

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95884 / September 22, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4338 / September 22, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21139

In the Matter of

Ira S. Viener, CPA,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND
21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE
102(e) OF THE COMMISSION'S
RULES OF PRACTICE, AND NOTICE
OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e) of the Commission’s Rules of Practice against Ira S. Viener, CPA (“Respondent” or “Viener”).

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. These proceedings arise out of Viener’s willful violations of the federal securities laws and his improper professional conduct. Punch TV Studios, Inc. (“Punch TV”) retained Viener to audit Punch TV’s financial statements for fiscal years 2015 through 2019 in connection with its Regulation A filings with the Commission. Another commonly controlled company (“Company A”) likewise retained Viener to audit its financial statements for fiscal year 2018 in connection with its own Regulation A filings with the Commission. All of Viener’s audit reports stated that the audits had been

conducted in accordance with generally accepted auditing standards (“GAAS”)¹ when, in fact, they had not been conducted in accordance with GAAS. Viener failed to adhere to GAAS in his audits because he failed to satisfy the Commission’s independence standards by preparing the very financial statements he later audited for Punch, for fiscal years 2017-2019, and for Company A. In addition, Viener engaged in improper professional conduct in all of his audits by failing to (1) properly plan the audits, (2) consider fraud, (3) obtain sufficient appropriate audit evidence, (4) prepare adequate documentation, (5) obtain written representations from management, (6) review the filings containing his audit reports, and (7) exercise professional judgement and maintain professional skepticism.

RESPONDENT

2. Viener, age 69, is a resident of Fort Lee, New Jersey. He has been licensed as a Certified Public Accountant in New Jersey since 1990 and is not registered with the Public Company Accounting Oversight Board (“PCAOB”). He consented to an indefinite suspension from practice before the Internal Revenue Service beginning August 1, 2006. Since 2021, he has been the chief financial officer of a corporation which files information reports with OTC Markets.

OTHER RELEVANT PERSON AND ENTITIES

3. Joseph Collins (“Collins”) controls and owns the majority shares of the company for which Viener acts as chief financial officer, as well as Punch TV Studios, Inc., and Company A.

4. Punch TV is a Delaware corporation formed in May 2014, with its principal place of business in Santa Fe Springs, California. In April 2016, Punch TV conducted a Tier 2 offering under Regulation A. From April 2016 to August 31, 2017, Punch TV raised over \$4 million from about 6,600 investors in an offering purportedly pursuant to Regulation A. Punch TV has one class of securities outstanding, which is not registered with the Commission or actively traded. Punch TV previously settled charges of violating Regulation A with the Commission. *See* Order Making Findings, Specifying Procedures, and Temporarily Suspending Exemptions Pursuant to Section 3(b) of the Securities Act of 1933 and Regulation A Thereunder (Jan. 9, 2018). The California Department of Business Oversight issued a Consent Order against Punch TV and Joseph Collins, chief executive officer of Punch TV, on September 18, 2020, ordering Punch TV and Collins to desist and refrain from selling securities in violation of California law. On September 30, 2021, the Commission filed a litigated civil action against Punch TV and Collins for violations of Section 5(a) and 5(c) of the Securities Act of 1933.

5. Company A is a Delaware corporation formed in September 2018, with its principal place of business in Santa Fe Springs, California. Collins is also the chief executive officer of Company A. During the period October 2018 through July 2019,

¹ GAAS refers to the standards established by the American Institute of Certified Public Accountants (“AICPA”).

Collins and Company A filed offering statements and amendments for two Regulation A offerings, neither of which were qualified by the Division of Corporation Finance. Company A has no current operations, and its Delaware status is forfeited.

FACTUAL ALLEGATIONS

A. Viener's Audits of Punch TV's and Company A's Financial Statements

6. Viener is a solo practitioner whose practice consists mostly of preparing tax returns for companies and individuals, some financial consulting, preparing financial statements or reports, and conducting minor audit work. His clients are mostly individuals and small companies, with about a third of his clients in the entertainment field.

7. In March 2017, Viener became Punch TV's independent auditor. At that time, in connection with its Regulation A offering, Punch TV retained Viener to audit its financial statements. Viener issued audit reports that were included in the Punch TV Forms 1-A for fiscal year 2015, 1-K for fiscal years 2016-2019, and 1-K/A for fiscal year 2019 that Punch TV filed with the Commission. Those audit reports stated that the audits had been conducted in accordance with GAAS.

8. In late 2018, Viener became Company A's auditor. Viener issued audit reports that were included in Company A's Form 1-A and numerous amended Forms 1-A that Company A filed with the Commission from April through September 2019.² As with Punch TV, Company A's audit reports stated that they had been conducted in accordance with GAAS.

9. Viener admitted that he both prepared and audited Punch TV's and Company A's financial statements. As Viener put it, "part of preparing the audit was preparing the financial statements. I gathered the financial information and prepared the financial statements." When asked whether he considered any issues relating to auditor independence, Viener stated he considered himself independent because he had "no financial interest in either Company."

10. Viener signed the Punch TV and Company A audit reports and knew that they would be filed with the Commission.

11. Viener gave Collins permission to use his electronic signature with regard to Commission filings. Viener has not taken any steps to withdraw any of his opinions.

² Viener testified that he only performed one audit for Company A. It is unclear if he performed one or more than one audit for the numerous Company A filings because they contain audit reports with different dates. For simplicity, we refer to Viener's audit work for Company A as "audits."

B. Viener’s Failure to Conduct Audits in Accordance with Generally Accepted Auditing Standards

12. Rule 2-02(b) of Regulation S-X states that “[t]he accountant's report . . . [s]hall state the applicable professional standards under which the audit was conducted.” See 17 CFR 210.2 02(b)(1).

13. Viener issued audit reports for Punch TV and Company A that falsely stated that the audits were performed “in accordance with generally accepted auditing standards.” As described below, contrary to GAAS, Viener failed to (1) properly plan the audit, (2) consider fraud, (3) obtain sufficient appropriate audit evidence, (4) prepare adequate documentation, (5) obtain written representations from management, (6) review the filings containing his audit reports, and (7) exercise professional judgement and maintain professional skepticism. Moreover, as discussed below in Paragraphs 34 - 40, Viener failed to satisfy auditor independence standards because he prepared the same financial statements he later audited.

14. Viener’s false statement that the audits were conducted in accordance with GAAS was willful.

1. Failure to Properly Plan the Audits, Assess Materiality, and Identify and Assess Risks of Material Misstatement

15. AU-C 300,³ *Planning an Audit*, at .07 and .09, provides that the auditor should establish an overall audit strategy that sets the scope, timing, and direction of the audit and that guides the development of the audit plan, and develop an audit plan that includes a description of the nature and extent of planned risk assessment procedures. AU-C 320, *Materiality in Planning and Performing an Audit*, at .10, provides that, when establishing the overall audit strategy, the auditor should determine materiality for the financial statements as a whole. AU-C 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, at .05, provides that the auditor should perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial statement and relevant assertion levels.

16. Viener’s workpapers did not contain any audit strategy, assessment of risks of material misstatement, or determination of materiality in accordance with GAAS with respect to any of the audits. Although Viener claimed to have performed some planning and risks assessments, he produced no planning or risk assessment workpapers. He also failed to perform any materiality assessments.

2. Failure to Properly Consider Fraud in a Financial Statement Audit

17. AU-C 240, *Consideration of Fraud in a Financial Statement Audit*, at .16-.18, provides that the auditor should perform procedures to obtain information for use in identifying the risks of material misstatement due to fraud, including making inquiries of

³ “AU-C” refers to the AICPA professional standards.

management regarding management's assessment of the risk that the financial statements may be materially misstated due to fraud, management's process for identifying the risks of fraud in the entity, and to determine whether they have knowledge of any actual, suspected, or alleged fraud affecting the entity.

18. In connection with all of the audits, Viener failed to make, or document in his workpapers, any inquiries of management regarding fraud.

3. Failure to Obtain Sufficient Appropriate Audit Evidence

19. AU-C 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, at .05 and .28, provides that the auditor should design and implement overall responses to address the assessed risks of material misstatement at the financial statement level, and conclude whether sufficient appropriate audit evidence has been obtained. AU-C 500A, *Audit Evidence*, at .06, provides that the auditor should design and perform audit procedures that are appropriate for the purpose of obtaining sufficient appropriate audit evidence.

20. Viener failed to perform appropriate audit procedures, obtain sufficient appropriate audit evidence, and conduct any evidence evaluations or reach any conclusions regarding such evidence in support of his audit opinions. Viener's audit procedures mainly entailed obtaining copies of bank statements, credit card statements, invoices, and preparing workpapers and worksheets to compile the financial statements. His workpapers primarily consist of documents, such as bank documents, invoices, and spreadsheets with no documented audit procedures performed or conclusions reached.

4. Failure to Prepare Adequate Audit Documentation

21. AU-C 230, *Audit Documentation*, at .08, provides that an auditor should prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the nature, timing, and extent of the audit procedures performed, the results of the audit procedures performed, the audit evidence obtained, significant findings or issues arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions.

22. With respect to all the audits, Viener's workpapers lack sufficient documentation to determine what, if any, audit procedures were conducted as they do not describe the nature, timing, or extent of any procedures performed. There is no documentation regarding the results of procedures performed, significant findings or issues, conclusions reached, or significant professional judgements made.

5. Failure to Obtain Written Representations

23. AU-C 580, *Written Representations*, at .09-.11, provides that the auditor should request written representations from management with responsibilities for the fair presentation of the financial statements and for the information provided and completeness of transactions.

