

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79855 / January 23, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3853 / January 23, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17805

In the Matter of

SHELLY R. MCGUIRE, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND 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 that public administrative proceedings be, and hereby are, instituted against Shelly R. McGuire, CPA (“Respondent” or “McGuire”) pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and 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 finds³ that:

Summary

1. This matter involves a false statement made by certified public accountant Shelly R. McGuire to the Financial Industry Regulatory Authority (“FINRA”) concerning her knowledge of insider trading in the securities of Sun Healthcare Group, Inc. (“Sun Healthcare”) in 2012. In April 2012, McGuire learned of merger negotiations involving Sun Healthcare as part of her professional responsibilities providing tax accounting services to the company. McGuire disclosed the merger negotiations to Donald P. Jones, an accountant with whom she had a close personal relationship and a relationship of trust and confidence, to seek professional guidance on an accounting issue affecting the merger. Jones thereafter misappropriated the information by purchasing Sun Healthcare stock and tipping a friend. Sun Healthcare publicly announced its acquisition by Genesis Healthcare, Inc. on June 20, 2012.

2. In September 2012, as part of an inquiry into trading in advance of the merger announcement, FINRA sent a request to McGuire’s firm for individuals with prior knowledge of the Sun Healthcare acquisition to identify and provide information about parties who traded prior to the public announcement. FINRA included Jones and his tippee as such traders in this request. McGuire was asked to identify any known individuals on the list, and in her review of it, learned that Jones had used the confidential merger information to purchase Sun Healthcare stock and tip another trader. McGuire thereafter falsely responded to FINRA that she had no information about any of the identified traders.

Respondent

3. **Shelly R. McGuire**, age 42, is a resident of Alhambra, California, is a certified public accountant licensed in California and New Mexico, and in 2012 was a member of The

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

American Institute of Certified Public Accountants (“AICPA”). In 2012, McGuire was employed by a public accounting firm as an accountant and provided tax accounting services to Sun Healthcare.

Other Relevant Entity and Individual

4. **Sun Healthcare Group, Inc.** formerly headquartered in Irvine, California, operated nursing, long-term care and assisted living facilities in the United States. The company’s stock was registered under Section 12(b) of the Exchange Act and was traded on the NASDAQ Stock Market under the ticker symbol “SUNH” until December 1, 2012, when it was acquired by Genesis Healthcare, Inc.

5. **Donald P. Jones** was, at all relevant times, a certified public accountant licensed in California and Michigan.

Facts

6. Since at least 2011, Sun Healthcare had retained McGuire’s prior accounting firm to provide certain accounting services. As part of that professional engagement, McGuire provided tax-related accounting services to Sun Healthcare.

7. On or about April 5, 2012, McGuire learned that Sun Healthcare was engaged in merger discussions when a Sun Healthcare official asked McGuire to provide guidance on a tax issue that could impact the terms of a merger agreement.

8. McGuire had a relationship of trust and confidence with Donald P. Jones, based on a history, pattern, and practice of sharing confidences with each other. Shortly after learning of the merger negotiations, McGuire told Jones about them and sought his professional advice on the Sun Healthcare tax issue. McGuire continued to consult with Jones on the tax issue during the period leading up to Sun Healthcare’s public announcement on June 20, 2012 of its acquisition by Genesis Healthcare, Inc.

9. At all times, McGuire expected Jones to maintain the confidentiality of the confidential information she had disclosed to him and not to trade based on the information. However, in breach of the duty of trust or confidence he owed to McGuire, Jones misappropriated the merger information from McGuire and used it to purchase Sun Healthcare stock in advance of the merger announcement and to tip another person, who also purchased stock. McGuire did not know of the trades at the time they occurred.

10. Subsequently, on September 19, 2012, McGuire received an inquiry from FINRA requesting that any person with prior knowledge of the Sun Healthcare acquisition identify any individuals included on a list of traders, provide details of all contacts with those individuals and provide information regarding knowledge of Sun Healthcare securities transactions by those traders. The FINRA letter identified Jones and his tippee as traders.

11. On that date, Jones admitted to McGuire to purchasing Sun Healthcare stock based upon the information McGuire had disclosed in confidence and to tipping another person, whom Jones identified to McGuire. However, despite this knowledge, McGuire falsely responded to the FINRA inquiry, stating that she had no information about any of the identified traders.

Findings

12. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice state that the Commission may deny to any person the privilege of appearing or practicing before it if such person is found to have engaged in improper professional conduct.

13. In 2012, Section ET 54 of the AICPA Code of Professional Conduct stated, among other things, that "[t]o maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity."

14. McGuire's misrepresentation to FINRA regarding her knowledge of trading of Sun Healthcare securities by Jones and his tippee constitutes improper professional conduct as defined by Rule 102(e)(1)(iv)(A)(1) of the Commission's Rules of Practice because it was intentional or knowing conduct that resulted in a violation of professional standards. Applicable professional standards include Generally Accepted Accounting Principles, Generally Accepted Auditing Standards, the AICPA Code of Professional Conduct and Commission Regulations. Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57163, 57167 (Oct. 26, 1998).

15. Based on the foregoing, the Commission finds that McGuire engaged in unethical or improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

McGuire's Cooperation

16. In determining to accept the Offer, the Commission considered the cooperation afforded by Respondent to the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent McGuire's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent McGuire is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After one year from the date of this Order, Respondent may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or
2. an independent accountant. Such an application must satisfy the Commission that:
 - (a) Respondent, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (b) Respondent, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;
 - (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
 - (d) Respondent acknowledges her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration

of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Brent J. Fields
Secretary