UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-17228

In the Matter of

David S. Hall, P.C. d/b/a The Hall Group CPAs,
David S. Hall, CPA,
Michelle L. Helterbran Cochran, CPA, and
Susan A. Cisneros

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENT MICHELLE L. HELTERBRAN'S POST-HEARING BRIEF

The Division of Enforcement files this Response to Respondent Michelle L. Helterbran's Post-Hearing Brief ("Resp. Brief")[1] and respectfully shows the Court as follows:

I.
SUMMARY

Helterbran's Post-Hearing Brief raises no legitimate defense to the Division's allegations. Rather, her arguments are undermined by the evidence in this case, frequently her own testimony or the testimony of Susan Cisneros. Indeed, Cisneros admits that she was an employee of The Hall Group ("THG") and that she did not consider herself qualified to be an Engagement Partner on engagements involving complex equity transactions. These two facts alone, neither of which Helterbran acknowledged in her brief, thwart Helterbran's attempt to hold Cisneros out as a proper Engagement Quality Reviewer.

[1] Respondent Susan A. Cisneros did not submit a post-hearing brief.

Helterbran also attempts to diminish the importance of THG's use of the Supervision, Review and Approval Form—a document that the Division established she repeatedly failed to properly complete. But at the hearing she admitted the crucial role that this work paper played in documenting the completion of the review process, her conclusion that the engagement was completed in accordance with PCAOB standards, her approval to issue the audit report or approval of the review engagement, as well as Cisneros's concurring approval as the EQR. Thus her attempts to now downplay the importance of completion of the form—only after she was confronted with her repeated failures to ensure it was properly completed— are unpersuasive, contradict the overwhelming weight of the evidence, and should be wholly rejected.

Further, Helterbran suggests that the purported working conditions at THG excuse her conduct. This argument ignores her own responsibility, which she acknowledged both at the hearing and was also expressed on the work papers she signed as Engagement Partner. It is also inconsistent with the flattering language she included in her resignation letter from THG.

Finally, despite the violations established by the Division at the hearing and in its Post-Hearing Brief ("DOE Brief"), Helterbran argues that she should face no consequences for her actions. This attitude reflects a lack of respect for the rules and standards the Commission enforces and should not be rewarded. Accordingly, the Court should impose the remedies requested by the Division, including the suspension of Helterbran's privilege of appearing or practicing before the Commission as an accountant.

II.
ARGUMENT AND AUTHORITIES

I. Cisneros Was "From" THG.

Helterbran contends that Cisneros was never required to be a partner or partner equivalent of the firm to act as EQR because Cisneros was not "from" THG. The only basis that Helterbran offers to support this argument is that Cisneros was a contractor of THG, not an employee. [Resp. Brief p. 3]. This argument fails for multiple reasons.

First, Helterbran attempts to rewrite the plain language of Auditing Standard No. 7, *Engagement Quality Review* ("AS 7") by introducing terms and creating distinctions that do not exist in this standard. AS 7 recognizes no difference between employees and contractors when stating that an Engagement Quality Reviewer must be a partner or partner equivalent if "from the firm that issues the engagement report . . . ." AS 7 ¶ 3. There is nothing in the standard or the adopting release, and the Division is unaware of any related PCAOB guidance or enforcement actions, that suggests that a person employed as a contractor cannot be considered to be "from the firm." Significantly, the text of AS 7 does not even include the terms "employee" or "contractor." Helterbran is merely attempting to create a distinction that does not exist, and her argument fails.

Second, even if the employee-contractor distinction were relevant, Cisneros was an employee of THG. And this issue was clearly put to rest at the hearing and cannot be reasonably disputed; Cisneros unequivocally admitted that she was, and considered herself, an employee of THG. [Tr. 262:4-13, "As far as I was concerned, I was an employee of [Hall's], yes."]. Her admission is further supported by the law governing the determination of whether someone is an employee. To determine whether an individual is an employee or an independent contractor,

courts often conduct an analysis of the 'economic realities' of the work relationship. *See Spirides v. Reinhardt*, 613 F.2d 826 (D.C.Cir.1979). The most important factor under this test is "the extent of the employer's right to control the 'means and manner' of the worker's performance." *Id.* at 831. When applying this test, courts also consider the following factors:

> (1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (2) the skill required in the particular occupation; (3) whether the "employer" ... furnishes the equipment used and the place of work; (4) the length of time during which the individual has worked; (5) the method of payment, whether by time or by the job; (6) the manner in which the work relationship is terminated; i.e., by one or both parties, with or without notice and explanation; (7) whether annual leave is afforded; (8) whether the work is an integral part of the business of the "employer"; (9) whether the worker accumulates retirement benefits; (10) whether the "employer" pays social security taxes; and (11) the intention of the parties.[2]

Spirides, 613 F.2d at 832.

These factors weigh in favor of a finding that Cisneros was an employee of, and therefore "from the firm" with respect to, THG. As an auditor, Cisneros performed a function that is a regular and essential part of THG's work. Further she testified that she was subject to the supervision of the Engagement Partner on particular engagements [Tr. 450:1-15], was otherwise generally subject to the supervision of Hall [Tr. 450:16-20], was paid by the hour, not by the job [Tr. 252:4-14], and was provided her office and materials by THG [Tr. 450:3-11]. Thus, Cisneros was, and considered herself, an employee of the THG, at least through January 2012. Because she was not a partner of the firm, or in an equivalent position, any engagement for which she served as the EQR during that time was not conducted in accordance with PCAOB

[2] Notably missing from these factors is whether the individual received a Form 1099 or a Form W-2 from the employer. (Resp. Brief p. 3).

standards. [DOE Brief pp. 8-10]. Helterbran has presented no evidence establishing that any of these factors weighs against a conclusion that Cisneros was a THG employee, nor, importantly, has Cisneros herself.

Third, the PCAOB and the Commission have already entered settled orders finding that Cisneros was not qualified to act as EQR, in part because she was not a partner or in an equivalent position. In the settled PCAOB enforcement action, *In re The Hall Group, CPAs and David S. Hall, CPA*, PCAOB Release No. 105-2016-015 (April 26, 2016), the PCAOB found that:

> In connection with the FY 2012 audits of the financial statements of Seven Arts and Freestone, the Firm failed to comply with AS7. Hall assigned an auditor *of the Firm* to serve as the EQR for both audits. *The auditor was not a partner or another individual in an equivalent position at the Firm.* The highest level that the auditor had held on an engagement team was to serve as an audit senior. The auditor, as well, was not a licensed certified public accountant. *This auditor did not possess the level of knowledge and competence required to serve as the engagement partner on the engagements under review.*

Id. at ¶ 33 (emphasis added). Although Cisneros is not named in the PCAOB's Order, the PCAOB's comment form that ultimately led to the PCAOB's action against the firm [DOE Exh. 114] clearly identifies Cisneros as the auditor who the PCAOB found to be "of the firm" but not a partner and otherwise lacking the "level of knowledge and competence required to serve as the engagement partner on the engagements under review."

In addition to the violations related to the audits from the PCAOB's settled order for which Cisneros served as EQR, the July 25, 2013 PCAOB comment form identifies Cisneros as unqualified to conduct the first, second, and third quarter 2012 reviews of DynaResource, Inc., on which Helterbran served as the Engagement Partner. Similar findings were made on these

same engagements and others in the Commission's settlement with David S. Hall and THG in this matter.[3]

Notably, Helterbran touts that the DynaResource engagements for which she served as Engagement Partner prompted "no comments in the PCAOB Inspection Report dated November 24, 2014. (EX. 15, page 3-5.). This is a testament to the [sic] Helterbran's detailed workpapers and how they complied with PCAOB standards." [Resp. Brief p. 19]. To the contrary, as discussed above, the PCAOB expressly criticized her use of Cisneros as an Engagement Quality Reviewer on the DynaResource engagements. [Doe. Exh. 114]. Helterbran was directly confronted with this fact at the hearing but continues to mislead the Court regarding the PCAOB's assessment of these engagements. [Tr. 558:2 – 562:5]. Thus, the PCAOB's comments do not act as a "testament" to her work, but are instead an indictment of her use of Cisneros as an EQR.

