

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21139

In the Matter of

Ira S. Viener, CPA,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION
FOR ENTRY OF ORDER OF DEFAULT AND
REMEDIAL SANCTIONS**

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Under Rules 155(a) and 220(f) of the Securities and Exchange Commission’s (“Commission”) Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), the Division of Enforcement (“Division”) respectfully moves for entry of an order of default and the imposition of remedial sanctions against Respondent Ira S. Viener, CPA (“Viener”). In support of its motion, the Division submits this Memoranda of Law and the declaration of Carol Kim, dated May 15, 2024, and its exhibits.

I. Background

A. The Division’s Allegations

The Commission issued an Order Instituting Administrative Proceedings (“OIP”) on September 22, 2022, under Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice. *Ira S. Viener, CPA*, Exchange Act Release No. 95884, 2022 WL 4445472 (Sept. 22, 2022).

As alleged in the OIP, Viener has been licensed as a Certified Public Accountant in New Jersey since 1990 and is not registered with the Public Company Accounting Oversight Board (“PCAOB”). OIP ¶ 2. In March 2017, Viener became the independent auditor for Punch TV Studios, Inc. (“Punch TV”), a Delaware corporation which conducted a Tier 2 offering under Regulation A from April 2016 through August 2017.¹ *Id.* ¶ 4. At that time, in connection with its Regulation A offering, Punch TV retained Viener to audit its financial statements. *Id.* ¶ 7. Viener

¹ In January 2018, in connection with the offering, the Commission issued an Order Making Findings, Specifying Procedures, and Temporarily Suspending Exemption Pursuant to Section 3(b) of the Securities Act of 1933 and Regulation A thereunder, *In the Matter of Punch TV Studios, Inc.*, Release No. 10452, 2018 WL 33010 (Jan. 9, 2018). The Commission later filed a civil action against Punch TV and its chief executive officer, Joseph Collins, alleging violations of Section 5 of the Securities Act of 1933. *See SEC v. Punch TV Studios, Inc.* No. 2:22-cv-007787-AB (C.D. Cal. filed Sept. 30, 2021). That action remains pending.

issued audit reports that were included in the Punch TV Forms 1-A for fiscal year 2015, 1-K for fiscal years 2016-2019, and 1-K/A for fiscal year 2019 that Punch TV filed with the Commission. *Id.* Those audit reports stated that the audits had been conducted in accordance with generally accepted auditing standards (“GAAS”) established by the American Institute of Certified Public Accountants (“AICPA”). *Id.*

In late 2018, Viener became auditor for Company A, a defunct Delaware corporation which filed offering statements and amendments for two Regulation A offerings, neither of which was qualified by the Division of Corporation Finance. OIP ¶¶ 5, 8. Punch TV’s chief executive officer, Joseph Collins, Jr. (“Collins”), was also Company A’s chief executive officer. *Id.* ¶ 5. Viener issued audit reports that were included in Company A’s Form 1-A and several amended Forms 1-A that Company A filed with the Commission from April through September 2019. *Id.* ¶ 8. Like the Punch TV audit reports, these reports for Company A also stated that they had been conducted in accordance with GAAS. *Id.*

Viener admitted that he both prepared and audited Punch TV’s and Company A’s financial statements. OIP ¶ 9. As Viener put it, “part of preparing the audit was preparing the financial statements. I gathered the financial information and prepared the financial statements.” *Id.* When asked whether he considered any issues relating to auditor independence, Viener stated he considered himself independent because he had “no financial interest in either Company.” *Id.* Viener signed the Punch TV and Company A audit reports and knew that they would be filed with the Commission. *Id.* ¶ 10.