24. Viener's workpapers contain no management representation letters or any indication that Viener requested written representations from management for Punch TV or Company A.

6. Failure to Review Filings with the Commission

25. AU-C 720A, *Other Information In Documents Containing Audited Financial Statements*, at .01-.02, and .06, provides that the auditor has a responsibility to read other information of which the auditor is aware in documents containing audited financial statements and the auditor's report thereon, in order to identify material inconsistencies, if any, with the audited financial statements. Documents containing audited financial statements include annual reports (or similar documents) that are issued to owners (or similar stakeholders).

26. Viener signed audit reports for Punch TV and Company A, which he understood would be filed with the Commission, but he admitted that he never reviewed any of the Punch TV or Company A filings.

7. Failure to Exercise Professional Judgment and Maintain Professional Skepticism

27. As stated in AU-C 200.01, AU-C 200 addresses the independent auditor's overall responsibilities when conducting an audit of financial statements in accordance with GAAS. AU-C 200.A19 provides that due care requires the auditor to discharge professional responsibilities with competence and to have the appropriate capabilities to perform the audit and enable an appropriate auditor's report to be issued. AU-C 200.17-.18 provides that the auditor should plan and perform an audit with professional skepticism, recognizing that circumstances may exist that cause the financial statements to be materially misstated and should exercise professional judgment in planning and performing an audit of financial statements. AU-C 200.14 provides that an attitude of professional skepticism includes a questioning mind and a critical assessment of audit evidence.

28. In addition, the auditor must be independent when performing an engagement in accordance with GAAS, unless circumstances exist that are not present here. *See AU-C 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards*, at .15.

29. Viener failed to exercise due care, professional judgment, and professional skepticism for each of the Punch TV and Company A audits. Viener deviated from GAAS since he did not conduct planning, identify and assess risks of material misstatement, consider materiality, properly consider fraud, evaluate and assess audit evidence, prepare adequate audit documentation, review the filings, or obtain written representations.

30. As a result of the conduct described above, the 2015-2019 Punch TV audits and the 2018 Company A audit were not conducted in accordance with GAAS.

VIOLATIONS

A. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice – Improper Professional Conduct

31. Rule 102(e) of the Commission's Rules of Practice allows the Commission to censure a person or deny the privilege of appearing or practicing before it to any person if it finds that such person has engaged in “improper professional conduct.” Exchange Act § 4C(a)(2); Rule 102(e)(1)(ii). Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define “improper professional conduct” as one of three classes of conduct: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; (2) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or (3) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

32. As a result of the conduct described above, Viener engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice by engaging in repeated instances of unreasonable conduct and/or a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.

33. Because he failed to comply with GAAS as set forth above, Viener engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

B. Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice - Willful Violation of Rule 2-02(b)(1) of Regulation S-X

34. Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice authorize the Commission to censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to “any person” who is found to have “willfully violated, or willfully aided and abetted the violation of” any provision of the Federal securities laws or the rules and regulations thereunder.

35. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state the applicable professional standards under which the audit was conducted.

36. Viener violated Rule 2-02(b)(1) by issuing audit reports for each of the 2015-2019 Punch TV audits and the 2018 Company A audits stating that he had conducted the audits in accordance with GAAS when he had not. As detailed above, Viener failed to comply with GAAS by failing to (1) plan the audits, (2) consider fraud, (3) obtain sufficient

appropriate evidence, (4) prepare adequate audit documentation, (5) obtain written representations from management, (6) review the filings containing his audit reports, and (7) exercise professional judgement and maintain professional skepticism.

37. In addition, Viener failed to comply with GAAS because he failed to maintain independence. Form 1-A requires that an offering statement for Tier 2 offerings contain audited financial statements. The audit must be conducted in accordance with either GAAS or the standards of the PCAOB, and the report and qualifications of the independent accountant must comply with the requirements of Article 2 of Regulation S-X.

38. Rule 2-01(b) of Regulation S-X states that the “Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances, would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.” Rule 2-01(c) of Regulation S-X sets forth a non-exclusive list of circumstances resulting in a lack of auditor independence. Under Rule 2-01(c)(4)(i), an accountant is not independent if he provides certain bookkeeping or other services, including preparing the audit client’s financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission, unless it is reasonable to conclude that the results of those services will not be subject to audit procedures during the audit of the audit client’s financial statements.

39. As set forth above, Viener admitted that both prepared and audited the Punch TV and Company A financial statements. Viener therefore failed to comply with the independence standards set forth in Rules 2-01(b) and (c) of Regulation S-X for at least the 2017-2019 Punch TV audits and all the Company A audits.

40. Accordingly, Viener’s statements that the audits were conducted in accordance with GAAS were false, and he willfully violated Rule 2-02(b)(1) of Regulation S-X in connection with these audits.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Rule 2-02(b)(1) of Regulation S-X, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purposes of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If any Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Viener by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to

the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is

not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary