

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 62499 / July 14, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Rel. No. 3153 / July 14, 2010

Admin. Proc. File No. 3-13935

In the Matter of

L. REX ANDERSEN, CPA

ORDER

On June 10, 2010, we issued an order instituting proceedings ("OIP") against L. Rex Andersen, a certified public accountant, pursuant to Commission Rule of Practice 102(e)(3),¹ that temporarily suspended him from appearing or practicing before the Commission as an accountant.²

¹ Commission Rule of Practice 102(e)(3), 17 C.F.R. § 201.102(e)(3), provides in pertinent part that:

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her 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; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

² *L. Rex Andersen, CPA*, Securities Exchange Act Rel. No. 62262 (Jun. 10, 2010), __ SEC Docket __.

On June 15, 2010, Andersen filed a petition, pursuant to Rule 102(e)(3)(ii),³ challenging the Commission action and requesting that the matter be set down for hearing.

I.

The proceedings were instituted based on Andersen's having been enjoined from violating Securities Exchange Act Section 10(b), Exchange Act Rule 10b-5⁴ and Rule 2-02 of Regulation S-X,⁵ and from aiding and abetting violations of Exchange Act Section 13(a)⁶ and Exchange Act Rules 12b-20⁷ and 13a-1.⁸ As part of the injunctive action, Andersen also was required to pay disgorgement, prejudgment interest and a civil money penalty of \$126,219.⁹

According to the OIP, the Commission's complaint in the injunctive action alleged that Andersen performed audits in 1999 and 2000, for Hardrock Mines, Inc. (later known as Exotics.com, Inc.), which were not conducted in accordance with generally accepted auditing standards and caused his auditing firm to issue audit reports falsely stating that the financial statements were presented in conformity with generally accepted accounting principles. These reports, it was alleged, were incorporated into public filings made by Hardrock Mines. The injunctive complaint further alleged that Andersen had not acted as an independent auditor because he himself had prepared most of the client's books and records and financial statements. Moreover, the complaint alleged, Andersen created the client's books and records in reliance on documents that he knew, or was reckless in not knowing, were fraudulent.

II.

³ 17 C.F.R. § 201.102(e)(3)(ii).

⁴ 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 prohibit fraud in connection with securities transactions.

⁵ 17 C.F.R. § 210.2-02 sets out the requirements for accountants' audit reports and attestation reports.

⁶ 15 U.S.C. § 78m(a) sets out periodic filing and recordkeeping requirements for issuers registered under the Exchange Act.

⁷ 17 C.F.R. § 240.12b-20 mandates that, "[i]n addition to the information expressly required to be included in a statement or report [required by the Commission], there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

⁸ 17 C.F.R. § 240.13a-1 establishes annual filing requirements for registered issuers.

⁹ *SEC v. Exotics.com, Inc.*, Civ. Act. No. 2:05-cv-00531-PMP-GWF (D. Nev. May 4, 2010).

In issuing the OIP, we found that it was "appropriate and in the public interest that Andersen be temporarily suspended from appearing or practicing before the Commission," based on the injunctive order. We stated that the temporary suspension would become permanent unless Andersen filed a petition challenging it within thirty days of service of the order, pursuant to Rule of Practice 102(e)(3)(ii). We further advised that, pursuant to Rule of Practice 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for hearing, or both.

In his petition, Andersen does not explicitly request that the temporary suspension be lifted. His petition does, however, seem to challenge the factual basis for the injunctive order and, implicitly, the temporary suspension. For example, he asserts that "it cannot be shown that I had a motive and opportunity to mislead nor has the SEC shown any specific instances of my intent to mislead." Anderson also states that he "was not aware of any public trading of the company stock during the time of my service" and claims that "the Company attorney . . . assured [him] that the documents [Andersen relied upon] were valid."

"Rule 102(e)(3) permits the Commission to suspend any accountant or other professional or expert who has been permanently enjoined from violating or aiding and abetting the violation of the Federal securities laws" ¹⁰ Generally, a respondent in a "follow-on" proceeding is precluded from challenging the basis for, or findings in, the underlying injunctive action. ¹¹ At this stage, it appears that the allegations made in the injunctive proceeding "justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect the Commission's process." ¹² As provided in Rule 102(e)(3)(iii), therefore, we will set the matter down for public hearing.

Accordingly, IT IS ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this Order; and it is further

¹⁰ *Daniel S. Lezak*, 57 S.E.C. 997, 1001 (2004).

¹¹ *Michael Batterman*, 57 S.E.C. 1031, 1039 n.18 (2004); *see also Lezak*, 57 S.E.C. at 1001 (holding that "[t]he findings of the Court, which [the petitioner] is precluded from contesting in this proceeding, as well as the injunction issued against him justify the continuance of his suspension until it can be determined what, if any, action may be appropriate to protect this Commission's processes").

¹² *William D. Shovers*, Exchange Act Rel. No. 59874 (May 6, 2009), 95 SEC Docket 16512, 16515.

ORDERED that the temporary suspension of L. Rex Andersen, entered on June 10, 2010, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Secretary