

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21239

<p>In the Matter of</p> <p>ANDY CHIN FONG CHEN,</p> <p>Respondent.</p>

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY
DISPOSITION AND REQUEST FOR REMEDIAL SANCTIONS**

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I. INTRODUCTION

The Division of Enforcement (“the Division”) moves for summary disposition,¹ and requests that the Commission enter an order permanently disqualifying Respondent Andy Chin Fong Chen (“Chen”) from appearing and practicing before the Commission under Rule of Practice (“Rule”) 102(e)(3)(iv) because he cannot meet his burden to show cause why he should not be so disqualified.

The United States District Court for the Western District of Washington (the “Court”) found that Chen defrauded investors through the United States Citizenship and Immigration Service’s (“USCIS”) EB-5 Immigrant Investor Program (“EB-5”), which affords certain foreign investors a path to permanent residency in the United States.² Chen repeatedly violated the antifraud provisions of the federal securities laws, including by, among other things, making materially false and misleading statements to EB-5 investors in the offer and sale of securities.³ In particular, as the Court found in granting the SEC’s motion for summary judgment, Chen and his co-defendant company, Aero Space Port International Group, Inc. (“ASPI”), falsely told investors that they would “funnel [investors’] money into job creation in satisfaction of the EB-5 requirements.”⁴ But, in reality, Chen “misappropriated at least \$6.5 million in investors’ money for uses contrary to the terms and purposes of the EB-5 program,”

¹ Rule of Practice 250(b).

² *SEC v. Chen, et al.*, No. 2:17-cv-0045-JLR, 2019 WL 652360 (W.D.Wash. Feb. 15, 2019) (Order on Motion for Partial Summary Judgment, ECF No. 180). Pursuant to Rule 323, the Commission may take official notice of the Court’s entire Feb. 15, 2019, Order. *See Am. Inv. Serv., Inc.*, Exchange Act Release No. 43991, 2001 WL 167861, at *1 n.1 (Feb. 21, 2001) (recognizing Commission’s authority to take official notice of federal district court orders).

³ *SEC v. Chen*, 2019 WL 652360, at *19 (Feb. 15, 2019).

⁴ *Id.* at *11.

including to satisfy margin calls, cover Chen’s BMW payments, and satisfy the financial obligations of Chen’s family members.⁵

Most importantly for the purposes of this proceeding, and as Chen has stipulated, the Court permanently enjoined Chen from violating the antifraud provisions of the federal securities laws,⁶ which satisfies the Division’s obligations under Rule 102(e)(3)(iv) and shifts the burden to Chen to “show cause why he . . . should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission.” In his prior motion to have the Commission lift the temporary suspension in this proceeding, Chen has already attempted to show cause why he should not be disqualified from appearing and practicing before the Commission and fell well short. More specifically, in connection with that effort, Chen failed to assure the Commission he will not engage in future violations, refused to recognize the wrongful nature of his fraudulent conduct, and did nothing to address the likelihood that his current occupation will present opportunities for future violations. The Commission rejected Chen’s arguments in denying his motion to lift the temporary stay and it should reject those same arguments here. As set forth in more detail below, Chen should be permanently disqualified from appearing and practicing before the Commission.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On May 15, 2017, the Commission filed a complaint (the “Complaint”) against Chen, ASPI, and others.⁷ As alleged in the Complaint, Chen and ASPI fraudulently raised over \$14.5 million from investors in exchange for membership interests in a limited liability company,

⁵ *Id.*

⁶ Stipulation of Facts (“Stipulation”) ¶ 12 filed March 16, 2023, on eFAP.

⁷ *SEC v. Chen*, No. 2:17-cv-0045-JLR, 2017 WL 11665430 (W.D.Wash. March 15, 2017).

falsely representing that investor funds would be used to finance the development of real property in Washington State.⁸ Chen and ASPI misrepresented to investors that these investments would enable them to participate in USCIS’s EB-5 program, which provides a means for foreign investors to obtain lawful permanent residency in the United States.⁹ The Complaint also alleged that Chen instead misappropriated the investor funds and used them for other purposes, including for his and his family’s personal benefit, thereby jeopardizing the investors’ ability to obtain permanent residency through the EB-5 program.¹⁰

