

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79393 / November 23, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3828 / November 23, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-14044

In the Matter of	:	ORDER GRANTING APPLICATION FOR
	:	REINSTATEMENT TO APPEAR AND PRACTICE
Kendall G. Merkley, CPA	:	BEFORE THE COMMISSION AS AN ACCOUNTANT
	:	

On September 13, 2010, Kendall G. Merkley, CPA (“Merkley”) was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Merkley pursuant to Section 4C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.¹ This order is issued in response to Merkley’s application for reinstatement to appear and practice before the Commission as an accountant.

Merkley was found to have engaged in improper professional conduct with respect to his conduct as the engagement partner on KMJ Corbin & Company LLP’s (“KMJ”) audits and reviews of Home Solutions of America, Inc.’s (“HSOA”) financial statements for the years ended December 31, 2004 through December 31, 2006. The Commission found that, during the relevant period, Merkley’s actions during the engagements were unreasonable and failed to conform to applicable professional standards. Merkley failed to (i) obtain sufficient competent evidential matter regarding bonuses, revenues, and cost of revenues with respect to KMJ’s 2004, 2005, and 2006 audit engagements; (ii) comply with PCAOB Auditing Standard No. 3, *Audit Documentation*; (iii) adequately plan the audit and properly supervise assistants in connection with the 2006 engagement; and (iv) conduct reviews of interim financial information in accordance with PCAOB standards and rules. In addition, Merkley was a cause of HSOA’s violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder and caused KMJ’s violation of Regulation S-X Rule 2-02(b)(1).

¹ See Accounting and Auditing Enforcement Release No. 3185 dated September 13, 2010. Merkley was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

Merkley has met all of the conditions set forth in the original order and, in his capacity as an independent accountant, has stated that he will comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to all requirements relating to registration, inspections, concurring partner reviews and quality control standards. 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, Merkley 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.

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 the information supplied, representations made, and undertakings agreed to by Merkley, it appears that he has complied with the terms of the September 13, 2010 order denying him the privilege of 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 Merkley, 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, and that Merkley, by undertaking to comply with all requirements of the Commission and the Public Company Accounting Oversight Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards, in his practice before the Commission as an independent accountant 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 rule 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 Kendall G. Merkley, CPA is hereby reinstated to appear and practice before the Commission as an accountant.

By the Commission.

Brent J. Fields
Secretary