

ADMINISTRATIVE PROCEEDING
FILE NO. 3-3474

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
MARTIN L. SANCHEZ
Rule 2(e), Rules of Practice

FILED
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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION
(Private Proceedings)

July 27, 1972
Washington, D.C.

Warren E. Blair
Chief Hearing Examiner

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MARTIN L. SANCHEZ	:	INITIAL DECISION
Rule 2(e), Rules of Practice	:	(Private Proceedings)

APPEARANCES: Matthew J. Zale, of the Denver Regional Office and
Frederick L. White, of the Office of General Counsel,
for the Office of Chief Accountant.

Thomas J. Constantine, of McKibben, Constantine and
Pred, for Martin L. Sanchez.

BEFORE: Warren E. Blair, Chief Hearing Examiner

By order dated December 30, 1971 ("Order") issued pursuant to Rule 2(e)(3) of the Rules of Practice, the Commission temporarily suspended Martin L. Sanchez, a certified public accountant, from appearing and practicing before the Commission. The Order charged that Sanchez was permanently enjoined by final judgment of the United States District Court for the District of Wyoming from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder by reason of his misconduct.

A petition of Sanchez to lift the temporary suspension was denied by the Commission on March 1, 1972, at which time the Commission further ordered that a hearing be held on March 13, 1972 to afford Sanchez the opportunity to show cause why he should not be censured or temporarily or permanently disqualified from appearing or practicing before the Commission. At the request of Sanchez, the commencement of the hearing was postponed until April 19, 1972.

During the hearing, Sanchez was represented by counsel. As part of the post-hearing procedures, successive filings of proposed findings, conclusions, and supporting briefs were specified. Timely filings thereof were made by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

Respondent

Martin Sanchez, 44 years of age, is a certified public accountant engaged in the practice of accountancy in Casper, Wyoming. He attended undergraduate and graduate schools at the University of Denver, majoring in accounting and receiving his graduate degree in business administration. Accreditation as a certified public accountant was granted by the State of Wyoming in 1957.

Upon completion of his formal education in 1952 Sanchez became employed as a junior accountant in the accounting firm of Raab, Rousch and Gaymon in Casper, Wyoming, remaining with them until October, 1960 when he resigned to become a sole practitioner. Because of a two-year restrictive provision in the employment contract he had with the Raab firm, Sanchez became a business manager and private accountant for an individual for the next eighteen months, at which time he gained a release from the restrictive obligation and opened his own office. Since late summer of 1961 he has independently, or in association with others, maintained an accounting office in Casper, Wyoming and has held various official positions in small companies for whom he has also performed accounting work.

In his practice, Sanchez has accepted accounting engagements throughout Wyoming and in several other western states, carrying on a general accounting practice over the past twenty years. His

accounting work on securities matters during that period has been limited to a total of five contemplated and actual filings under the Securities Act. Two of those engagements involved preparation of financial material for Regulation A filings and in the other three, full registration statements were under consideration. Of the latter, two registration statements were actually filed and of those, one was withdrawn without becoming effective.

Disqualification of Respondent

It is concluded from the record that respondent should be permanently disqualified from appearing or practicing before the Commission. As charged in the Order, respondent by reason of his misconduct was permanently enjoined by final judgment entered on October 4, 1971 by the United States District Court for the District of Wyoming from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.^{1/} Having been so enjoined, respondent has the burden of showing cause why he should not be permanently disqualified from appearing or practicing before the Commission.^{2/}

^{1/} S.E.C. v. Pollution Control and Engineering Corp., Civ. Action No. 5577 (D. Wyoming 1971).

^{2/} Rules of Practice, Rule 2(e)(3)(iv), 17 C.F.R. 201.2(e)(3)(iv).

Respondent has not here carried that burden.

The permanent injunction which underlies the present proceeding was entered upon the consent of Sanchez without his admitting or denying the allegations in the Commission's complaint, but Findings of Fact and Conclusions of Law were made by the Court after taking evidence in open court in connection with the Commission's Motion for Preliminary Injunction. The Court found that Sanchez and other defendants since July 1, 1970 and until June 10, 1971 had offered and sold unregistered common stock of Pollution Control and Engineering Corporation, a Wyoming corporation ("PCEW"), Pollution Control and Engineering Corporation, a Utah corporation ("PCEU"), and Pollution Reduction Corporation ("PRC"), a Wyoming corporation, and had made grossly false and misleading statements during the course of such offers and sales concerning the assets, operations, and prospects of those corporations, including statements that PRC's gross income would be \$175,000,000 over ten years and that its stock would rise from 50¢ to a price of \$4.50 to \$5 per share. The Court further found that for the period August 1, 1970 through March 31, 1971, over \$250,000 was raised in the sale of PCEW securities to about 50 persons, and that from July 10, 1970 through March 31, 1971 another \$135,000 was raised from the sale of PRC securities to approximately 44 investors.

Respondent's contention that errors committed in his preparation of financial statements for PCR were unintentional cannot be accepted. As his own testimony makes clear, Sanchez associated

himself with other principals of PCEW, PCEU and PCR in plans and schemes to defraud investors in the offer and sale of unregistered securities, and willingly acquiesced in their requests to prepare financial statements and to otherwise act in a manner that was of material assistance, if not vital to the accomplishment of those purposes.

On July 2, 1970 Sanchez became secretary-treasurer, "in-house" accountant, and a director of PCEW at the request of Ralph Schauss, PCEW's president. Sanchez knew that PCEW and PRC were dormant corporations and that Schauss had acted as an incorporator of each. Upon being elected director, Sanchez immediately participated in a board meeting in which approval was given to the acquisition of certain uranium claims in exchange for 1,936,190 shares of PCEW stock and of patent rights to certain anti-pollutant devices for an equal amount of PCEW stock. Schauss and Eugene Stevens, PCEW's vice-president, had interests in the uranium claims for which each was to receive 19,825 shares of stock, and Donald Lange, PRC's president, was to receive 58,087 of the shares to be issued in exchange for the patent rights. Additionally, Sanchez discussed with the other directors and with them approved a plan to raise capital for PCEW through a private placement of the company's stock, with Schauss as president being given the responsibility for overseeing the sale and, if necessary, for obtaining salesmen to accomplish that purpose.

While it may be true, as Sanchez claims, that he did not assist

Schauss or the salesmen, Allen Goldsmith and Paul Lange, who were hired by Schauss, in the offer and sale of PCEW stock in the sense of direct participation in the sales effort, there can be little doubt that at the very least Sanchez was derelict in his duty as an officer and director of PCEW. Having approved a private placement of PCEW securities, Sanchez could not thereafter close his eyes to Schauss' activities, especially in view of his knowledge that Schauss was reviving a dormant corporation and that authority had been given to Schauss to hire securities salesmen. Sanchez therefore must be viewed as having actively participated in the fraudulent offer and sale of PCEW's stock.

A further participation in the offer and sale of unregistered stock is evidenced by respondent's conduct in connection with the sale of PCEU stock by Lange in April, 1971. By that time, PCEW had merged with Fremont Uranium which, as the surviving corporation, changed its name to PCEU, and stock of the new corporation had been or could be exchanged for that of PCEW. Sanchez was then acting as PCEU's transfer agent as well as being an officer and director of that corporation.

Lange persuaded Sanchez, who initially was hesitant to transfer Lange's PCEU stock, to assist him by devising an arrangement which utilized an exchange of stock with a Fremont Uranium stockholder and a transfer of the latter's stock into the name of Lange's nominee. Sanchez was aware that Lange's position as a control person of PCEU precluded transfer of Lange's stock, but under pressure

from Lange acceded to his wishes when presented with the flimsiest of excuses for doing so. Such conduct, engaged in at a time when respondent also knew that the Commission was investigating possible violations of law in the sale of PCEU stock, reflects a willingness to participate in Lange's unlawful scheme rather than, as contended by respondent, a failure to use good judgment.

The cooperation with Lange that Sanchez displayed in the previous instance was preceded by earlier demonstrations of his willingness to disregard accounting principles to advance his own interests and those of Schauss, Stevens and Lange. Such preference of interests obviously came into play when at Lange's request Sanchez certified balance sheets for PRC as of July 30, 1970 and November 30, 1970 for use in connection with PRC's attempt to sell securities in California. At the time Sanchez prepared and placed his certificate upon those statements, PRC and PCEU were under common control, with common officers, and with Lange, Schauss, and Stevens owning a majority of the stock in each of those companies. As an officer and director of PCEU, Sanchez knew or should have known that he could not act as, or represent himself to be, an independent accountant for the purpose of certifying to the financial statements of a PCEU affiliate.^{3/} His acceptance of the audit engagement and subsequent certification of PRC's balance sheets are

^{3/} J. Carey, Professional Ethics of Certified Public Accountants 20-21 (1956).

inexplicable under the circumstances except as actions of a person bent on doing the bidding of associates to the exclusion of professional considerations.

