

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76978 / January 27, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3735 / January 27, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17069

In the Matter of

JUSTIN MOONGYU
LEE, ESQ., CPA

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i) OF
THE COMMISSION'S RULES OF
PRACTICE

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 Justin Moongyu Lee (“Respondent” or “J. Lee”) pursuant to Rule 102(e)(3)(i)¹ of the Commission’s Rules of Practice (17 C.F.R. § 200.102(e)(3)(i)).

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, temporarily suspend from appearing or practicing before it any attorney, [or] 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 . . . any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

The Commission finds that:

1. J. Lee, at all relevant times, was an attorney who was admitted to practice in California. On July 1, 2014, J. Lee was suspended for failure to pay bar membership fees while disciplinary charges relating to the fraud alleged in the Commission's injunctive action described below were pending against him.

2. At all relevant times, J. Lee held a certified public accountant certificate in the State of Missouri. He held himself out to investors as a certified public accountant.

3. On September 3, 2014, the Commission filed a civil injunctive action against J. Lee, his wife Rebecca Taewon Lee ("R. Lee"), Thomas Edward Kent ("Kent"), and the following entities: American Immigrant Investment Fund I, LLC, ("AIIF"), Biofuel Venture IV, LLC, ("Biofuel IV"), Biofuel Venture V, LLC ("Biofuel V"), Nexland, Inc., dba Nexland Investment Group ("Nexland"), and Nexsun Ethanol, LLC ("Nexsun") (collectively, the "Entity Defendants). The Commission alleged that J. Lee and the others perpetrated a multimillion dollar investment scheme that defrauded foreign investors, who were seeking to obtain United States residency and, ultimately, citizenship, through the EB-5 visa program. The Complaint alleges that J. Lee violated the antifraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder.

4. On October 29, 2015, the United States District Court for the Central District of California entered a final judgment against J. Lee and the Entity Defendants that he controlled, after granting the Commission's motion for entry of final judgment by default. In addition to enjoining J. Lee and the Entity Defendants from future violations of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Court ordered that J. Lee and the Entity Defendants are jointly and severally liable for disgorgement of \$7,210,000, plus interest of \$1,052,403.73, for a total of \$8,262,403.73, and further ordered J. Lee to pay a \$150,000 civil penalty.

5. In granting the Commission's motion for entry of a final judgment by default, the Court found the facts pled in the Complaint were sufficient to establish violation of the antifraud provisions by J. Lee, including that:

a. J. Lee founded, and was the CEO, of each of the Entity Defendants. In addition to his role as CEO, he was the president, secretary, managing member, and/or the chairman of the board of directors of several of the Entity Defendants. He was also the signatory on all bank accounts for each of these entities. Further, J. Lee was the founder, CEO, and sole owner of a related entity, Kansas Biofuel Regional Center, LLC ("Kansas Biofuel").

b. The fraudulent scheme began in 2006, when J. Lee and Kent applied to the United States Citizenship and Immigration Service ("USCIS") on behalf of Kansas Biofuel for designation as a regional center. Among other representations, J. Lee and Kent represented to USCIS that, through Nexsun, they were going to construct and operate a new ethanol plant

in Kansas that would create thousands of jobs and substantial economic benefit. Once USCIS designated Kansas Biofuel as a regional center in 2007, J. Lee and Kent created various companies, including AIIF, Biofuel IV, and Biofuel V, through which to raise monies from immigrant investors. From March 2009 to April 2011, defendants raised \$11,455,000 from twenty-four investors through three offerings of shares in AIIF, Biofuel IV, and Biofuel V, to purportedly construct an ethanol plant in Kansas.

c. The defendants, including J. Lee, misrepresented that the \$11.5 million in investor monies raised was being used to construct and operate an ethanol plant in Kansas, that these investments qualified the investors to obtain U.S. residency citizenship, and that people had been employed for this venture. Contrary to these representations, the ethanol plant was never built. Instead, J. Lee and R. Lee misappropriated and misused most of the \$11.5 million. In particular, they spent almost \$3.9 million to finance an unrelated project in the Philippines, and another \$2.38 million to pay off investors in other offerings. These expenditures were neither permissible under the EB-5 program nor disclosed to investors.

d. To conceal their misuse of funds and failure to construct the ethanol plant, J. Lee and R. Lee caused employees to be hired by Nexsun, but paid them for performing tasks unrelated to construction of the ethanol plant. Then, as required by USCIS, defendants submitted a Form I-9 to USCIS identifying each employee that they hired, which purportedly evidenced the required creation of jobs. J. Lee signed the false documents submitted to USCIS.

e. The facts alleged in the Complaint support a claim that J. Lee and the Entity Defendants made the misrepresentations and omissions, which were material, with the requisite scienter. J. Lee was the “architect” of the entire fraudulent scheme. He headed and controlled each of the Entity Defendants. He signed the initial application to the USCIS for designation as a regional center in 2006 as President and CEO of Kansas Biofuel. J. Lee also approved offering materials to each investor, which represented that their money would be invested in Nexsun to develop and operate an ethanol plant. Further, J. Lee approved of all information regarding the purported Nexsun ethanol project that was disseminated at investor seminars from 2008 to 2010. By 2009, preliminary construction of the ethanol plant ceased and construction of the ethanol plant was no longer feasible. Nevertheless, J. Lee continued to make representations to investors and the USCIS that construction of the plant was ongoing.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined J. Lee from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission’s Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that J. Lee be temporarily suspended from appearing or practicing before the Commission as an attorney or an accountant.

IT IS HEREBY ORDERED that J. Lee be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney or an accountant. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that J. Lee may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission

receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission will, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon J. Lee personally or by certified mail at his last known address or, if that address is in a foreign country, by any other method reasonably calculated to give notice and is not prohibited by the law of the foreign country where J. Lee may be found. If J. Lee is located in the Republic of Korea, he may be served in accordance with the Hague Convention on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters.

By the Commission.

Brent J. Fields
Secretary