

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of :
: INITIAL DECISION
L. REX ANDERSEN, CPA : September 17, 2010

APPEARANCES: Silvestre A. Fontes, Thomas J. Rappaport, and David H. London for the
Division of Enforcement, Securities and Exchange Commission

O. Robert Meredith for Respondent L. Rex Andersen, CPA

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision permanently disqualifies L. Rex Andersen, CPA (Andersen), from appearing or practicing before the Securities and Exchange Commission (Commission) as an accountant. Andersen was previously enjoined from violating the antifraud and reporting provisions of the securities laws.

I. BACKGROUND

The Commission issued its Order Instituting Proceedings (OIP) against Andersen on June 10, 2010, pursuant to 17 C.F.R. § 201.102(e)(3) and temporarily suspended him from appearing or practicing before the Commission. Andersen filed a petition, pursuant to 17 C.F.R. § 201.102(e)(3)(ii), challenging the Commission action and requesting a hearing, and the Commission ordered a hearing on July 14, 2010. The undersigned granted the parties leave to file Motions for Summary Disposition at a July 28, 2010, prehearing conference, pursuant to 17 C.F.R. § 201.250, by August 18, 2010, with oppositions due on September 8, 2010. L. Rex Andersen, Admin. Proc. No. 13935 (A.L.J. July 28, 2010). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on August 13, 2010. Andersen did not file a Motion for Summary Disposition or an opposition. The administrative law judge is required by 17 C.F.R. § 201.250(b) to act “promptly” on a motion for summary disposition.

This Initial Decision is based on the Division’s Motion for Summary Disposition, including those attachments admitted into evidence, infra, and Andersen’s June 15, 2010, Answer to the OIP (Ans.). There is no genuine issue with regard to any fact that is material to

this proceeding. All material facts that concern the activities for which Andersen was enjoined were decided against him in the civil case on which this proceeding is based. Pursuant to 17 C.F.R. § 201.250(a), any other facts in his opposition would have been taken as true, had he filed one. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

A. Allegations and Arguments of the Parties

The OIP alleges that Andersen, a CPA, was enjoined in 2010 from violating the antifraud, registration, and reporting provisions of the federal securities laws, based on his wrongdoing while auditing Hardrock Mines, Inc. (Hardrock Mines), a publicly traded company, later known as Exotics.com, Inc. The Division urges that Andersen be permanently disqualified from appearing or practicing before the Commission as an accountant. Andersen did not file an opposition to the Division's motion. However, his Answer states that his audits were adequate and indicates disagreement with the District Court's judgment.

B. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. § 201.323, included in the Division's Motion for Summary Disposition, at Exhibits F, G, and J, are admitted into evidence as Division Exhibits F, G, and J:

March 8, 2010, Order granting SEC's Motion for Summary Judgment, SEC v. Exotics.com, No. 2:05-cv-00531 (D. Nev.) (Div. Ex. F);

May 4, 2010, Final Judgment of Permanent Injunction, SEC v. Exotics.com (Div. Ex. G);
and

Cease-and-Desist Order, Richard E. Sellers, CPA, 92 SEC Docket 977 (Dec. 27, 2007) (Div. Ex. J).

Additionally, the following items included in the Division's Motion for Summary Disposition, at Exhibits A-E, H, are admitted into evidence as Division Exhibit A-E, H:

April 21, 2005, Complaint, SEC v. Exotics.com, Inc. (Div. Ex. A);

March 30, 2006, Answer, SEC v. Exotics.com (Div. Ex. B);

SEC's January 29, 2010, Motion for Summary Judgment, SEC v. Exotics.com (Div. Ex. C);

SEC's January 29, 2010, Memorandum of Points and Authorities in Support of Motion for Summary Judgment, SEC v. Exotics.com (Div. Ex. D);

Defendant's February 25, 2010, Response to SEC's Motion for Summary Judgment, SEC v. Exotics.com (Div. Ex. E);

August 12, 2010, Declaration of David H. London (Div. Ex. H).

II. FINDINGS OF FACT

Andersen has been permanently enjoined from violations of the antifraud, registration, and reporting provisions of the federal securities laws. Div. Ex. G. The wrongdoing that underlies Andersen's injunction concerned his audits of Exotics.com, Inc., formerly known as Hardrock Mines, most recently for the year 2000. Ans. at 1. In addition to the statutory violations, the court found that Andersen lacked auditor independence in the audits. Div. Ex. F. Thus, Andersen was enjoined from violations of Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, and 13a-1 thereunder, and of Rule 2-02 of Regulation S-X (17 C.F.R. § 210.2-02). Div. Ex. G at 1-2. The court also ordered disgorgement of ill-gotten gains of \$3,500 plus prejudgment interest of \$2,719.04, and a civil penalty of \$120,000,¹ payable within fourteen days of the May 4, 2010, judgment. Div. Ex. G at 3. As of August 10, 2010, Andersen had not paid these sums. Div. Ex. H. Previously, Andersen and his former partner settled charges related to their failure to register their now-defunct public accounting firm with the Public Company Accounting Oversight Board as required by Section 102(a) of the Sarbanes-Oxley Act of 2002. Div. Ex. J.

III. CONCLUSIONS OF LAW

Andersen has been permanently enjoined "by reason of his . . . misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder" within the meaning of 17 C.F.R. § 201.102(e)(3)(i)(A). While Andersen disagrees with the District Court's judgment in his case, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997).²

IV. SANCTION

The Division requests that Andersen be permanently disqualified from appearing or practicing before the Commission.³ This sanction is consistent with 17 C.F.R. § 201.102(e)(3),

¹ Andersen indicates that he is unaware of the \$120,000 civil penalty and of the antifraud injunction. Ans. at 2.

² Nor does the pendency of an appeal preclude the Commission from action based on an injunction. Franklin, 91 SEC Docket at 2714 n.15, Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002).

³ "Practicing before the Commission" includes "transacting any business with the Commission" and "the preparation of any statement, opinion or other paper by any . . . accountant . . . filed

and accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). Although not recent, Andersen’s unlawful conduct was recurring, involving more than one audit. By definition, conduct that violates the antifraud provisions is egregious and involves scienter. There are no mitigating circumstances.

V. ORDER

IT IS ORDERED that L. REX ANDERSEN, CPA, IS PERMANENTLY DISQUALIFIED from appearing or practicing before the Commission as an accountant.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission’s Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission’s Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned’s order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge

with the Commission in any registration statement, notification, application, report or other document with the consent of such . . . accountant.” 17 C.F.R. § 201.102(f).