Further, Sanchez compounded his error of undertaking the PRC audit engagement by failing to follow generally accepted accounting principles in his presentations of PRC's financial position. Sanchez concedes that he failed to properly disclose in PRC's balance sheets that uranium claims valued at over \$500,000 and certain patent rights valued at \$666,000 on the balance sheets had been acquired by PRC from its own officers in transactions that were not a result of arms-length bargaining. Additionally, Sanchez is unable to justify and concedes that generally accepted accounting principles were violated when he valued the 2,000,000 shares that Lange received for patent rights to an air pollution apparatus at 30¢ per share and at the same time gave a value of \$2 per share to the 20,000 PRC shares issued in exchange for patent rights to a carburetor device.

Sanchez again failed to adhere to generally accepted accounting principles by including a \$10,000 note payable to PCEU as a liability in PRC's November 30, 1970 balance sheet without disclosing that the transaction that gave rise to that liability involved a borrowing from a PRC affiliate to effect the acquisition of coal rights which had been obtained in a two-step process from Stevens who was an officer of PRC. Indeed, Sanchez admits that he should have disclosed that the acquisition was not an arms-length bargain,

that PRC had purchased the coal rights from a corporation owned and controlled by Stevens, and that those rights had been acquired by the selling corporation from Stevens. An additional questionable presentation is found in the portrayal of a \$16,000 unsecured note receivable as a PRC asset in the November 30th balance sheet without a reserve for possible loss being set up against it. The record establishes that Sanchez noted in his working papers that collection of the note was "highly unlikely" because of his belief that the obligor on the note, International American Industries, was very close to bankruptcy. Nonetheless, at Lange's urging Sanchez reversed himself without good reason, and gave full recognition to the note as an asset.

A further indication of lack of requisite character and integrity can be found in the misrepresentation of Sanchez's official position with Western Reserve Life Insurance Company which was made in a registration statement filed with the Commission. In that registration statement,^{4/} Sanchez knowingly misrepresented that he was "principal financial officer" of the company by signing his name in that capacity. The explanation offered by Sanchez was that he was told to sign by an officer of the company who was also its legal counsel, and that it didn't occur to him that the representation was inaccurate. Accepting that explanation at face-value, and even then it cannot be considered justification for his

^{4/} File No. 2-23585.

action, the conclusion must be that Sanchez either is unable to recognize the error of his ways or that the wish to please those able to affect his financial welfare quickly overcomes any doubts regarding the propriety of a requested action.

It is not enough that Sanchez is willing to admit that he has made errors, that certain persons in his community think well of him, and that he claims to have been sufficiently impressed with the seriousness of these proceedings and the inadequacy of his former policies which now have been materially revised. The record of his past conduct clearly shows that he has been the ready tool of Schauss and Lange and indicates he would again accede to their pleas for his assistance. Illustrative of this is the fact that after deciding in January or March, 1971 that Lange had been using him and could not be trusted, and telling Lange that he "did not want any more dealings with him," Sanchez turned around on April 17, 1972, just two days before the hearings in these proceedings commenced, and at Lange's request prepared Lange's personal income tax return. Moreover, Sanchez has continued to hold his official positions with PCEU and shares with it common office space on which the company pays the \$125 per month rent. Sanchez's continued association with PCEU is understandable in view of his financial interests represented by his holdings of PCEU's non-interest bearing demand note for \$4,500 and 5,000 shares of PCEU stock which may be greatly increased if his expectation of receiving 100,000 to 200,000 shares more for services rendered is realized. But those same interests make it

reasonable to anticipate that Sanchez would not be able to resist again preferring self-interest and that of his associates in PCEU at the expense of ethical conduct in his accounting work or in the offer and sale of securities.


A number of previous instances in which a sanction less than permanent disqualification was imposed upon accountants for misconduct are cited by respondent in urging that no more than a suspension of short duration would be warranted here. Consideration has been given to the citations, but the arguments of respondent in this connection are unacceptable. While some guidance with respect to the appropriate sanction may be obtained from previous decisions of the Commission in this area, each case must ultimately be determined on its own merits. Here the record reveals a definite weakness in respondent's moral fiber which in conjunction with his continued interest in PCEU and longstanding and continuing acquaintance with persons of questionable character argues strongly for permanent disqualification of respondent from appearing or practicing before the Commission.^{5/}

Accordingly, IT IS ORDERED, pursuant to Rule 2(e)(3) (iii) of the Rules of Practice, that Martin L. Sanchez be, and he hereby is, permanently disqualified from appearing or practicing before the Commission.

^{5/} All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to to that party.



Warren E. Blair
Chief Hearing Examiner

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