On February 15, 2019, the Court granted summary judgment in favor of the Commission against Chen and ASPI on the Commission’s claims that they violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5(b) thereunder, and Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”), by falsely promising that Chen and ASPI would use investors’ capital to finance the real estate project in accordance with EB-5 program requirements and by failing to disclose that they would instead use investor funds for purposes contrary to the EB-5 program.¹¹

In holding that Chen and ASPI acted with scienter, the Court found that Chen solicited investors’ money with the undisclosed intent to deploy those funds at Chen’s complete discretion, contrary to the terms of the EB-5 program; more specifically, the Court held:

[N]o reasonable juror could doubt that Mr. Chen was “consciously” reckless in disregarding the risk that the Offering Documents’ assurances of compliance with the EB-5 program were false. Even assuming Mr. Chen held a good faith belief that he could discretionarily spend EB-5 funds as working capital,

⁸ *Id.* at ¶1.

⁹ *Id.* at ¶3.

¹⁰ *Id.* at ¶4.

¹¹ *SEC v. Chen*, 2019 WL 652360, at *17 (Feb. 15, 2019).

certain expenditures of EDC III investors' money were so obviously beyond the pale—*i.e.*, payments on his BMW and loans to family members—that Mr. Chen “must have been aware” that he was falsifying the Offering Documents' representations to foreign investors. In diverting investors' money for unquestionably personal purposes, Mr. Chen not only violated the essential terms of the EB-5 program, but also contravened the unreasonably liberal understanding of permissible uses of EB-5 funds he expressed in the ASPI board meeting. Such disregard is “more egregious than even ‘white heart/ empty head’ good faith,” and establishes beyond genuine dispute that Mr. Chen acted with recklessness constituting scienter.¹²

Following its grant of summary judgment, on August 16, 2022, the Court entered a final judgment against Chen that, among other things, ordered him to pay a \$75,000 civil penalty and permanently enjoined him from future violations of Securities Act Section 17(a)(2), Exchange Act Section 10(b), and Rule 10b-5(b) thereunder.¹³ The Court also appointed a receiver to protect ASPI investor interests,¹⁴ and agreed with the Commission that six investors' \$500,000 investment (\$3 million total) should be returned to them from funds held by the receiver.¹⁵

On November 10, 2022, the Commission instituted this proceeding (“OIP”) against Chen, pursuant to Rule 102(e)(3), based on the permanent injunctions the Court ordered against him.¹⁶

¹² *SEC v. Chen*, 2019 WL 652360, at *17 (Feb. 15, 2019)(internal citations and quotations omitted).

¹³ Stipulation ¶ 12.

¹⁴ *SEC v. Chen, et al.*, No. 2:17-cv-0045-JLR, 2021 WL 5492754, at *3 (W.D.Wash. Nov. 23, 2021).

¹⁵ *SEC v. Chen, et al.*, No. 2:17-cv-0045-JLR, 2022 WL 3370206, at *5 (W.D.Wash. Aug. 16, 2022).

¹⁶ *Andy Chin Fong Chen, CPA*, Exchange Act Release No. 4364, 2022 WL 16900142 (Nov. 10, 2022), *motion denied by, Andy Chin Fong Chen, CPA*, Exchange Act Release No. 4371, 2023 WL 345030, at *4 (Jan. 19, 2023).

Pursuant to the OIP, Chen was temporarily suspended from appearing or practicing before the Commission.¹⁷

On December 20, 2022, Chen petitioned the Commission to lift the temporary suspension (“Chen’s Petition”). The Commission denied Chen’s Petition on January 19, 2023 and ordered the parties to conduct a prehearing conference pursuant to Rule 221.¹⁸ On February 2, 2023, counsel for the Division and Chen conducted a Rule 221 prehearing conference by telephone, during which they agreed that this matter may be resolved—without a hearing—on the pleadings, papers, and stipulation of essential facts.

On February 27, 2023, the parties filed a joint statement pursuant to Rule 221(c). Subsequently, the Commission issued an order, requiring the parties to *inter alia* file briefs and joint stipulations of fact by March 31, 2023, “addressing whether the Commission should censure Chen or disqualify him from appearing or practicing before the Commission for a period of time or permanently and identifying the standard applicable to the Commission’s review and consideration of the record and briefs.”¹⁹ The parties filed a Stipulation of Facts on March 16, 2023. Then, on March 28, 2023, Chen filed a Motion for Dismissal of Suspension Proceedings (“Motion for Dismissal”) and Chen’s declaration in support of the motion. Pursuant to the Commission’s briefing order of March 7, 2023 (Release No. 11164), the Commission now submits this brief.

¹⁷ *Id.* at *2.

¹⁸ *Andy Chin Fong Chen, CPA*, Exchange Act Release No. 4371, 2023 WL 345030, at *4 (Jan. 19, 2023).

¹⁹ *Andy Chin Fong Chen*, Exchange Act Release No. 4387, 2023 WL 2392849, at *1 (March 7, 2023).

III. THE BURDEN HAS SHIFTED TO CHEN TO SHOW WHY HE SHOULD NOT BE SANCTIONED

Chen has stipulated that he was permanently enjoined from violating the securities laws, including the antifraud provisions.²⁰ As a result of this stipulation, the burden shifts to Chen to show cause why he “should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission.” Rule 102(e)(3)(iv). For the reasons explained below, Chen cannot satisfy his burden because of the egregiousness of his actions, the recurrent nature of his infraction, the high degree of his scienter, his failure to recognize the wrongful nature of his conduct, and the likelihood that his occupation will present opportunities for future violations. In short, the undisputed facts support permanently disqualifying Chen from appearing and practicing before the Commission pursuant to Rule 102(e)(3).

The purpose of Rule 102(e)(3) is remedial. The Rule is directed at protecting “the integrity of the Commission’s own processes” and “the confidence of the investing public in the integrity of the financial reporting process.” *Marrie v. SEC*, 374 F.3d 1196, 1200-01 (D.C. Cir. 2004); *Robert W. Armstrong, III*, SEC Release No. 2264, 2005 WL 1498425, at *11 (June 24, 2005).

In determining the appropriate remedial sanction, the Commission requires that the decision be made with “due regard to the public interest,” and that the following factors regarding a respondents’ conduct be considered:

the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

²⁰ Stipulation ¶ 12.

Thomas D. Melvin, CPA, SEC Release No. 673, 2015 WL 5172974, at *2, n.16 (Sept. 4, 2015) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) for the relevant factors to be considered and ordering permanent disqualification from appearing and practicing before the Commission).

The Commission's public interest inquiry "is a flexible one, with no single factor being dispositive." *Anton & Chia, LLP, et al.*, SEC Release No. 1407, 2021 WL 517421, at *88 (Feb. 8, 2021). The remedy is intended to "protect the public from future reckless or negligent conduct by professionals who practice before the Commission and the 'integrity of [the Commission's] own processes.'" *Id.* at *98. The Commission also considers the extent to which the sanction will have a deterrent effect. *Id.* at *93 (finding that cease and desist order, "would stand as a cautionary tale for potential future violators . . . to avoid the underlying violative conduct in the future, and deterrence is a relevant consideration in deciding whether to impose Rule 102(e) sanctions. . . .") (citing *Michael C. Pattison, CPA*, Exchange Act Release No. 3407, 2012 WL 4320146, at *8 (Sept. 20, 2012)); *Steven Altman, Esq.*, Exchange Act Release No. 63306, 2010 WL 5092725, at *19 & n.71 (Nov. 10, 2010) (deterrence is a relevant factor in deciding sanctions), *pet. denied*, 666 F.3d 1322 (D.C. Cir. 2011).

A. Chen's Conduct Was Egregious and Recurrent

Chen's conduct was egregious and recurrent, amply justifying permanently disqualifying him from appearing and practicing before the Commission. He was enjoined on the basis of fraudulent conduct that occurred over more than a five year period,²¹ involving materially false and

²¹ *SEC v. Chen*, 2019 WL 652360, at *5 (Feb. 15, 2019) ("The SEC's expert witness ... a forensic accountant, traced the path of 'all monies transferred in and out of [EDC III's] bank accounts' between May 17, 2011, and September 30, 2016.").

misleading statements related to Chen’s offer and sale of securities in the EB-5 program.²² In particular, Chen violated the antifraud provisions of the securities laws by making material misrepresentations to investors that their funds would be used in accordance with EB-5 program requirements, such that investors would become eligible to seek permanent U.S. residency.²³ Instead, Chen misappropriated at least \$6.5 million of investor funds for his and his family’s benefit,²⁴ including use of investor funds to refinance a personal home and to cover Chen’s BMW payments.²⁵ Additionally, Chen’s unlawful conduct resulted in USCIS denying investors’ petitions for resident status.²⁶

In sum, Chen’s recurrent conduct was egregious, and, as the Commission has repeatedly held, “conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.” *Peter Siris*, Exchange Act Release No. 3736, 2013 WL 6528874, at *6 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). “[W]here a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission ‘typically’ imposes a permanent bar.” *James A. Evans, Jr.*, SEC Release No. 1006, 2016 WL 1721123, at *5 (April 29, 2016) (barring an investment advisor). Although the Commission opinions in *Siris* and *Evans* involved investment advisers, these portions of the holdings apply equally to accountants. Anyone that engages in fraud should be subject to the severest sanctions, and this is particularly true for industry gatekeepers like accountants. *See*,

²² *Id.* at *1 (An EB-5 program “affords certain foreign investors a path to permanent residency in the United States.”).

²³ *Id.* at *15.

²⁴ *Id.* at *11.

²⁵ *Id.* at *6,*11,*17.

²⁶ *Id.* at *7-*8.

generally, *Anton & Chia, LLP*, 2021 WL 517421, at *89 (Feb. 8, 2021) (quoting *Siris* approvingly in an initial decision ordering Rule 102(e) suspensions against accountants).

B. Chen Acted with a High Degree of Scienter

Chen violated the federal securities laws with scienter, “a mental state embracing intent to deceive, manipulate, or defraud.” *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980). His disregard for providing truthful offering documents to investors—“consciously reckless” in the Court’s words—evidences a high degree of scienter.²⁷ As the Court found, Chen must have been aware that he was falsifying representations in offering documents provided to foreign investors, noting that Chen’s “disregard is ‘more egregious than even ‘white heart/ empty head’ good faith,’ (citation omitted) and establishes beyond genuine dispute that Mr. Chen acted with recklessness constituting scienter.”²⁸

C. Chen’s Petition Gives No Assurances Against Future Violations and He Refuses to Recognize the Wrongful Nature of His Conduct

In Chen’s Petition, and his Motion for Dismissal, the arguments center on whether Chen ever “practiced” before the Commission in the past. But, as noted, Rule 102(e)’s remedy is prospective; it is designed to protect the Commission’s processes, and the investing public, from future harm. *Anton & Chia, LLP*, 2021 WL 517421, at *98 (Feb. 8, 2021) (“Rule 102 sanctions protect the public from future reckless or negligent conduct by professionals who practice before the Commission and the ‘integrity of [the Commission’s] own processes.’”). Accordingly, whether Chen practiced before the Commission in the past, or even at the time of the misconduct, is not an

²⁷ *Id.* at *17, *18.

²⁸ *Id.* at *17.

element the Division needs to establish.²⁹ What Chen may do in the future is the relevant question, and Chen’s Petition and Motion for Dismissal provide no assurances that he will not engage in future violations of the securities laws. Instead, he has consistently challenged this proceeding and downplayed seriousness of the results of the Court proceeding. Most tellingly, even though the Court found that Chen committed fraud with scienter, ordered him to pay a \$75,000 civil penalty, and enjoined him from committing future violations of the antifraud provisions of both the Securities Act and Exchange Act, Chen still refuses to acknowledge his misconduct, speciously arguing that “[e]ven if [he] 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.”³⁰

D. Chen’s Occupation Presents Significant Opportunities for Future Violations

Chen holds a bachelor’s degree in accounting,³¹ and was originally issued a CPA designation in 1990.³² Prior to January 27, 2023, Chen held a “CPA-Inactive” certificate with the

²⁹ The “text of Rule 102(e) contains no requirement that a person must be appearing and practicing before the Commissions at the time of the conduct on which the Commission’s findings are based.” *See Chen*, 2023 WL 345030, at *3 (Jan. 19, 2023) (“[N]othing 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.”).

³⁰ Chen’s Petition at 3; *see also* March 24, 2023 Declaration of Andy Chin Fong Chen (“Chen Declr.”) ¶ 6 (This action “is a meaningless act intended to embarrass me....”).

³¹ Stipulation ¶ 2; March 28, 2023, Chen Declr. ¶ 2.

³² Chen testified, under oath, during the Division’s investigation that he held a CPA license in the early 1990s and was a member of two CPA organizations. Exhibit 1 (transcript of February 3, 2016, investigative testimony) (“2016 Testimony”) at 19:16-20:16. The Washington State Board of Accountancy’s website also lists a license number for Chen that was originally issued in December 1990. Just this week, Chen filed a declaration with his Motion for Dismissal in which he stated, under penalty of perjury, that he “never obtained a CPA license.” Chen Declr. ¶ 2. After receiving that declaration, which contradicts Chen’s prior sworn testimony, the Division obtained a declaration from the Washington State Board of Accountancy stating that Chen obtained a CPA-Inactive Certificate in December 1990. Exhibit 2 (March 31, 2023, Declaration

Washington State Board of Accountancy.³³ But, in an apparent attempt to improve his argument in this proceeding—after the OIP was instituted and after the Commission denied Chen’s Petition—Chen changed his status with the Washington State Board of Accountancy from “CPA-Inactive” to “Retired Certificate Holder.”³⁴

Rule 102(e)(3), however, is not limited to accountants with CPAs and Chen’s CPA status does not control the outcome of this proceeding.³⁵ Indeed, the Commission previously suspended a Washington State CPA certificate holders from appearing or practicing before the Commission. *See, e.g., In the Matter of Robert A. Ness, Jr.*, Release No. 2566, 2007 WL 1260795 (Feb. 27, 2007) (holder of Washington State CPA-Inactive certificate suspended from appearing or practicing before the Commission). Furthermore, despite his retired certificate holder status, Washington State law allows Chen to use the title “accountant.” Wash. Rev. Code Ann. § 18.04.350(10) (West 2023). Chen evidently values his accountant status regardless of whether he

of Kirsten Donovan) ¶ 4 ; *see also* Wash. Rev. Code Ann. § 18.04.025(3) (June 2022) (“‘Certificate’ means an alternative license type issued by the board indicating that the certificate holder had passed the CPA examination, but has not verified the certificate holder’s experience and was not fully licensed as a certified public accountant to practice public accounting.”); *id.* at § 18.04.025(4) (“‘Certified public accountant’” or ‘CPA’ means a person holding a certified public accountant license or certificate.”). Regardless of Mr. Chen’s current or past status as a CPA, Rule 102(e)(3) is not limited to CPAs. *Andy Chin Fong Chen, CPA*, 2023 WL 345030, at *3 (Jan. 19, 2023).

³³ *Andy Chin Fong Chen, CPA*, 2023 WL 345030, at *1 n.4 (Jan. 19, 2023).

³⁴ Stipulation ¶ 4; Chen Declr. at ¶ 4; A March 31, 2023, search of the Washington State Board of Accountancy website, <https://data.wa.gov/Consumer-Protection/CPA-Search-Board-of-Accountancy/pqu3-uhwj> showed that, as of January 27, 2023, Mr. Chen’s status was “Retired Certificate holder.” The Commission has previously taken official notice, under Rule 323, of the results of a search for Chen’s name on the CPA Search page of the Washington State Board of Accountancy. *Chen*, 2023 WL 345030, at *1 n.4 (Jan. 19, 2023).

³⁵ *Andy Chin Fong Chen, CPA*, 2023 WL 345030, at *3 (Jan. 19, 2023) (“Chen’s argument ignores the language of Rule 102(e)(3)—the relevant provision here—which specifies that the Commission may temporarily suspend “‘any . . . accountant,’ not only those accountants currently licensed to practice as certified public accountants.”).

can use the CPA designation: he preserved his accountancy certificate status with the Washington State Board of Accountancy; he testified that he was a member of the AICPA; he holds an undergraduate degree in accounting; and he sat and passed the CPA exam.³⁶

In addition, and most importantly, Chen does not need an active CPA license to commit future violations of the federal securities laws that could put the Commission's processes at risk and his misconduct, as described in this brief, makes clear that he has not met his burden to show cause that he should not be disqualified from doing so permanently. He continues to work in the same business he used to commit his violations that led to the Court's final judgment against him. He currently runs a real estate development business that could present him with opportunities to work for public issuers.³⁷ He was also previously appointed as a bank director,³⁸ and named in public filings with the Commission.³⁹ All of these factors demonstrate the ease with which Chen could be involved with Commission processes in the future.⁴⁰

IV. CONCLUSION

Chen cannot satisfy his burden to show cause why he should not be permanently disqualified from appearing and practicing before the Commission. Chen's actions make clear that the Commission's processes would be at risk if he were allowed to appear or practice before the Commission in the future. Accordingly, on the basis of the points and authorities set forth herein,

³⁶ Exhibit 1 (2016 Testimony) at 19:16-20:16; Stipulation ¶¶ 2 and 3; Chen Declr. ¶¶ 2 and 4

³⁷ Chen's Petition at 1.

³⁸ Stipulation ¶ 5.

³⁹ *Id.* ¶ 7.

⁴⁰ See Washington State Board of Accountancy, <https://acb.wa.gov/individual-licensing/retirement> (last visited March 30, 2023).

the Division respectfully requests entry of an Order, pursuant to Rule 102(e)(3), permanently disqualifying Chen from appearing and practicing before the Commission.

Respectfully submitted this 3rd day of April, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2023, I caused the Division's Motion for Summary Disposition and Remedial Sanctions (originally filed on March 31, 2023) to be served in the manner set forth below:

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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21239

In the Matter of
ANDY CHIN FONG CHEN,
Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY
DISPOSITION AND REQUEST FOR REMEDIAL SANCTIONS**

EXHIBIT 1

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-12267-A
AEROSPACE PORT INTERNATIONAL)
GROUP, INC.)

WITNESS: Andy Chen

PAGES: 1 through 263

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

DATE: Wednesday, February 3, 2016

The above-entitled matter came on for hearing,
pursuant to notice, at 9:49 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 A Yes, I don't have other foreign accounts or
2 domestic accounts.

3 **Q And then finally for Item 23. Same issue.**

4 A Yes. I don't have other foreign accounts or
5 domestic accounts.

6 **Q Thank you.**

7 **We can move ahead to page 9 now.**

8 A Uh-huh.

9 **Q Again, the top left, the numbers.**

10 A Which one?

11 **Q 9. Page 9.**

12 A Okay. Top left. Got it.

13 **Q And I just wanted to ask about your response to
14 Item 32.**

15 A Yes.

16 **Q So you listed a couple of organizations, the
17 AICPA.**

18 **Is that the American Institute of CPAs?**

19 A Yes.

20 **Q Okay. And that says your membership expired in
21 1993.**

22 A Uh-huh.

23 **Q That's correct?**

24 A I think so. Because I have not -- I passed the
25 exam in 1990, and the time I joined the membership, but I

1 decided to join the ASPI, Inc., you know, I never was an
2 accountant, and I think I still have my license and put
3 it on the shelf there, but I have not paid a fee for it.

4 BY MR. BAGNALL:

5 **Q Mr. Chen, based on that answer, could you**
6 **please look at Question 31.**

7 A Okay.

8 **Q You marked the answer as "No," but based on**
9 **your most recent response, should that be a "Yes"?**

10 A Okay. What's the question? "Do you hold -- "

11 Oh, okay. So I should say "yes," because I
12 used to hold that license in 1993.

13 **Q Okay.**

14 A I thought it was do I still hold anything.

15 **Q Thank you.**

16 A I correct that answer.

17 BY MR. JOHNSON:

18 **Q And I believe you also said that you never**
19 **practiced as an accountant, is that correct?**

20 A No, I never practiced as an accountant.

21 **Q Okay. And then under "AICPA," you listed**
22 **WSCPA. Is that Washington State CPA?**

23 A Yes, that's the abbreviation.

24 **Q Uh-huh. And that also expired?**

25 A Yes.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21239

In the Matter of
ANDY CHIN FONG CHEN,
Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY
DISPOSITION AND REQUEST FOR REMEDIAL SANCTIONS**

EXHIBIT 2

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21239

<p>In the Matter of</p> <p>ANDY CHIN FONG CHEN,</p> <p>Respondent.</p>

DECLARATION OF KIRSTEN DONOVAN

1. This declaration is based on the Washington State Board of Accountancy's database records.
2. I am the Operations Manager employed by the Washington State Board of Accountancy ("Board of Accountancy").
3. The Board of Accountancy maintains a publicly available licensee search of individuals who have obtained a Certified Public Accountant ("CPA") license or a CPA-Inactive Certificate in Washington State.
4. The Board of Accountancy records show that Andy C.F. Chen obtained a CPA-Inactive Certificate on December 12, 1990.
5. The Board of Accountancy records further show that, as of January 27, 2023, Mr. Chen's CPA-Inactive Certificate is in a retired status.
6. Prior to January 27, 2023, the Board of Accountancy records show that Mr. Chen held a CPA-Inactive Certificate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

SIGNED at Olympia, Washington, this 31 day of March 2023


Kirsten Donovan