Viener’s audits of Punch TV and Company A were not conducted in accordance with GAAS, and the audit reports’ statements to the contrary are false. OIP ¶ 13. Viener failed to conduct the audits in accordance with GAAS in at least these ways:

- Viener’s workpapers contained no audit strategy, assessment of risks of material misstatement, or determination of materiality in accordance with GAAS with respect to any of the audits. Although Viener claimed to have performed some planning and risks assessments, he produced no planning or risk assessment workpapers. He also performed no materiality assessments. OIP ¶ 16. *See* AU-C 300,² *Planning an Audit*, at .07 and .09; AU-C 320, *Materiality in Planning and Performing an Audit*, at .10; AU-C 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, at .05.
- In connection with all the audits, Viener failed to make, or document in his workpapers, any inquiries of management regarding fraud. OIP ¶ 18. *See* AU-C 240, *Consideration of Fraud in a Financial Statement Audit*, at .16-.18.
- Viener failed to perform appropriate audit procedures, obtain sufficient appropriate audit evidence, and conduct any evidence evaluations or reach any conclusions about such evidence in support of his audit opinions. Viener’s audit procedures mainly entailed obtaining copies of bank statements, credit card statements, invoices, and preparing workpapers and worksheets to compile the financial statements. His workpapers primarily consist of documents, such as bank documents, invoices, and spreadsheets with no documented audit procedures performed or conclusions reached. OIP ¶ 20. *See* AU-C 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, at .05 and .28; AU-C 500A, *Audit Evidence*, at .06.

² “AU-C” refers to the AICPA professional standards.

- For all the audits, Viener’s workpapers lack sufficient documentation to determine what, if any, audit procedures were conducted as they do not describe the nature, timing, or extent of any procedures performed. There is no documentation regarding the results of procedures performed, significant findings or issues, conclusions reached, or significant professional judgments made. OIP ¶ 22. *See* AU-C 230, *Audit Documentation*, at .08.
- Viener’s workpapers contain no management representation letters or any indication that Viener requested written representations from management for Punch TV or Company A. OIP ¶ 24. *See* AU-C 580, *Written Representations*, at .09-.11.
- Viener signed audit reports for Punch TV and Company A, which he understood would be filed with the Commission, but he admitted that he never reviewed any of the Punch TV or Company A filings. OIP ¶ 26. *See* AU-C 720A, *Other Information In Documents Containing Audited Financial Statements*, at .01-.02, and .06.
- Viener failed to exercise due care, professional judgment, and professional skepticism for each of the Punch TV and Company A audits. OIP ¶ 29. *See* AU-C 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards*, at .15.

B. Procedural Background

On October 14, 2022, the Division served Viener, through his counsel at the time, with a copy of the OIP in accordance with Rule 141(a)(2)(ii), 17 C.F.R. § 201.141(a)(2)(ii). *See* Declaration of Daniel O. Blau, dated November 30, 2022, previously filed with the Commission. As stated in the OIP, Viener’s answer had to be filed within 20 days of service. *Viener*, 2022 WL 4445472, at *8.

The Commission issued an Order to Show Cause on April 3, 2024, directing Viener to show cause why he should not be deemed in default and why this proceeding should not be determined against him due to his failure to file an answer or otherwise defend this proceeding. *Ira S. Viener, CPA*, Exchange Act Release No. 99893, 2024 WL 1436857 (Apr. 3. 2024). If Viener did not file a response to the Order to Show Cause, the Commission directed the Division to file a motion for entry of an order of default and the imposition of remedial sanctions. As of the filing of this motion, Viener has not responded to the Order to Show Cause.

II. Argument

Viener has not answered the OIP despite the passage of more than 16 months since service and despite the Commission's Order to Show Cause. The Commission should find Viener in default and impose remedial sanctions as set forth below.

A. Viener is in default.

Commission Rule of Practice 155(a) provides that “[a] party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails . . . [t]o answer, to respond to a dispositive motion within the time provided, or to otherwise defend the proceeding.” Here, because Viener has failed to “answer . . . or otherwise defend the proceeding,” the Division submits that an order of default should be entered against him and the Division's allegations should be deemed to

be true, as is specifically contemplated by the Commission's Rules of Practice. *See* Rules 155(a) and 220(f).³

B. Viener engaged in improper professional conduct and willfully violated Rule 2-02(b)(1) of Regulation S-X.

1. Improper Professional Conduct

Section 4C(a)(2) of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice allows the Commission to censure a person or deny the privilege of appearing or practicing before it to any person if it finds that such person has engaged in "improper professional conduct." Exchange Act § 4C(a)(2); Rule 102(e)(1)(ii). Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define "improper professional conduct" as one of three classes of conduct: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; (2) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or (3) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Highly unreasonable conduct "is an intermediate standard, higher than ordinary negligence but lower than the traditional definition of recklessness" *Amendment to Rule 102(e) of the Commission's Rules of Practice*, Exchange Act Release No. 40567, 63 Fed. Reg. 57164,

³ The Expert Report of Ann Gittleman, dated November 11, 2022, and attached as Exhibit 1, also demonstrates that Viener failed to conduct the Punch TV and Company A audits in accordance with GAAS.

57167 (Adopting Release, Oct. 19, 1998). “The term ‘unreasonable,’ as distinguished from the term ‘highly unreasonable’ ..., connotes an ordinary or simple negligence standard.” *Id.* at 57169.

Viener’s conduct qualifies as at least a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted. Indeed, the area of auditor independence is always an area requiring heightened scrutiny. *See* Amendment to Rule 102(e) of the Commission’s Rules of Practice, Securities Act Rel. No. 7593, 1998 SEC LEXIS 2256, at *20 (Oct. 19, 1998). As shown above, Viener’s audits failed to satisfy auditor independence requirements at least for the 2017-2019 Punch TV audits and the Company A audits. In addition, because he disregarded GAAS in multiple audits as set forth above, Viener’s conduct, at a minimum, should be considered as repeated instances of unreasonable conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

2. Willful Violation of Rule 2-02(b)(1) of Regulation S-X

Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice authorize the Commission to censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to “any person” who is found to have “willfully violated, or willfully aided and abetted the violation of” any provision of the Federal securities laws or the rules and regulations thereunder. “Willfully” as used in this context means intentionally committing the act that constitutes the violation. There is no requirement that the actor also know that they are violating a rule or statute. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *see also Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). Rule 2-02(b)(1) of Regulation S-X requires an

accountant's report to state the applicable professional standards under which the audit was conducted.

Viener violated Rule 2-02(b)(1) by issuing audit reports for each of the 2015-2019 Punch TV audits and the 2018 Company A audits stating that he had conducted the audits in accordance with GAAS when he had not. As detailed above, Viener ignored GAAS by failing to (1) plan the audits, (2) consider fraud, (3) obtain sufficient appropriate evidence, (4) prepare adequate audit documentation, (5) obtain written representations from management, (6) review the filings containing his audit reports, and (7) exercise professional judgment and maintain professional skepticism.

Viener also failed to maintain independence. Form 1-A requires that an offering statement for Tier 2 offerings contain audited financial statements. The audit must be conducted in accordance with either GAAS or the standards of the PCAOB, and the report and qualifications of the independent accountant must comply with the requirements of Article 2 of Regulation S-X. Rule 2-01(b) of Regulation S-X states that the "Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances, would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement." Rule 2-01(c) of Regulation S-X sets forth a non-exclusive list of circumstances resulting in a lack of auditor independence. Under Rule 2-01(c)(4)(i), an accountant is not independent if he provides certain bookkeeping or other services, including preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission, unless it is reasonable to conclude that the results

of those services will not be subject to audit procedures during the audit of the audit client's financial statements.

As explained above, Viener admitted that he both prepared and audited the Punch TV and Company A financial statements. Viener therefore failed to comply with the independence standards set forth in Rules 2-01(b) and (c) of Regulation S-X for at least the 2017-2019 Punch TV audits and all the Company A audits. Because both the preparation of the financial statements and the audits of those statements are inherently intentional acts, Viener's violation of Rule 2-02(b)(1) of Regulation S-X was willful within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii).

C. Remedial sanctions, including a bar from practice before the Commission, disgorgement, and civil penalties, are in the public interest.

To preserve the integrity of the Commission's processes, Viener's improper professional conduct and willful violation of Rule 2-02(b)(1) of Regulation S-X warrant remedial sanctions. *See, e.g., Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *5 (Sept. 20, 2012) ("Rule of Practice 102(e) has been the primary tool available to the Commission to preserve the integrity of its processes") (citing additional authority). In considering whether administrative sanctions are in the public interest, the Commission considers such factors as (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) recognition of wrongful conduct; and (6) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *Lonny S. Bernath*, Release No. 993, 2016 WL 1319539, at *4 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is

in the public interest). The application of these factors is flexible and no single factor is dispositive. *Thomas D. Melvin, CPA*, Release No. 3682, 2015 WL 5172974, at *2 (Sept. 4, 2015). The Commission also considers the extent to which a sanction may have a deterrent effect. *Id.*

All the *Steadman* factors weigh in favor of sanctions. First, Viener's violations were egregious. His audits were not deficient in one or two respects; they altogether failed to conform with GAAS. Viener purported to "audit" his own financial statements, eliminating any semblance of independence. He also failed to (1) plan the audits, (2) consider fraud, (3) obtain sufficient appropriate evidence, (4) prepare adequate audit documentation, (5) obtain written representations from management, (6) review the filings containing his audit reports, and (7) exercise professional judgment and maintain professional skepticism. Second, Viener's violations were not isolated but repeated year after year in multiple audits for two different issuers. Finally, by failing to defend against this proceeding, Viener has made no assurances against future violations, nor has he evinced any recognition of the wrongfulness of his conduct. Meanwhile, Viener remains an accountant, which presents opportunities for future violations. Accordingly, sanctions are in the public interest. Not only should the Commission order Viener to cease and desist from his violations, but Viener "represents such a significant threat to the integrity of [the Commission's] processes that he must be permanently disqualified from appearing or practicing before [it]." *Melvin*, 2015 WL 5172974, at *3.

The Division also requests that Viener be ordered to disgorge \$88,721.04 in audit fees and ordered to pay a civil penalty of \$51,800. Sections 21B and 21C of the Exchange Act provide that the Commission may enter an order requiring disgorgement, including reasonable interest, in a proceeding for violations of the Exchange Act. "Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations

unprofitable.” *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999). Disgorgement need only be a “reasonable approximation of profits causally connected to the violation.” *Id.* at 1192 n.6 (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997)). The attached declaration of Carol Kim establishes that Viener received about \$88,721.04 in fees for the Punch TV and Company A audits giving rise to the violations. Prejudgment interest on this amount is \$19,664.26. *See First Jersey Secs., Inc.*, 101 F.3d at 1476 (upholding prejudgment interest on disgorgement award).

Finally, Section 21B of the Exchange Act authorizes the Commission to impose civil penalties in cease-and-desist proceedings against any person who is violating or has violated, or is or was a cause of the violation of, any provision of the Exchange Act, or any rule or regulation thereunder. Section 21B(b) provides that penalties should be assessed according to a three-tier system, with the first tier applying to violations not involving fraud, and specifies statutory maximum amounts, which are adjusted each year for inflation. Because Viener violated Rule 2-02(b)(1) of Regulation S-X with each audit from 2015 through 2019, the Division’s requested penalty of \$51,800 (\$10,360 for each year of improper audits) is within the statutory limits. In addition to being in the public interest, these sanctions are in line with sanction imposed by the Commission in similar cases. *See PLS, CPA, A Pro. Corp.*, Release No. 4224, 2021 WL 2893373 (July 9, 2021) (ordering accountants who engaged in improper professional conduct to cease and desist from future violations, barring them from practice before the Commission, and ordering disgorgement with interest and civil penalties); *Paritz & Co., P.A.*, Exchange Act Release No. 81678, 2017 WL 4230713 (Sept. 21, 2017) (same).

III. Conclusion

For these reasons, Viener should be deemed in default, and the Commission should (1) order Viener to cease and desist from future violations of Rule 2-02(b)(1) of Regulation S-X; permanently deny him the privilege of appearing or practicing before the Commission; (3) order disgorgement of \$88,721.04 plus \$19,664.26 in prejudgment interest; and (4) impose a civil penalty of \$51,800.

Dated: May 15, 2024

Respectfully submitted,



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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING

File No. 3-21139

In the Matter of

Ira S. Viener, CPA,

Respondent.

**DECLARATION OF CAROL KIM
IN SUPPORT OF DIVISION OF
ENFORCEMENT'S MOTION FOR
ENTRY OF DEFAULT JUDGMENT
AND REMEDIAL SANCTIONS**

I, Carol Kim, pursuant to 28 U.S.C. § 1746, declare:

1. I have personal knowledge of each of the matters set forth below, and if called upon as a witness I could and would competently testify as to the facts stated herein.

2. I am a staff accountant in the Division of Enforcement of the Securities and Exchange Commission (“SEC”) in Los Angeles, California. I have been a licensed Certified Public Accountant, licensed in the State of California, since 2008, and have worked on investigations at the SEC’s Division of Enforcement since 2008. My duties include accounting analysis and services for the SEC in civil enforcement actions.

3. In the course of my duties with the SEC, I analyze bank records, financial records, and other books and records of companies, I make calculations and observations based upon those records, and conduct related inquiries and investigations. The documents that I analyze in the course of my duties with the SEC are of the type reasonably relied upon by accountants in forming opinions and inferences about, among other things, the finances of a company and its sources and uses of money.

4. During the SEC’s investigation entitled *In the Matter of Punch TV Studios, Inc.*, and pursuant to my duties as an accountant with the SEC, I reviewed certain bank records, including underlying detail such as account statements and checks (“Bank Records”), for the following accounts that were produced to the SEC:

- a. East West Bank Account No. XXXX0432 in the name of Punch TV Studios, Inc. for the months March 2017 through April 2017;
- b. Wells Fargo Account No. XXXXXX7709 in the name of Punch TV Studios, Inc. for the months December 2017 and March 2020;
- c. Wells Fargo Account No. XXXXXX7380 in the name of PunchFlix, Inc. for the month December 2019.

5. Based on my review of the Bank Records, I identified the following amounts described as payments to Ira Viener (“Viener”):
 - a. \$7,510 dated March 30, 2017. See attached as Exhibit A.
 - b. \$10,000 dated April 5, 2017. See attached as Exhibit B.
 - c. \$10,000 dated December 7, 2017. See attached as Exhibit C.
 - d. \$5,000 dated December 22, 2017. See attached as Exhibit D.
 - e. \$10,211.04 dated December 22, 2017. See attached as Exhibit E.
 - f. \$1,000 dated December 9, 2019. See attached as Exhibit F.
 - g. \$5,000 dated March 2, 2020. See attached as Exhibit G.
6. Viener testified that his audit fees were \$40,000 for 2019 and 2020, and he was paid by stock in URBT. *See* Testimony of Ira Viener (January 20, 2022) 193:12-194:11, 197:23-198:15. See attached as Exhibit H.
7. I created a spreadsheet attached as Exhibit I to summarize the amounts described as payments to Viener in the Bank Records and his testimony. These amounts totaled \$88,721.04.
8. Interest on \$88,721.04 since March 2, 2020, using the tax underpayment penalty rate set forth at 26 U.S.C. § 6621(a)(2) is \$19,664.26. Exhibit J is a report generated by the Division of Enforcement’s prejudgment interest calculator setting forth the interest calculation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 14, 2024, in Los Angeles, California.

A solid black rectangular box redacting the signature of Carol Kim.

Carol Kim