

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85483 / April 2, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4035 / April 2, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-13447

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

On April 17, 2009, Kevin E. Brooks, CPA (“Brooks”) 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 him pursuant to Rule 102(e)(3) of the Commission’s Rules of Practice.¹ This order is issued in response to Brooks’ 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 Brooks had been permanently enjoined by a United States District Court from future violations of Section 17(a)(2) and (3) of the Securities Act of 1933 and Sections 13(b)(5) and 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 13b2-1, 13b2-2, and 16a-3 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder in an action brought by the Commission. In its complaint in the injunctive action, the Commission alleged that Quest Software, Inc. (“Quest”), in part through the misconduct of Brooks, misstated its financial statements by failing to report compensation expense associated with stock options granted in-the-money through undisclosed backdating of grant dates from 1999 through 2001. The complaint also alleged that Brooks failed to ensure that the stock option grants at Quest were properly accounted for and disclosed. The complaint further alleged that Brooks caused misrepresentations to be made to Quest’s auditors by stating in management

¹ See Accounting and Auditing Enforcement Release No. 2964 dated April 17, 2009. Brooks was permitted, pursuant to the order, to apply for reinstatement after five years upon making certain showings.

representation letters that all stock options were made with an exercise price equal to the fair market value of Quest stock on the date of grant.

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, Brooks 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. Brooks 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, Brooks' 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.

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 Brooks, it appears that he has complied with the terms of the April 17, 2009 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 Brooks, 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 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 Kevin E. Brooks, 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.

Vanessa A. Countryman
Acting Secretary