

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 55568 / April 2, 2007

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2590 / April 2, 2007

ADMINISTRATIVE PROCEEDING

File No. 3-12605

In the Matter of

DANNY EDWARD MOUDY,

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Danny Edward Moudy (“Moudy” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

This matter arises out of certain improper accounting at UCAP, Inc. concerning its fiscal year ended September 30, 2002. At all relevant times, Moudy was UCAP's former chief executive officer ("CEO"), and knew or should have known that UCAP overstated mortgage revenue during fiscal year 2002. Specifically, Moudy caused UCAP to record only half of an adjustment necessary to make the company's financial statements comply with generally accepted accounting principles ("GAAP"). Moudy knew or should have known that failing to record the full mortgage revenue adjustment enabled UCAP to meet improperly a key financial covenant required to save the company's sole line of credit.

Respondent

1. Moudy, 57, of Benton, Arkansas, was UCAP's CEO from approximately November 2001 through May 2003, and again from approximately mid-October 2003 through February 28, 2004. Moudy also served as UCAP's chairman of the board from approximately November 2001 through April 20, 2004.

Other Relevant Entities

2. UCAP, a Colorado corporation, operated a mortgage banking business until it ceased operations on or about April 30, 2004. UCAP operated through its wholly-owned subsidiary, United Capital Mortgage Corporation ("UCMC"). UCMC's principal place of business was in Aurora, Colorado. UCMC filed for bankruptcy protection on November 2, 2004. UCAP's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act from 1996 through August 23, 2005, and pursuant to Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, the company was obligated to file reports on Forms 10-KSB and 10-QSB during that time period. On August 23, 2005, the Commission revoked UCAP's securities registration pursuant to Section 12(j) of the Exchange Act. From July 2002 through August 23, 2005, UCAP's common stock was quoted on www.pinksheets.com, a service of Pink Sheets LLC. Prior to July 2002, it was quoted on the OTC Bulletin Board, a service of the NASDAQ Stock Market, Inc. Neither UCAP nor UCMC have any current operations.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

4. UCAP, through its operating subsidiary, UCMC, provided mortgage banking services to consumers nationwide. The company's mortgage revenue consisted of mortgage origination fees (the fees earned when borrowers closed on the loans), and the gain or loss on the sale of mortgages in the secondary market. The company's revenue, therefore, was contingent upon the volume of loans it placed and how quickly it could prepare mortgages for sale in the secondary market.

5. In fiscal years ended September 30, 2002 and 2003, among other things, UCAP planned to increase loan originations in order to increase revenue and the price of UCAP's common stock. UCAP's mortgage business was dependent on UCMC's single line of credit, which funded the mortgages that were originated. Significant increases to the line of credit were necessary to support UCAP's growth. Through its sole lender, the available credit grew from approximately \$30 million in January 2002 to at least \$125 million in September 2002. UCAP's lender required that certain financial covenants be met to maintain the line of credit. With respect to fiscal year 2002, among other things, (a) UCAP's subsidiary, UCMC, was required to maintain a minimum \$5 million tangible net worth; and (b) UCAP and UCMC were required to maintain audited financial statements pursuant to GAAP.

Improper Mortgage Revenue Adjustment

6. As early as fiscal year ended September 30, 2001, UCMC had not been recognizing mortgage revenue in accordance with GAAP. Specifically, UCMC had been recognizing mortgage revenue at the time borrowers closed mortgage loans, rather than when loans were sold in the secondary market as required by GAAP. UCAP's external auditor stated that he requested the company make an adjustment to UCAP's consolidated financial statements for fiscal year 2001 to correct the error. UCAP's auditor was informed that UCAP was in the process of purchasing a computer system that would enable UCMC to more easily track loans from origination through sale in the secondary market, and therefore the revenue recognition problem would be corrected in fiscal year 2002. On that basis, Moudy and others agreed to wait until fiscal year 2002 to address the adjustment. Moudy and others failed, however, to take adequate action to provide reasonable assurances in fiscal year 2002 that UCMC devised and maintained internal controls sufficient to recognize mortgage revenue properly under GAAP while the company was implementing the new computer system.

7. While conducting UCAP's audit field work for the fiscal year ended September 30, 2002, UCAP's auditor determined that UCMC was continuing improperly to recognize mortgage revenue. UCAP's auditor informed Moudy that a \$1.67 million adjustment to revenue was necessary to make UCAP's fiscal year 2002 financial statements comply with GAAP. Moudy at first agreed that the full amount of the revenue error, or \$1.67 million, would be recorded in UCAP's fiscal year 2002 consolidated financial statements in order to comply with GAAP. At an October 22, 2002 board of directors meeting, Moudy discussed the change in accounting for mortgage revenue.

8. Thereafter, at or about the time UCAP's consolidated fiscal year 2002 financial statements were being finalized, Moudy learned that UCMC might be in breach of the lender's \$5 million minimum tangible net worth covenant. In or about early January 2003, Moudy approved recording half of the required \$1.67 million revenue adjustment in UCAP's fiscal year 2002 financial statements and recording half in UCAP's fiscal year 2003 financial statements as a means of meeting the lender's minimum tangible net worth covenant.

9. Moudy knew or should have known that failing to book the full adjustment would not correct the GAAP error in fiscal year 2002. Moudy failed to inform UCAP's board of directors or audit committee that only half the revenue adjustment would be taken.

10. Moudy knew or should have known that recording only half of the required \$1.67 million revenue adjustment was in contravention to GAAP. On January 15, 2003, Moudy caused UCAP's fiscal year 2002 consolidated financial statements, included in UCAP's Form 10-KSB filed with the Commission, to include only half of the necessary \$1.67 million revenue adjustment. As a result, UCAP's 2002 Form 10-KSB understated the company's pre-tax loss by \$378,000 or seven percent.

11. Also on January 15, 2003, Moudy caused UCAP to issue an earnings release for fiscal 2002. Moudy should have known that the release incorrectly reported \$730,000 in pre-tax income, excluding non-recurring restructuring charges, resulting in an overstatement of 107 percent. UCAP should have reported a pre-tax income, excluding non-recurring restructuring charges, of \$353,000.

Legal Discussion

12. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require all issuers with securities registered under Section 12 of the Exchange Act to file annual reports with the Commission on Form 10-K. These reporting requirements necessarily include the requirement that the issuer supply accurate information. In addition, Rule 12b-20 requires that reports contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. As a result of the conduct described above, UCAP violated, and Moudy caused UCAP's violations of, Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder, with respect to UCAP's Form 10-KSB for the fiscal year ended September 30, 2002.

13. Also as a result of the conduct described above, UCAP violated, and Moudy caused UCAP's violations of, Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and Section 13(b)(2)(B), which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Moudy's Offer.

Accordingly, it is hereby ORDERED that:

Respondent Moudy cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

By the Commission.

Nancy M. Morris
Secretary