

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATION PROCEEDING
File No. 3-21239

In the Matter of

ANDY CHIN FONG CHEN,

Respondent.

**RESPONDENT'S MOTION FOR
DISMISSAL OF SUSPENSION
PROCEEDINGS**

I. UNDISPUTED FACTS

Respondent has a college degree in accounting and many years ago passed the CPA exam. He never obtained a CPA license and has never practiced as an accountant. Until recently he held an inactive certificate under Washington law prohibiting him from representing himself as a Certified Public Accountant because he has never applied for or received a license and has never completed any of the required continuing education credits. He has now changed his status to retired certificate holder.

He has never represented anyone as an accountant and does not even know how to file his own personal tax returns. He has never practiced before the Commission. Nor has he had any involvement with a filing or other practice before the Commission. **See Declaration of Andy Chin Fong Chen.**

II. ISSUE

Does the Commission have authority to enter a meaningless suspension from practice order against someone who has never transacted any business with the Commission nor prepared or assisted with any statement, opinion or other paper or document filed with the Commission?

III. DISCUSSION

The Commission is unable to show any case where a person who has never “practiced” before the commission is permanently suspended from practice. As a result, the suspension order is punitive and an improper remedy. In *Kokesh v. SEC*, 137 S.Ct. 1635 (2017) the court held that a civil sanction that cannot fairly be said *solely* to serve as a remedial purpose but can only be explained as serving retributive or deterrent purposes, is punishment. No remedial purpose is served here. Why would Chen challenge a meaningless prohibition from practicing before the Commission? It is clearly a punishment designed to embarrass Mr. Chen with the intent to inflict adverse consequences on his business, banking and social relationships.

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 No. 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 No. 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.

The Order Denying Petition to Lift Temporary Suspension at page 6 argues the importance of a suspension because Chen could appear or practice before the Commission in the future should he become relicensed as a CPA. Relicensing is no longer possible for Chen based upon his recent retirement as a certificate holder.

Similarly, the Order Denying Petition to Lift Temporary Suspension at page 5 – 6 notes that nothing in the text of Rule 102(e)(3) requires that an accountant have practiced before the Commission for the Commission to suspend the accountant, and “Chen cites nothing imposing such a requirement”. The Commission’s logic would extend to anyone enjoined from future SEC violations, whether or not that person had anything to do with “practice” before the Commission. The Commission ignores the “public interest” requirement of Rule 102(e)(3)(i). Rule 102(e) “is

designed to protect the integrity of the Commission's processes". *In the Matter of Robert W. Armstrong III*, Release No. 2264 (2005) 2005 WL 1498425.

How does it serve the integrity of the Commission by the meaningless act of suspending Chen from "practice" which he never has undertaken nor intends to undertake? The suspension order should be lifted.

DATED this 28th day of March, 2023.

/s/ Frank R. Siderius

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CERTIFICATE OF SERVICE

I certify that on March 28, 2023, a copy of Respondent's Motion for Dismissal of Suspension Proceedings was served upon the following:

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