

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55359 / February 27, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2566 / February 27, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12575

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In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS PURSUANT TO RULE
Robert A. Ness, Jr.,	:	102(e) OF THE COMMISSION’S RULES OF
	:	PRACTICE, MAKING FINDINGS, AND
Respondent.	:	IMPOSING REMEDIAL SANCTIONS
	:	
	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Robert A. Ness, Jr., (“Respondent” or “Ness”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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, and the findings contained in paragraph 3 of Section III below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Ness, age 42, passed the Certified Public Accountant (“CPA”) examination in the State of Washington, and received a certificate allowing him to use the title CPA-Inactive, but has never been a licensed CPA. He served as Controller of Metropolitan Mortgage & Securities Co., Inc. (“Metropolitan”) from 2001 until his termination in April 2004.

2. Metropolitan was, at all relevant times, a closely-held Washington corporation with its principal place of business in Spokane, Washington that was engaged in the business of originating high-risk commercial real estate loans and selling real estate. While all of Metropolitan’s common stock was held by former CEO C. Paul Sandifur, Jr. (“Sandifur”) or his family, Metropolitan registered debt securities and preferred stock with the Commission pursuant to Sections 12(b) and 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”). Metropolitan listed its securities on the Pacific Exchange and the American Stock Exchange until both exchanges delisted the securities in December 2003. Metropolitan had its registrations revoked pursuant to Section 12(j) of the Exchange Act on January 27, 2006. On February 4, 2004, Metropolitan filed for Chapter 11 bankruptcy in United States Bankruptcy Court in the Eastern District of Washington. Metropolitan’s assets are currently being liquidated.

3. On September 26, 2005, the Commission filed a complaint against Ness in SEC v. Robert A. Ness, et al. (Civil Action No. 2:05-CV-1631). On February 2, 2007, the court entered an order permanently enjoining Ness, by consent, from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

4. The Commission’s complaint alleged, among other things, that Ness, at the direction of Metropolitan’s former President and Chief Executive Officer, approved the use of an accounting treatment that did not comply with Generally Accepted Accounting Principles (“GAAP”). The inappropriate accounting treatment recognized the full gain on several sales of

real estate immediately, when one or more of the criteria required by GAAP had not been met. To facilitate the real estate sales Metropolitan had financed all or nearly all of the sales prices to the buyers. Under GAAP, recognition of the full gain on these real estate sales was not permitted until various criteria were met including, that the buyers make their own substantial initial down payments demonstrating their commitments to pay for the properties. Despite this, Ness approved the immediate recognition of the full gain for the transactions even though he knew, or was reckless in not knowing, that such accounting treatment was a departure from GAAP and contrary to the advice Metropolitan had received from its auditor. The fraudulently recorded income from the transactions allowed Metropolitan to report a net profit for the third fiscal quarter of 2002 and the 2002 fiscal year instead of a net loss.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

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

A. Ness is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider his 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 Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

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

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

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

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, 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 Respondent to resume appearing or practicing before the Commission as an accountant provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission as 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 provided that his state CPA license or certificate is current and he 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary