

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67164 / June 8, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3388 / June 8, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-13007

In the Matter of Kenneth M. Avery, CPA	: ORDER GRANTING APPLICATION FOR : REINSTATEMENT TO APPEAR AND PRACTICE : BEFORE THE COMMISSION AS AN ACCOUNTANT : RESPONSIBLE FOR THE PREPARATION OR : REVIEW OF FINANCIAL STATEMENTS REQUIRED : TO BE FILED WITH THE COMMISSION
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On April 14, 2008, Kenneth M. Avery, CPA (“Avery”) was denied the privilege of appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission against Avery pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹ This order is issued in response to Avery’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission found that Avery, an audit partner with the public accounting firm Arthur Andersen LLP (“Andersen”), engaged in improper professional conduct in connection with the audit of the financial statements of WorldCom, Inc. (“WorldCom”) for its fiscal year ended December 31, 2001. During 2001, WorldCom improperly removed approximately \$3 billion in line cost expenses from its income statement by improperly and fraudulently characterizing these expenses as “assets” on its balance sheet. Avery failed to comply with Generally Accepted Auditing Standards (“GAAS”) by unreasonably: (i) failing to exercise due professional care in the planning and performance of the audit; (ii) failing to exercise an attitude of professional skepticism throughout the audit; (iii) failing to obtain sufficient evidential matter to afford a reasonable basis for Andersen’s opinion regarding WorldCom’s financial statements; (iv) failing to consider expanding the extent of the audit procedures applied, applying procedures closer to or as of year end, particularly in critical audit areas, or modifying the nature of

¹ See Accounting and Auditing Enforcement Release No. 2809 dated April 14, 2008. Avery was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

procedures to obtain more persuasive evidence, in light of the significant risks of material misstatement that existed at WorldCom; (v) failing to plan and perform the audit to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud; and (vi) issuing an audit report that falsely stated that the audit was conducted in accordance with GAAS and that WorldCom's financial statements were presented in conformity with Generally Accepted Accounting Principles.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Avery attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Avery is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Avery's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."² This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Avery, it appears that he has complied with the terms of the April 14, 2008 order suspending him from appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct, or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Avery, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

² Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Kenneth M. Avery, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary