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SEC Appellate File No.:

3-16578

Administrative Proceedings before the  
Professional Oversight Accountancy Board  
PCAOB FileNo. 105-2012-002

**UNITED STATES OF AMERICA**

before the

**SECURITIES AND EXCHANGE COMMISSION**

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**In the Matter of the Application of Kabani & Company, Inc.,  
Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim  
Khan Muhammad, CPA, for Review of Disciplinary Action  
Taken by PCAOB**

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**NOTICE OF APPEAL OF SANCTIONS TO THE U.S.  
SECURITIES EXCHANGE COMMISSION**

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**Orders Appealed**

Under Title 17 CFR 201.440, et seq. and Title 15 U.S. Code § 7217, codifying Section 107(c)(2)-(3) of the Sarbanes Oxley Act, petitioners/appellants Kabani & Company, Inc., Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim Khan Muhammad, CPA, now appeal the final Orders from the PCAOB:

- 1) The March 31, 2015 Order Denying Petitioners/Appellants' Motion for Reconsideration;
- 2) The January 22, 2015 Order Summarily Affirming the PCAOB's April 22, 2015 Sanction Order; and
- 3) The April 22, 2015 Amended Sanction Order.

### **Summary Grounds for Petitioners/Appellants' Appeal**

The grounds for appealing the above PCAOB Orders are, in sum:

- 1.) Petitioners/appellants were unable to present material fact witnesses from testifying at the PCAOB hearing, and only recently made contact with former Kabani & Company employees who could and would testify as to the legitimate reasons why the metadata was different from Kabani & Company's computer system and the data found on the computer of its review partner; These findings are consistent with the evidences produced showing communication trail between Kabani employees and the Thomson Reuters (Software developer of the electronic file system employed at Kabani).
- 2.) Petitioners/appellants were unaware of the significance of the discrepancy of the metadata until trial, and so did not have time to show the PCAOB hearing officer communications with Kabani & Company's software vendor of actions needed to be taken to Kabani & Company's computer system that would affect the metadata for its files, which discrepancy was the gravamen for the PCAOB's decision to impose sanctions against petitioners/appellants; The Hearing officer relied on a witness

employed by PCAOB who had no prior experience of analyzing any file in the PPC Engagement file system (the system used by Kabani) and analyzed data using wrong method and erroneous judgment..

3.) During the review process, the PCAOB, in violation of its own rules, publicly published information regarding the initial PCAOB's hearing officers findings, thereby preventing petitioners/appellants from receiving a fair and unbiased review of the initial hearing officer's decision; This is 2<sup>nd</sup> time the PCAOB has violated Kabani's constitutional rights. PCAOB had earlier published the inspection report of 2011 when the SEC was still in process of reviewing the inspection report and Kabani's appeal, resulting in a letter issued by the SEC staff to PCAOB instructing it to withdraw the report with immediate effect. PCAOB wishes to impose death sanction on the firm and professional career of its partner for one alleged discrepancy, yet the PCAOB staff itself been involved not once but twice in violating basic constitutional rights of Kabani defendants.

4.) The PCAOB violated petitioners/appellants' constitutionally due process rights by:

- a. Selecting a non-judicial forum to litigate raised at the PCAOB hearing;
- b. Denying petitioners/appellants' constitutional right to a civil jury trial of their peers by imposing significant monetary penalties;

- c. Engaging in selective enforcement as there are no limits as to which persons the SEC/PCAOB may elect to initiate enforcement proceedings before the PCAOB/SEC versus those by which the SEC is also empowered to litigate enforcement actions before the federal district courts of the United States;
  - d. Selecting a non-judicial forum that deprived petitioners/appellants of valuable pre-hearing discovery rights consisting with the Federal Rules of Civil Procedure and Federal Rules of Evidence promulgated by the United State Supreme Court and Congress to ensure fair hearings consisting with U.S. Constitution's Article II, § 8, cl. 9 Article III, § 1, and the 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 14<sup>th</sup> Amendments;
- 5.) Kabani has been subject to two subsequent inspections by PCAOB (after the 2008 inspection, which is the subject of this appeal) and has been a model citizen in conducting these inspections without any similar issues or complains from PCAOB staff. As the SEC has acknowledged that the nexus between the sanction imposed and the remedial and protective efficacy is equally important, as the PCAOB's model of regulating the accounting profession is one of self-remediation under the so-called "supervisory model", therefore, even if one time offence of Kabani (as alleged) is to be believed, Kabani has proved to SEC and PCAOB it has implemented self-

remediation measures successfully (twice) and therefore, does not deserve any further sanctions; that is, the sanctions are too onerous;

- 6.)The PCAOB wrongly placed the burden of proof on petitioners/appellants to “prove a negative,” instead of requiring the PCAOB to prove by a preponderance of evidence that the files that Rehan Saeed reviewed were Kabani & Company’s audit work paper files with identical meta data;
- 7.)The initial investigation order was received by Kabani in April 2010 for an alleged offence committed in August-Sept 2008 (7 years ago). The Hearing took place in 2013 (over three years later) and the decision of the Hearing was made almost a year later in 2014. The PCAOB rules required the Hearing officer to deliver a judgment within 60 days of conclusion of the consideration in the trial. Therefore, the Hearing officer failed to deliver the judgment in timely manner denying the defendant a speedy trial and judgment as per the PCAOB rules and per the defendant’s Constitutional rights, and that such inequitable delay in prosecution prejudiced petitioners/appellants ability to properly defend themselves from the PCAOB’s charges;
- 8.)The Original Hearing officer who was appointed and heard all the pleas and appeals was changed and replaced with a new person, with no experience of auditing and accounting and was brought in days before the trial, and so entirely relied on the

representations about the evidence from the PCAOB and failed to conduct a detailed review of the evidence;

9.) The Hearing officer did not allow the defendants to produce its own expert witness (IT matters) to question the Board expert and prove that the documents were never modified when the original witness intended could not be produced due to lengthy delay of this trial and his ensuing out of town engagements, even though the replacement expert witness (employed by Kabani) was available to testify at the hearing and could have easily been deposed by the PCAOB in plenty of time before the scheduled hearing;

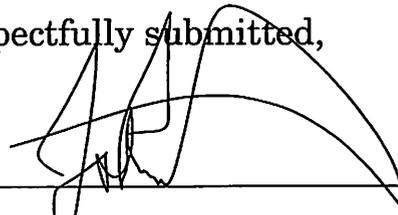
10.) The Hearing officer failed to consider that the disgruntled non-employee (on whose testimony this whole case was created) testified at the trial that he never witnessed any alteration or changes to the documents nor did he hear or see anyone instructing others to do so. The disgruntled non-employee's testimony at the Hearing changed as compared to his initial submissions and initial testimonies, before his settlement with the PCAOB, clearly indicating influence by PCAOB in his changed undertakings. The disgruntled non-employee confessed that even certain affidavits on his behalf, clarifying his position (after the disgruntled non-employee confessed of submitting forged documents to PCAOB during the process) was written in its entirety by the PCAOB staff. The PCAOB staff not only manufactured but circumvented the facts and

evidences and was guilty of hiding the truth from the Hearing officer in violation petitioners/appellants' due process rights;

11.) The Hearing officer failed to consider the fact that working file of PacificNet (the main file in this case) was corrupted and could not be opened and the Division relied on a replacement file which was not the one which inspectors saw. The Division did not produce any evidence which suggested that the replacement file was the one which was seen by the inspectors (as the onus to prove was on the Division). Even the developer of the file, Thomson Reuters, indicated that they believed that the two files, one which could be opened by the PCAOB staff and the one which could not be opened, were different files. The two files had different size and different names, yet the non-final file was the only file analyzed to charge the defendants on the assumption that the final file would have been similar to non-final file (in-spite of difference in size and dates).

Dated: April 27, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John R. Armstrong', is written over a horizontal line. The signature is stylized and somewhat cursive.

John R. Armstrong, as attorneys for  
Defendants/Petitioners/Appellants  
Kabani & Company, Inc., Hamid  
Kabani, CPA, Michael Deutchman,  
CPA, and Karim Khan Muhammad,  
CPA

**PROOF OF SERVICE**

I, Janina M. Gather, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am over the age of 18 years, and not a party to or interested in the within entitled action. I am an employee of HORWITZ + ARMSTRONG LLP and my business address is 26475 Rancho Parkway South, Lake Forest, CA 92630.

On April 27, 2015 I served the within **NOTICE OF APPEAL OF SANCTIONS TO THE U.S. SECURITIES EXCHANGE COMMISSION** on the interested parties in this action.

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Janina M. Gather, Declarant

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