II. Cisneros Was Not Qualified to Act as EQR.

Helterbran next contends that Cisneros was qualified to act as an Engagement Quality Reviewer on every engagement for which Helterbran was the Engagement Partner. [Resp. Brief p. 3-6]. In support of this argument, Helterbran summarily states that Cisneros satisfies the competency requirements included in the PCAOB's interim quality control standard QC sec. 40, *The Personnel Management Element of a Firm's System of Quality Control-Competencies Required by a Practitioner-in-Charge of an Attest Engagement.* But her argument misstates the import of QC sec. 40 and ignores Cisneros's own testimony admitting that she was not qualified to act as an engagement partner on certain engagements.

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[3] *In re David S. Hall, P.C. d/b/a The Hall Group CPAs, et al.*, Exchange Act Release No. 79147, at ¶ 16 (October 24, 2016).

AS 7 sets a definitive standard for the competency of an Engagement Quality Reviewer. Under AS 7, an Engagement Quality Reviewer, regardless of whether or not they are "from the firm," must "possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner on the engagement under review." AS 7 ¶ 5. Thus, if a person is not qualified to act as the Engagement Partner on an engagement, they are not competent to act as the Engagement Quality Reviewer. Footnote 3 to paragraph 5 of AS 7 clarifies that the term "engagement partner" has the same meaning as the "practitioner-in-charge of an engagement" in QC sec. 40. Helterbran's references to this provision are thus not entirely without basis. But she is not entitled to substitute the standards listed in QC sec. 40 for the plainly stated standard of AS 7, and she offers no precedent or guidance indicating otherwise.

Even if the QC sec. 40 standard could be substituted for the standard under AS 7, Helterbran's analysis is fatally flawed. First, she argues that Cisneros was not required to have precisely the same qualifications as the Engagement Partner on an engagement, but only sufficient qualifications such that she could serve as Engagement Partner on the engagement. This is a fair statement, and the Division has never argued otherwise. But Helterbran fails to establish that Cisneros was sufficiently qualified. The primary evidence she cites for her argument that Cisneros satisfies the competencies discussed in QC sec. 40 (not AS 7) are uncorroborated, self-serving, summary confirmations that Cisneros met the standard. For example, to establish that Cisneros satisfied the technical proficiency requirement necessary to act as a practitioner-in-charge of an attest engagement under QC sec. 40.07, Helterbran relies on testimony in which she asked Cisneros to read the standard and then simply asked her whether or not she met this criterion. [Tr. 377:19 – 378:6]. There was no basis for Cisneros's self-serving

testimony on this point either in documentary evidence or through corroborating testimony from any other witness besides Helterbran herself. In essence, Helterbran's argument exists only within her own echo chamber, and it should be rejected.

She further argues that under QC sec. 40, Cisneros "would gain the necessary competencies through recent experience in accounting auditing, and attestation engagements . . . ." [Resp. Brief p. 4 (emphasis in original) (*citing* QC sec. 40.05)]. This is a not a direct quote from QC sec. 40 and mischaracterizes the standard.[4] Helterbran appears to argue that simply by working on at least 20 engagements at THG, Cisneros necessarily gained the competencies to act as an EQR on those engagements. This directly conflicts with QC sec. 40, which notes that competency "is qualitative rather than quantitative." QC sec. 40.04. Thus, regardless of the *number* of engagements on which she had been involved, unless Cisneros actually *gained the necessary experience* during these engagements to act as an Engagement Partner, her participation on those engagements is irrelevant. Helterbran fails to address this qualitative question. She also never addresses the numerous statements made by Cisneros during the hearing showing her lack of familiarity with the role of the EQR and the standards on which it is based. [DOE Brief pp. 11-12].

With respect to the extent of Cisneros's participation on public company engagements, the testimony is inconsistent. Although Helterbran solicited summary testimony from Cisneros that she was comfortable assessing risks and performing audit procedures for certain of

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[4] QC sec 40.05 states:

> A firm's policies and procedures would ordinarily require a practitioner-in-charge of an engagement to gain the necessary competencies through recent experience in accounting, auditing, and attestation engagements. In some cases, however, a practitioner-in-charge will have obtained the necessary competencies through disciplines other than the practice of public accounting, such as in relevant industry, governmental, and academic positions. If necessary, the experience of the practitioner-in-charge should be supplemented by continuing professional education (CPE) and consultation.

Helterbran's engagements, [Tr. 367-369], Hall's testimony directly conflicts with this assertion. In particular, Hall testified that when he or Helterbran would have Cisneros work on public company engagements, she was assigned to the easier audit areas. [Tr. 101:8-21]. Additionally, Hall testified that after Helterbran started at THG, Cisneros "didn't work much on the audit engagement except as a reviewer". [Tr. 101:22 -24].

Notably, Helterbran wholly ignores Cisneros's own testimony that she did not consider herself qualified to act as the Engagement Partner on engagements involving certain equity transactions, such as options and stock for services. [Tr. 452:18-453:14, 225:10-16]. This testimony is inescapable.[5] It also conclusively establishes that any engagement on which Cisneros conducted the EQR and which involved these equity transactions was not conducted in accordance with PCAOB standards, including engagements for which Helterbran served as the Engagement Partner. [DOE Brief pp. 10-11].

Helterbran also ignores Cisneros's testimony that, when she didn't understand something she was reviewing, she would ask the auditor who did the work to explain it to her. [Tr. 442:20 – 443:15]. AS 7, however, requires the person conducting the review to be objective. AS 7 ¶¶ 6-7. Relying on the person who did the work to tell her how it should be done necessarily eliminates any objectivity with respect to that area. Indeed, because Cisneros lacked the qualifications to review the work herself, and was forced to go to the Engagement Partner for guidance, the Engagement Partner effectively became the EQR on those issues. Although QC sec. 40.05 contemplates that a person performing a review may gain the necessary competence

[5] Despite the definitiveness of Cisneros's own testimony against her interests, Helterbran continues to represent to the Court that Cisneros was qualified to act as an Engagement Partner on every engagement for which Helterbran acted as Engagement Partner, including those involving options transactions. (Resp. Brief p. 5).

by consulting with a practitioner who possesses the relevant knowledge, consulting with the person who did the primary work being reviewed is fundamentally inconsistent with PCAOB standards.

Helterbran's final argument to support Cisneros's competence as EQR is the fact that there have been no restatements on the engagements for which Cisneros acted as EQR. [Resp. Brief p. 6]. Restatements typically arise only where there has been an acknowledged material failure in an issuer's accounting that went undetected by the audit or review. In some respects, this is the worst case scenario for an audit. Thus, Helterbran effectively argues that absent a worst case scenario, an engagement cannot violate PCAOB standards. This is certainly not the case. This argument mimics her failed analogy at trial that compared the lack of restatements on engagements that she failed to conduct in accordance with PCAOB standards with "near misses" on an airplane. [Tr. 551:2-9, 562:6-14]. And it further reflects that Helterbran does not appreciate that the PCAOB's auditing standards do not govern the accuracy of the issuer's accounting, they govern the *process* to be used when auditing the issuer's accounting. Thus, it is the failure to conduct an audit in accordance with PCAOB standards that gives rise to a violation, and the lack of a restatement is largely irrelevant.[6] Indeed the PCAOB and Commission routinely make findings against auditors where no wrong doing by the issuer is alleged, including the previously referenced settled PCAOB and Commission proceedings against Hall and THG.

