

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11133 / November 10, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 96299 / November 10, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4364 / November 10, 2022

ADMINISTRATION PROCEEDING
File No. 3-21239

In the Matter of

ANDY CHIN FONG CHEN, CPA

Respondent.

**PETITION TO LIFT
TEMPORARY SUSPENSION**

Respondent, Andy Chin Fong Chen (“Chen”) petitions the Securities and Exchange Commission (“Commission”) to lift the temporary suspension imposed pursuant to Rule 102(e)(3) of the Commission’s Rules of Practice. Chen is not licensed to practice as an accountant, has never practiced before the Commission, and the Commission lacks jurisdiction pursuant to 17 CFR § 201.102.

Respondent Chen is not licensed to practice as an accountant in Washington State (or elsewhere). He is a shareholder, board member, and President of Aero Space Port International, Inc. (“ASPI”), a private family real estate company. The company has participated in the United States Citizenship and Immigration Service’s (“USCIS”) Employment-Based Immigration program.

Chen has never participated in any way in a filing with the Commission. He has never “practiced” before the Commission in that he has never transacted any business with the Commission nor has he prepared or assisted with any statement, opinion, or other paper or document filed with the Commission.

The Order states Chen holds a valid CPA-Inactive certificate but fails to clarify that terminology as defined by the Washington State Board of Accountancy. A CPA-Inactive certificate in Washington is not a licensee and is prohibited from practicing public accounting. It is undisputed that Chen has never represented himself or anyone else appearing before the Commission. Additionally, Chen and ASPI have never participated in any filing with the Commission.

§ 201.102(e) presumes past practice before the Commission. § 201.102(e)(iv) allows discipline with respect to persons “licensed to practice as accountants . . .”.

The Commission is unable to cite any case where an accountant, bookkeeper or other person who has not “practiced” before the Commission is suspended from appearing before the Commission. Rule 102(f) defines practicing before the Commission as including transacting any business with the Commission and the preparation of any paper by an accountant or other expert filed with the Commission. Under this definition Chen has never practiced before the Commission.

It is widely held that the purpose in promulgating Rule 102(e) was to ensure the Commission’s processes continue to be protected and that the investing public continues to have confidence in the integrity of the financial reporting process. The overall purpose of Rule 102(e)(3) is to prevent situations in which the investing public places its trust in, or reliance upon, attorneys, accountants, engineers, and other professionals or experts who have demonstrated an

unwillingness or inability to comply with the requirements of the federal securities laws, while assuring that such professionals and experts will have a fair opportunity to show why the interest of the investing public will not materially be jeopardized if they are permitted to continue to appear in practice before the Commission. See *In the matter of Karen Bruton*, 2018 WL 6061351, Administrative Proceeding File No. 3-18790 at *2 quoting 63 Fed.Reg. at 57, 164. Every case the Commission will be able to cite involves someone who has “practiced” before the Commission.

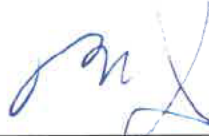
In the matter of Robert W. Armstrong, III, release number 2264 (2005) 2005 WL 1498425 it was held that Mr. Armstrong “appeared and practiced” before the Commission because he had computed amounts of income needed to be held in reserve which ultimately appeared in false financial reports submitted in filings with the Commission. Chen has had no such participation in SEC filings.

Similarly, *In the matter of Michael C. Pattison, CPA*, release number 3407 (2012) 2012 WL 4320146 the accountant sanctioned had assisted with preparation of financial statements filed with the Commission. It was assumed that Mr. Pattison’s occupation would present opportunities for future violations. Again, Chen has never been involved in any Commission filings.

Even if Chen never intends to “practice” before the Commission this disciplinary proceeding is blatantly retaliatory because the Commission was largely unsuccessful in its securities action in federal court. No disgorgement was ordered. A meaningless suspension of Chen from practice before the Commission serves no remedial purposes and is not designed to protect the public. Rather, it creates a press release opportunity for the Commission to challenge any bookkeeper found liable for securities fraud violations whether or not the individual has practiced before the Commission. Such a ruling by the Commission expands the jurisdictional reach of § 102 beyond its intended purpose.

The temporary suspension should be lifted and this administrative action dismissed.

DATED this 19th day of December, 2022.



Frank R. Siderius, WSBA 7759
SIDERIUS, LONERGAN & MARTIN, LLP
500 Union Street, Suite 847
Seattle, WA 98101
franks@sidlon.com
206/624-2800
206/624-2805

CERTIFICATE OF SERVICE

I certify that on December 20, 2022, a copy of this Petition to Lift Temporary Suspension as served upon the following:

Gregory N. Miller
Assistant Chief Litigation Counsel
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
(202) 551-4469
millergn@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549


Valerie Loxtercamp