

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81546 / September 7, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3894 / September 7, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-13832

In the Matter of _____ : ORDER GRANTING APPLICATION FOR
: REINSTATEMENT TO APPEAR AND PRACTICE
Brian K. Rabinovitz, CPA : BEFORE THE COMMISSION AS AN ACCOUNTANT
: RESPONSIBLE FOR THE PREPARATION OR
: REVIEW OF FINANCIAL STATEMENTS REQUIRED
: TO BE FILED WITH THE COMMISSION

On March 24, 2010, Brian K. Rabinovitz, CPA (“Rabinovitz”) was suspended from appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission against Rabinovitz pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹ This order is issued in response to Rabinovitz’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 Rabinovitz had been permanently enjoined by a United States District Court from future violations of Rule 2-02 of Regulation S-X. In a complaint filed on April 25, 2005, the Commission alleged, among other things, that Rabinovitz and others participated in a scheme that resulted in Exotics.com, Inc. (“Exotics.com”) filing materially false and misleading financial statements in its Commission filings, including an amended current report on Form 8-K filed on September 24, 2001, a quarterly report on Form 10-QSB for the quarter ended September 30, 2001, and an annual report on Form 10-KSB for the fiscal year ended December 31, 2001. The complaint further alleged that Rabinovitz and audit staff under his supervision committed acts and omissions that caused them to become non-independent during audits of Exotics.com and that Rabinovitz approved the issuance of audit reports which, among other things, falsely stated that the audits had been conducted by an independent auditor and in accordance with generally accepted auditing standards. The complaint also alleged that

¹ See Accounting and Auditing Enforcement Release No. 3122 dated March 24, 2010. Rabinovitz was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

Rabinovitz and audit staff under his supervision engaged in a number of improper accounting practices that caused Exotics.com's financial statements to depart from 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, Rabinovitz 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. Rabinovitz 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, Rabinovitz'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.

Rabinovitz is currently subject to probation under the California Board of Accountancy that is scheduled to end in February 2018. Failure to abide by the terms of his probation could result in the revocation of Rabinovitz's CPA license pending notice and an opportunity to be heard by the California Board of Accountancy. Rabinovitz has attested that he will notify the Commission if he is found to have violated the terms of the probation. He also has attested that he understands that the revocation of his CPA license could result in the revocation of his reinstatement to appear and practice before the Commission as an accountant.

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 Rabinovitz, it appears that he has complied with the terms of the March 24, 2010 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 Rabinovitz, 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 Brian K. Rabinovitz, 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.

Brent J. Fields
Secretary