

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 58241 / July 29, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 2851 / July 29, 2008**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12788**

**In the Matter of**

**BANKER & CO. AND  
JITENDRA S. BANKER,**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
PURSUANT TO SECTION 4C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE**

**I.**

On September 13, 2007, the Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, and Notice of Hearing against Banker & Co. ("the Firm") and Jitendra S. Banker ("Banker"). The Firm and Banker will be referred to hereafter collectively as "Respondents."

**II.**

Respondents have submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### A. RESPONDENTS

1. The Firm is a public accounting firm headquartered in Costa Mesa, California. The Firm prepared and issued an audit report dated January 31, 2004, in connection with its audit of OTC Dreamwerks, Inc. ("OTC Dreamwerks"), an audit report dated May 21, 2004, in connection with its audit of Morgan Clark Management, Inc. ("Morgan"), and an audit report dated August 10, 2004, in connection with its audit of Mill Creek Research, Inc. ("Mill Creek").

2. Banker, 68, of Costa Mesa, California, has been licensed as a chartered accountant in England since 1969, but he is not licensed as a CPA in any American state. As engagement partner on the OTC Dreamwerks, Morgan, and Mill Creek engagements, Banker participated in the preparation and issuance of the January 31, 2004 OTC Dreamwerks audit report, the May 21, 2004 Morgan Clark audit report, and the August 10, 2004 Mill Creek audit report.

#### B. FACTS

1. OTC Dreamwerks is a Utah corporation based in Orange, California. During the relevant period, OTC Dreamwerk's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). OTC Dreamwerks reported no revenue or assets for fiscal year ended December 31, 2003. OTC Dreamwerks has at all relevant times been an issuer as defined by the Act.

2. The Firm audited OTC Dreamwerk's 2003 financial statements included in OTC Dreamwerk's annual report for fiscal year 2003 on Form 10-KSB, filed with the Commission on February 26, 2004. As part of that audit, Banker & Co. prepared and issued an audit report dated January 31, 2004, which was included in OTC Dreamwerk's Form 10-KSB.

3. Banker participated in auditing the 2003 financial statements included in OTC Dreamwerk's annual report for fiscal year 2003 on Form 10-KSB, filed with the Commission on February 26, 2004. As part of that audit, Banker participated in the preparation and issuance of an audit report dated January 31, 2004, which was included in OTC Dreamwerk's Form 10-KSB.

4. Morgan is a Utah corporation based in Orange, California. During the relevant period, Morgan's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. Morgan reported no revenue and no assets for fiscal year ended June 30, 2003. Morgan has at all relevant times been an issuer as defined by the Act.

5. The Firm audited Morgan's 2003 financial statements included in Morgan's annual report for fiscal year June 30, 2003 on Form 10-KSB, filed with the Commission on May

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

28, 2004. As part of that audit, Banker & Co. prepared and issued an audit report dated May 21, 2004, which was included in Morgan's Form 10-KSB.

6. Banker participated in auditing the 2003 financial statements included in Morgan's annual report for fiscal year June 30, 2003 on Form 10-KSB, filed with the Commission on May 28, 2004. As part of that audit, Banker participated in the preparation and issuance of an audit report dated May 21, 2004, which was included in Morgan's Form 10-KSB.

7. Mill Creek is a Utah corporation based in Seymour, Texas. During the relevant period, Mill Creek's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. Mill Creek reported revenues of \$200 and total assets of \$900,000 for fiscal year ended December 31, 2003. Mill Creek has at all relevant times been an issuer as defined by the Act.

8. The Firm audited Mill Creek's 2003 financial statements included in Mill Creek's annual report for fiscal year December 31, 2003 on Form 10-KSB, filed with the Commission on September 3, 2004. As part of that audit, Banker & Co. prepared and issued an audit report dated August 10, 2004, which was included in Mill Creek's Form 10-KSB.

9. Banker participated in auditing the 2003 financial statements included in Mill Creek's annual report for fiscal year December 31, 2003 on Form 10-KSB, filed with the Commission on September 3, 2004. As part of that audit, Banker participated in the preparation and issuance of an audit report dated August 10, 2004, which was included in Mill Creek's Form 10-KSB.

10. Even though the Firm had failed to register with the Public Company Accounting Oversight Board ("PCAOB"), the Firm issued, and Banker participated in the preparation and issuance of, audit reports on the financial statements of OTC Dreamwerks, Morgan, and Mill Creek after the October 22, 2003 deadline.

11. As part of the audits, the Firm received an aggregate of approximately \$5,300 for conducting the audits of the financial statements of OTC Dreamwerks, Morgan, and Mill Creek for which Banker & Co. filed audit reports after October 22, 2003.

## **C. VIOLATIONS**

1. Section 4C(a) of the Exchange Act provides, in relevant part, that the Commission "may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission ... (1) not to possess the requisite qualifications to represent others ... or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder."

2. Rule 102(e)(1) of the Commission's Rules of Practice provides that the Commission "may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission ... (i)

not to possess the requisite qualifications to represent others ... or (iii) to have willfully violated ... any provision of the Federal securities laws or the rules and regulations thereunder.”

3. Section 102(a) of the Act provides that “it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.”<sup>2</sup>

4. The provisions of Section 102(a) of the Act became effective on October 22, 2003.<sup>3</sup>

5. Based on the conduct described above, the Firm willfully<sup>4</sup> violated Section 102(a) of the Act.

#### **D. FINDINGS**

1. Based on the foregoing, the Commission finds that the Firm and Banker did not possess the requisite qualifications to represent others.

2. Based on the foregoing, the Commission finds that the Firm willfully violated Section 102(a) of the Sarbanes-Oxley Act of 2002.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

##### **1. Banker & Co.**

The Firm is denied the privilege of appearing or practicing before the Commission as an accountant.

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<sup>2</sup> A violation of the Act or any rule that the Board issues under the Act is treated for all purposes in the same manner as a violation of the Exchange Act, including with respect to penalties. Sarbanes-Oxley Act of 2002, 15 U.S.C.A. § 7202(b)(1) (West 2002).

<sup>3</sup> Section 102(a) became effective “[b]eginning 180 days after the date of the determination of the Commission under Section 101(d)” of the Act that the Board was prepared to undertake its statutory responsibilities. The Commission made the required determination on April 25, 2003. See Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002, Securities Act Release No. 8223, Exchange Act Release No. 47746, 2003 WL 1956164 (Apr. 25, 2003).

<sup>4</sup> A willful violation of the securities laws means merely that the person charged with the violation knows what he is doing. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000).

B. After one year from the date of this Order, the Firm may request that the Commission consider its reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that the Firm's work in the Firm's practice before the Commission will be reviewed either by the independent audit committee of the public company for which the Firm works or in some other acceptable manner, as long as the Firm practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) the Firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective. However, if registration with the PCAOB is dependent upon reinstatement by the Commission, the Commission will consider an application on its other merits;

(b) the Firm has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

(c) the Firm acknowledges responsibility, as long as the Firm appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by the Firm to resume appearing or practicing before the Commission provided that the Firm's state CPA license is current and the Firm has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to the Firm's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

**2. Jitendra S. Banker**

A. Banker is censured.

B. Banker may practice before the Commission as an independent accountant provided that:

1. The public accounting firm with which he is associated is registered with the PCAOB in accordance with the Act, and such registration continues to be effective;

2. He has submitted to the Commission (attention: Office of the Chief Accountant) the PCAOB's letter notifying the public accounting firm with which he is associated that its registration application has been approved.

By the Commission.

Florence E. Harmon  
Acting Secretary