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[6] AU § 230.10, 13, *Due Professional Care in the Performance of Work* ("Since the auditor's opinion on the financial statements is based on the concept of obtaining reasonable assurance, the auditor is not an insurer and his or her report does not constitute a guarantee. Therefore, the subsequent discovery that a material misstatement, whether from error or fraud, exists in the financial statements does not, in and of itself, evidence (a) failure to obtain reasonable assurance, (b) inadequate planning, performance, or judgment, (c) the absence of due professional care, or (d) a failure to comply with generally accepted auditing standards.")

III. The Absence of a SRAF Is Sufficient Evidence to Find that an Engagement Was Not Conducted in Accordance with PCAOB Standards.

Helterbran next contends that the absence of a properly completed and signed Supervision, Review and Approval Form ("SRAF") is an immaterial fact that has no effect on an engagement's compliance with PCAOB standards, particularly those regarding documentation of engagements. [Resp. Brief 6-8]. Characterizing the SRAF as merely a checklist, and refusing to acknowledge it as THG's standard documentation of the culmination of the detail, partner, and engagement quality review process, Helterbran suggests that the audit work papers (never introduced as exhibits in this case) would otherwise satisfy the documentation requirements. This argument ignores the documentary evidence in this case, the testimony from the hearing, and the underlying auditing standards.

Consistent with Auditing Standard No. 3, *Audit Documentation* ("AS 3"), AS 7 requires that documentation of an Engagement Quality Review contain "sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the procedures performed by the engagement quality reviewer," including who performed the EQR, the documents they reviewed, and the date the concurring approval of issuance was provided or why it was not. AS 7 ¶ 19. It is well established that there was *one* document that THG, and Helterbran herself, used to satisfy these documentation requirements—the SRAF. [Tr. 96:19-23, "This, again, is the document The Hall Group used to document its detailed review, its engagement partner review, and its engagement quality review, correct? That's correct." (Hall); Tr. 505:18-21 "And it's this form that The Hall Group used to document the EQR's approval to issue the report; isn't that true? Yes." (Helterbran)]. This is particularly true as it relates to the concurring approval of issuance by the Engagement Quality Reviewer. There is no other work

paper that reflects this approval.[7] Indeed, the form's very title—Supervision, Review and *Approval* Form—reflects this. Moreover, the SRAF is the *only* document that THG used to establish the *Engagement Partner's* approval of the issuance of an audit report or the communication of the completion of a review.

In sum, Helterbran cannot escape the ample evidence establishing that, without a properly completed and executed SRAF, there is no other document, or group of documents, that an experienced auditor could review to determine whether the Engagement Partner approved, and the Engagement Quality Reviewer agreed with, the issuance of an audit report. Accordingly, the absence of a completed and signed SRAF is evidence that the engagement was not properly documented and thus not conducted in accordance with PCAOB standards. [DOE Brief pp. 5-7].

IV. Helterbran Should Be Held Accountable for Her Conduct.

Helterbran spends nine pages arguing that she should not be held accountable for her actions because, she claims, THG was a hostile work environment, the firm was short on staff, and Hall threatened employees. [Resp. Brief pp. 8-17]. These "mitigating factors" are merely excuses and should be disregarded.

None of these arguments purport to show why Helterbran should be relieved of the responsibility she took on when she chose to act as the Engagement Partner on engagements on behalf of THG. Her affirmation and knowledge of this responsibility is undeniable. On every audit engagement that Helterbran served as Engagement Partner, she confirmed with her signature on the SRAF that she "acknowledged [her] responsibility for the engagement and its performance, and [she has] fulfilled [her] responsibility." [*See, e.g.,* DOE Exh. 87 p. 4]. She

[7] Even if the other audit work papers reflected that they were reviewed by the EQR, and the date of such review, as Helterbran alleges, they would not document the EQR's decision to approve the issuance of the audit report. Moreover, such documents were never offered into evidence and are not before the Court.

also acknowledged this responsibility at the hearing. [Tr. 509:5-8]. Even more, she acknowledged that she held the power to refuse to approve an engagement if she felt the audit was not properly conducted. [Tr. 509:18-21]. Instead of exercising this power, she acknowledged at the hearing that, although she knew that THG's audit and review engagements were not being conducted in accordance with PCAOB standards, she failed to take any corrective steps and instead chose to go along with the violations. [Tr. 514:4-23]

