

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 REPLY TO DIVISION OF ENFORCEMENT’S RESPONSE

I. STEADMAN FACTORS

The Division of Enforcement (“the Division”) urges Respondent Chen should be permanently enjoined from appearing or practicing before the Commission. The Division relies upon the six *Steadman* factors found at *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

The *Steadman* case at page 1139 states “the greater the sanction the Commission decides to impose, the greater is its burden of justification . . . the Commission has an obligation to explain why a less drastic remedy would not suffice.” At page 1140 the court stated “To say that past misconduct gives rise to an inference of future misconduct is not enough. What is required is a specific reenumeration of the facts in (the) case that merit permanent exclusion.”

In the present action it is undisputed that the trial court found securities law violations. Nonetheless, the Division overlooks the undisputed fact that all investors were fully repaid their investment and did not suffer loss. The sixth *Steadman* factor requires the likelihood that Respondent’s occupation will afford him opportunities for future violations. It is further

undisputed that Respondent has never “practiced” before the Commission. Further, his family business is not publicly traded and has no business before the Commission. There is no “likelihood” that Respondent’s occupation will lead to future misconduct.

II. REMEDY

The Division acknowledges that respondent Chen is an unlicensed accountant who has never practiced before the Commission. The Division acknowledges that pursuant to Rule 102(e) “censure” is a potential remedy. Certainly censure is a less drastic remedy than permanently disqualifying someone from practicing before the Commission who has never practiced before the Commission.

The Division cites *Robert A. Ness, Jr.*, Release No. 2566, 2007 WL 1260795 which is readily distinguishable. Mr. Ness was Controller of a mortgage and securities firm which registered debt securities and preferred stock with the Commission. Ness approved of an accounting system that did not comply with Generally Accepted Accounting Principles (GAAP).

Similarly, the Division’s reliance upon *John M. Williams*, Release No. 3377, 2012 WL 1119223 (April 4, 2012). Williams was an accountant who acquired non public information concerning an acquisition of a publicly traded stock and traded in the shares of that stock. Both cases involved activities with publicly traded stock not private offerings.

Under the foregoing circumstances, Respondent Chen has established it is inappropriate that he be permanently disqualified from appearing and practicing before the Commission. The Division concludes its Response by citing Respondent Chen’s business (which has nothing to do with the Commission) and the ease with which Chen “could be involved” with Commission processes in the future. Such speculation does not meet the *Steadman* requirement for an

explanation why permanent exclusion is required as opposed to no action or a less drastic action such as censure.

DATED this 9th day of May, 2023.

/s/ Frank R. Siderius

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CERTIFICATE OF SERVICE

I certify that on May 9, 2023, a copy of Respondent's Reply to Division of Enforcement's Response was served upon the following:

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