

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57855 / May 23, 2008

Admin. Proc. File No. 3-12208

In the Matter of

KEVIN HALL, CPA

c/o William R. Baker III
Latham & Watkins, LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304

and

ROSEMARY MEYER, CPA

c/o Gary F. Bendinger
Howrey LLP
170 South Main, Suite 400
Salt Lake City, UT 84101

ORDER DENYING
MOTIONS FOR SUMMARY
AFFIRMANCE

On January 15, 2008, an administrative law judge issued a decision dismissing an administrative proceeding against respondents Kevin Hall, CPA, and Rosemary Meyer, CPA ("Respondents"), who served respectively as engagement partner and senior manager for the 1999 audit by KPMG LLP ("KPMG") of the financial statements of US Foodservice, Inc. ("USF"), a food service and distribution company. On February 6, 2008, the Commission's Division of Enforcement (the "Division") filed a petition for review of the law judge's decision. On February 5, 2008, and March 13, 2008, Hall and Meyer respectively moved for summary affirmance by the Commission of the law judge's decision. ^{1/} The Division filed a consolidated response to these motions. We have determined to deny Respondents' motions.

^{1/} Meyer also filed a Motion for Permission to Refile Motion for Summary Affirmance of Initial Decision and Memorandum of Points and Authorities in Support of Motion. We grant this motion.

Rule of Practice 102(e) permits us to censure or deny, permanently or temporarily, the privilege of appearing or practicing before us to persons found to have engaged in improper professional conduct. 2/ As applied to persons licensed as accountants, "improper professional conduct" includes the following:

(A) Intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or

(B) Either of the following two types of negligent conduct:

(1) 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.

(2) 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. 3/

The Order Instituting Proceedings ("OIP"), issued by the Commission on February 16, 2006, alleges that Respondents engaged in improper professional conduct within the meaning of Rule 102(e) in connection with the audit of the financial statements of USF for its 1999 fiscal year and with the interim review for the second quarter of its fiscal year 2000. The OIP charges that Respondents failed to comply with Generally Accepted Auditing Standards ("GAAS") by unreasonably: (i) failing to exercise due professional care; (ii) failing to maintain an attitude of professional skepticism; (iii) failing to obtain sufficient competent evidentiary matter; (iv) substituting management representations for competent evidence; (v) failing to properly design and conduct audit confirmation procedures; and (vi) failing to require material adjustment to interim financial statements during their review engagement.

Among other things, the OIP alleges that USF engaged in a scheme to overstate the operating income reported in its financial statements, which were audited by KPMG and included in USF's filings with the Commission, by booking certain prepayments of income known as promotional allowances ("PAs") as received before they had been earned. The OIP further alleges, with respect to the 1999 audit, that, although Respondents identified the valuation, existence, and completeness of promotional income and receivables as a critical audit objective requiring heightened scrutiny and found numerous instances where USF recognized PA income when it should not have, Respondents nevertheless failed to recognize, or refused to act upon, these and other "red flags" they found.

2/ 17 C.F.R. § 201.102(e).

3/ 17 C.F.R. § 201.102(e)(1)(iv).

With respect to the interim review, the OIP alleges that Respondents were aware that USF had to pay substantial penalties under a supply contract if minimum purchase requirements were not met, that Respondents knew that USF paid \$15 million in penalties during the first two quarters of fiscal year 2000 and was likely to continue incurring penalties under the contract, and that Respondents nevertheless allowed USF to avoid expensing the payments and failed to require USF to assess its exposure to a contingent liability under the contract.

The law judge held that Respondents' conduct did not violate GAAS. She held that the procedures that Respondents planned and executed in connection with both the 1999 audit and the interim review were appropriate and that Respondents' failure to make additional inquiries or employ other procedures was not unreasonable. She further held that, even if Respondents did violate GAAS, their conduct was not reckless or highly unreasonable. Accordingly, the law judge dismissed the proceedings.

Rule of Practice 411(e)(2) provides that the Commission may summarily affirm an initial decision if the Commission determines that no issue raised in the proceeding warrants further consideration. 4/ That rule provides further that the Commission may deny a motion for summary affirmance upon a reasonable showing that, among other reasons, the initial decision embodies an exercise of discretion that is important and that the Commission should review. 5/

Respondents claim that summary affirmance is warranted. They assert that the Initial Decision embodies no important questions of law or policy that the Commission needs to address. Instead, Respondents contend, the Initial Decision merely presents a straightforward application of the evidence presented to the auditing standards applicable at the time. Respondents assert that the law judge specifically identified the auditing standards at issue, and that the law judge found, "after an exhaustive review of the evidence," that Respondents met those standards.

In opposition to Respondents' motions, the Division emphasizes that the auditor's responsibilities under GAAS are of critical importance to the Commission. The Division contends that this proceeding involves basic concepts of GAAS. The Division claims that the law judge misapplied or ignored fundamental concepts of GAAS and longstanding Commission precedent. For these reasons, the Division argues that its appeal presents an important policy matter that merits Commission review.

We previously have noted that "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties

4/ 17 C.F.R. § 201.411(e)(2).

5/ Id.

have a right to full consideration of those matters." 6/ Summary affirmance is appropriate when it is clear that "submission of briefs by the parties will not benefit us in reaching a decision." 7/

That is not the case here. We have an interest in articulating our own views on the matters raised in this proceeding, and we wish to have the benefit of the parties' views on the proper application of GAAS to the conduct at issue. The questions posed by the Division's petition for review involve important matters regarding an auditor's fundamental responsibilities under GAAS. Under the circumstances, it appears appropriate to consider the record and the parties' arguments as part of the normal appellate process rather than the abbreviated process involved with a summary affirmance. We therefore deny Respondents' motions. Our denial of the motions should not be construed as suggesting any view as to the outcome of this case.

Accordingly, it is ORDERED that the motions for summary affirmance by Kevin Hall, CPA, and Rosemary Meyer, CPA, be, and they hereby are, denied.

By the Commission.

Nancy M. Morris
Secretary

6/ Richard Cannistraro, 53 S.E.C. 388, 389 n.3 (1998); see also Terry T. Steen, 52 S.E.C. 1337, 1338 & n.2 (1997) (denying summary affirmance and noting that Division did not assert "compelling reasons" that would justify such affirmance).

7/ Cannistraro, 53 S.E.C. at 389 n.3. In Cannistraro, we summarily affirmed the decision of a law judge denying a Division motion to suspend indefinitely administrative proceedings against a respondent who had evaded service. Our decision was based on Commission Rule of Practice 161, which, at the time, permitted postponement for a "reasonable period of time" and which we interpreted to mean not an "open-ended" period. In determining that summary affirmance was appropriate, we noted that the record was abbreviated, consisting primarily of the Division's motions for extensions of time to serve the respondent, and that such Commission action would "not be unjust for either party." Id. at 389; see also Christopher A. Lowry, 55 S.E.C. 481, 484 (2001) (denying motion for summary affirmance where the Commission "wish[ed] to have the benefit of the parties' views on, among other matters, the appropriate sanctions in the public interest"); Salvatore F. Sodano, Exchange Act Rel. No. 56961 (Dec. 13, 2007), SEC Docket __, __ & n.6 (applying Cannistraro and Lowry in order denying motion for summary affirmance).