The scope of the Engagement Partner's responsibility for an engagement is clear: "The engagement partner is responsible for the engagement and its performance. Accordingly, the engagement partner is responsible for proper supervision of the work of engagement team members *and for compliance with PCAOB standards.*" Auditing Standard No. 10, *Supervision of the Audit Engagement* ¶ 3 (emphasis added). This responsibility is not conditioned in any way on the working environment in which the Engagement Partner finds themselves. Regardless, Helterbran devoted multiple pages of her brief attempting to establish difficult working conditions. But even if they were relevant to her violations, these allegations are in direct contradiction to the only contemporaneous evidence of how Helterbran viewed her time at THG—her letter of resignation that she introduced at the hearing, in which she said "Thank you for all of your support, flexibility and opportunities over the last six years. I sincerely appreciate it." [Resp. Exh. 42]. These are not the words of a beleaguered employee or someone forced to break the law.

Even if Helterbran did feel harassed or overworked at THG, Cisneros's testimony made clear that she understood that those factors were not true impediments to performing engagements in accordance with PCAOB standards. While being questioned about Hall's pressure to conduct engagements within the hours that Cisneros and Helterbran had budgeted for

themselves, Cisneros made clear that this pressure never amounted to a request to cut corners: "I never heard him say that we should stop doing the right things to meet the budget. I really never heard him say that . . . I mean, he didn't ask us to do anything wrong, but it was just do the right thing, but meet the budget." [Tr. 389:1-20].

Just as no one forced Helterbran to write a letter of gratitude to Hall, no one forced her to repeatedly approve engagements she knew did not comply with PCAOB standards. Helterbran cannot hold herself out as an engagement partner with responsibility for an audit, but not be responsible for what the rules, the Commission, and the public expect from an Engagement Partner. Helterbran must be held accountable for her own misconduct.

V. The Sanctions Sought by the Division Are Warranted.

In her final attempt to avoid responsibility for her conduct, Helterbran argues that she should not be subject to any sanctions. [Resp. Brief pp. 17-21]. The Division's brief lays out in detail the appropriate remedies here. [DOE Brief pp. 15-24]. Her arguments do nothing to weaken the foundation on which the Division bases its requested remedies.

By arguing that she should not face *any* punishment for her violations, Helterbran continues to display a total disregard for the true nature of her conduct. For example, she says that she "has accepted responsibility for the incomplete checklists," but refuses to acknowledge the actual role of the SRAFs as discussed above. [Resp. Brief p. 17]. She also contends that she "would have never been involved in this action if it wasn't for the egregious actions and greed of Mr. Hall." [Resp. Brief p. 20]. Again, Helterbran ignores that it is not Hall's conduct that has placed her here. It is her conduct, on engagements where she served as Engagement Partner, where she signed documents acknowledging this responsibility, and where she failed to ensure compliance with PCAOB standards.

Finally, Helterbran states that there is no need to deter her from future violations as there is "absolutely no likelihood of any future violations." [Resp. Brief p. 19]. There is no reason to take any comfort from this assurance. As she testified at the hearing, she knew that THG was not following PCAOB standards, she had the power to stop it, and she chose to go along with conduct she knew was wrong. [Tr. 514:4-23, 509:18-21].

At bottom, Helterbran has made clear that she wants to continue appearing and practicing before the Commission [Tr. 458:4-8] but that she has no respect for the rules and standards the Commission enforces. Unless she is ordered to cease and desist from her violations and suspended from appearing or practicing before the Commission, she will continue to pose a threat to the Commission's processes, the investing public, and the capital markets. Accordingly, the Court should order the relief requested by the Division.

Dated: December 16, 2016

Respectfully submitted,

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SERVICE LIST

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the Division of Enforcement's Response to Respondent Michelle L. Helterbran's Post-Hearing Brief was served on the following on December 16, 2016 via United Parcel Service, Overnight Mail:

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