite order requiring him to do or to refrain from doing an act." *Shuffler v.*
10 *Heritage Bank*, 720 F.2d 1141, 1146 (9th Cir. 1983). "The standard for finding a party in civil
11 contempt is well settled: The moving party has the burden of showing by clear and convincing
12 evidence that the contemnors violated a specific and definite order of the court. The burden
13 then shifts to the contemnors to demonstrate why they were unable to comply." *In re Bennett*,
14 298 F.3d 1059, 1069 (9th Cir. 2002) (citation omitted).

15 1. DEFENDANT VIOLATED THE 1983 INJUNCTION.

16 The 1983 injunction prohibits defendant from "appearing or practicing before the
17 Commission in any way." The scope of this injunction has been litigated incessantly for nearly
18 a decade. Broker-dealers are regulated by the SEC, 15 U.S.C. § 78o, and practicing before the
19 Commission includes the following (17 C.F.R. § 201.102(f)):

20 (1) Transacting any business with the Commission; and

21 (2) The preparation of any statement, opinion or other paper by any
22 attorney, accountant, engineer or other professional or expert, filed
23 with the Commission in any registration statement, notification,
application, report or other document with the consent of such
attorney, accountant, engineer or other professional or expert.

24 Public Company Accounting Oversight Board's Auditing Standard 7, in turn, requires
25 an engagement quality review for audits of broker-dealers as part of the annual audit process.
26 The EQR must provide concurring approval of issuance before the audit firm may grant
27 permission to the client to use the auditor's report.

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United States District Court
For the Northern District of California

1 The SEC has submitted evidence — namely, defendant’s under-oath testimony from a
2 parallel SEC enforcement action — demonstrating that defendant recently acted as EQR on
3 over a dozen audits. Defendant ensured that audit plans had been followed, proofread and
4 corrected the underlying financial statements, and ultimately approved the audits. Defendant
5 knew his approval was necessary for the audit team to release the audits to the broker-dealers
6 for inclusion with their filings with the SEC. This work therefore constituted appearing and
7 practicing before the SEC, as defendant knew that his approval of the audits was required and
8 that the audits would later be filed with the Commission. Based on the above findings, a
9 finding of civil contempt is warranted.

10 This case has tugged at the conscience of the district judge because defendant has been
11 subjected to the injunction for decades and it has compromised his ability to earn a living. For
12 that reason, the district judge was hopeful that the instant motion would provide an opportunity
13 to consider whether some relief from the consent decree should be allowed. At the hearing on
14 the instant motion, the undersigned accordingly directed the SEC to file a supplemental brief
15 addressing the adequacy of defendant’s EQR work on any one audit for 2014 or 2015. The SEC
16 thereafter submitted evidence of the EQR work defendant performed for Profor Advisors, a
17 broker-dealer, for its audit for the year ending on December 31, 2014. In connection with that
18 work, defendant signed the “Supervision, Review, and Approval Form” that approved the audit
19 of Profor. Therein, defendant affirmed that he “possess[ed] the competence, independence,
20 integrity, and objectivity to perform the engagement quality review (EQR)” (Dkt. No. 134-1 at
21 5). In reality, however, defendant’s daughter was Profor’s financial and operations principal
22 and had final responsibility for all financial matters, including the handling of financial
23 statements. These circumstances demonstrate that defendant has remained tone deaf when it
24 comes to his professional responsibilities and that the injunction should remain in place.

25 **2. APPROPRIATE RELIEF?**

26 In order to ensure defendant’s future compliance with the 1983 injunction, the SEC
27 seeks an order (1) requiring defendant to inform the Court and the SEC of the identities of all
28 broker-dealers for which he served as EQR and whose audits were filed with the SEC, and the

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years for which he served as EQR on those audits; (2) requiring defendant to withdraw from any present engagement as EQR on any audits of broker-dealers registered with the SEC; (3) restating that defendant is barred from appearing and practicing before the SEC, including appearing by participating in any way on audits of regulated entities such as broker-dealers; and (4) requiring defendant to disgorge all profits gained in performing the audits at issue in this order. With respect to disgorgement, the SEC estimates that defendant has earned at least [REDACTED] for his work as an EQR.

For the foregoing reasons, this order directs defendant to file with the Court a complete list of all broker-dealers for which he has served as EQR and whose audits were filed with the SEC since 2015, identifying each by date and name of the broker-dealer. This must be filed by **JUNE 14, 2019**. Defendant should be mindful that he remains barred from appearing or practicing before the SEC, including by participating in any way on audits of regulated entities such as broker-dealers. This order postpones consideration of any further penalties until completion of the SEC's parallel administrative enforcement action against defendant.

CONCLUSION

To the extent stated above, the motion to find defendant in civil contempt is **GRANTED**.

IT IS SO ORDERED.

Dated: May 13, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18994

In the Matter of

Joseph S. Amundsen, CPA,
Michael T. Remus, CPA, and
Michael Remus CPA,

Respondents.

CERTIFICATE OF SERVICE

I, Richard G. Primoff, certify that on the 14th day of May, 2019, I caused the original and three copies of the May 14, 2019 Letter of Richard G. Primoff to be filed with the Office of the Secretary by United Parcel Service (UPS) overnight delivery, and to be served by UPS overnight delivery and email on Respondent Joseph S. Amundsen and ALJ Carol Fox Foelak, at the following addresses, and to counsel for Respondents Michael T. Remus, CPA and Michael Remus CPA (by Commission Order dated April 25, 2019), at his email address, prginsberg@sullivanlaw.com:

Vanessa Countryman, Acting Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3628
Washington, D.C. 20549

Joseph S. Amundsen
[REDACTED]
Easton, PA [REDACTED]

The Honorable Carol Fox Foelak
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, NE, Mail Stop 2557
Washington, DC 20549


Richard G. Primoff