

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68661 / January 15, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3441 / January 15, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15175

In the Matter of

Kevin A. Howard, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Kevin A. Howard (“Respondent” or “Howard”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . [p]ermanently 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.

which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Kevin A. Howard, age 49, resides in Houston, Texas. From 1986 until 1998, Howard was a CPA licensed to practice in the State of Texas. Between August 1999 and September 2001, Howard served as Chief Financial Officer and Vice President of Finance for Enron Broadband Services ("EBS"), a subsidiary of Enron Corp. ("Enron"). Howard was terminated by Enron on March 12, 2003.
2. Enron was, at all relevant times, an Oregon corporation with its principal place of business in Houston, Texas. Until its bankruptcy filing in December 2001, Enron was the seventh largest corporation in the United States based upon reported revenue. In the previous ten years, Enron had evolved from a regional natural gas provider to a commodity trader of natural gas, electricity, and other physical commodities with retail operations in energy and other products. Enron also created and traded financial products. At all relevant times, the common stock of Enron was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the New York Stock Exchange.
3. On January 4, 2013, the U.S. District Court for the Southern District of Texas, Houston Division, entered a final judgment by consent against Respondent, permanently enjoining him from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"); permanently enjoining him from violating Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5 and 13b2-1; and permanently enjoining him from aiding and abetting the violation of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13, in the civil action entitled Securities and Exchange Commission v. Kevin A. Howard, et al., Civil Action Number H-03-0905 (S.D. Tex.). The final judgment also prohibits Respondent from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act. Respondent was also ordered to pay a \$65,000 civil money penalty.
4. The Commission's First Amended Complaint ("FAC") alleged, among other things, that Respondent engaged in a fraudulent scheme known as "Project Braveheart," which involved the "monetization" of certain assets resulting in the immediate recognition of earnings from a long term agreement with Blockbuster Inc. to develop and provide video-on-demand services. Respondent carried out the scheme by forming a purported joint venture, assigning the Blockbuster agreement to the joint venture, and selling an interest in the joint venture based on the value of future revenues from the Blockbuster agreement to a third party. The FAC further alleged that Project Braveheart was a sham from its inception since it had no economic substance

and was created solely for the purpose of generating earnings. Additionally, the FAC alleged that Respondent was aware that the joint venture partner was an entity that never intended to participate as a partner, and its equity was not at risk because Enron guaranteed the entity a short term take-out at a specified rate of return. The FAC alleged that Respondent did not inform Enron's outside auditor, Arthur Andersen, about the true nature of the transaction, and in meetings and conversations with Andersen made false and misleading statements about the transaction. As a result, EBS recognized \$53 million in earnings in the fourth quarter of 2000 and \$58 million in earnings in the first quarter of 2001, thus enabling EBS to meet its earnings targets.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Howard's Offer.

Accordingly, IT IS HEREBY ORDERED, effective immediately, that:

Howard is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Elizabeth M. Murphy
Secretary