

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11164 / March 7, 2023

SECURITIES EXCHANGE ACT OF 1934
Release No. 97061 / March 7, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4387 / March 7, 2023

Admin. Proc. File No. 3-21239

In the Matter of

ANDY CHIN FONG CHEN

ORDER SCHEDULING BRIEFS AND AMENDING CAPTION

On November 10, 2022, the Commission temporarily suspended Andy Chin Fong Chen from appearing or practicing before the Commission pursuant to Commission Rule of Practice 102(e)(3).¹ On January 19, 2023, the Commission denied Chen's petition to lift that temporary suspension and directed that this matter be set for hearing before the Commission.²

On February 27, 2023, the parties filed a Joint Statement Pursuant to Rule 221(c) of the Commission's Rules of Practice, which stated that the parties had agreed that the issues in this proceeding may be decided "solely on the papers filed with the Commission" and that they would "stipulate to essential facts."³ The parties also represented that they had not reached an

¹ *Andy Chin Fong Chen, CPA*, Exchange Act Release No. 96299, 2022 WL 16900142 (Nov. 10, 2022); 17 C.F.R. § 201.102(e)(3).

² *Andy Chin Fong Chen, CPA*, Exchange Act Release No. 96710, 2023 WL 345030 (Jan. 19, 2023).

³ *Cf. Russell C. Schalk, Jr.*, Exchange Act Release No. 78898, 2016 WL 5219501, at *2, *5 (Sept. 21, 2016) (sustaining result reached by administrative law judge in proceeding determined on the papers after respondent determined to forgo an in-person hearing).

agreement on filing motions for summary disposition pursuant to Rule of Practice 250.⁴ The parties further requested that they be permitted to file briefs addressing whether the Commission should “maintain its suspension of Chen from appearing or practicing before the Commission as an accountant.” The parties proposed that they exchange briefs on or before March 31, 2023, but did not address additional briefing in the case. In addition, the parties agreed that the abbreviation “CPA” should be removed from the caption of the case.⁵

Accordingly, IT IS ORDERED that, the parties shall each file by March 31, 2023, a brief addressing whether the Commission should censure Chen or disqualify him from appearing or practicing before the Commission for a period of time or permanently⁶ and identifying the standard applicable to the Commission’s review and consideration of the record and briefs;⁷ the parties shall file any responses to the initial briefs by May 1, 2023; and the parties may file any replies to any such responses by May 15, 2023;⁸ and it is further

ORDERED that, for the purpose of narrowing the matters at issue in the case and to facilitate citations to the record, the parties are directed to file any joint stipulations of fact on or before March 31, 2023, or that, in the alternative, the parties notify the Commission of any alternative agreement regarding the filing of any such stipulations by that date; and it is further

ORDERED that the caption in this proceeding be amended to remove “CPA.”⁹

Pursuant to Rule of Practice 180(c), a party’s failure to file a brief or comply with this order may result in the Commission’s determination of the matter at issue against that party, entry of default, dismissal of the proceeding, or the prohibition of the introduction of evidence or

⁴ See 17 C.F.R. § 201.250(b) (allowing for determination of case where “there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law”); *Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21, 2014) (stating that “[t]he facts on summary disposition must be viewed in the light most favorable to the non-moving party” (citing *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *9 (Aug. 5, 2011))).

⁵ See *Chen*, 2023 WL 345030, at *1 n.4 and *4 n.39 (recognizing that Chen is not currently licensed to practice as a CPA and directing the parties to confer and specify whether the caption should be amended to eliminate “CPA”).

⁶ See Rule of Practice 102(e)(3)(iii), 17 C.F.R. § 102(e)(3)(iii).

⁷ See, e.g., *supra* notes 3 and 4 and accompanying text; cf. *O’Shea v. UPS Ret. Plan*, 837 F.3d 67, 72 & n.8 (1st Cir. 2016) (discussing considerations applicable where parties submit matter for consideration as a “case stated”).

⁸ Attention is called to Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b) and (c), with respect to content and length limitations, and Rules of Practice 150 - 153, 17 C.F.R. § 201.150 - 153, with respect to form and service.

⁹ Cf. *Karen Bruton*, Exchange Act Release No. 84627, 2018 WL 6061351, at *4 & n.25 (Nov. 19, 2018) (granting respondent’s request that “CPA” be stricken from the caption because her CPA license was inactive).

the exclusion of testimony regarding the matter at issue.¹⁰ The Commission may decide at a later point that, contrary to the parties' agreement, the proceeding cannot be decided solely on the papers and that, consequently, a live hearing should be held for the taking of evidence.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹⁰ 17 C.F.R. § 201.180(c).