

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 56408 / September 13, 2007**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2688 / September 13, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12769**

**In the Matter of**

**Darilek, Butler & Co., P.C. and**  
**Robert F. Darilek, CPA,**

**Respondents.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 4C AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted against Darilek, Butler & Co., P.C. and Robert F. Darilek, CPA (collectively “Respondents”) pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and that public administrative proceedings be, and hereby are, instituted against Darilek, Butler & Co., P.C. pursuant to Section 4C<sup>1</sup> of the Exchange Act and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C 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 . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

<sup>2</sup> Rule 102(e)(1)(iii) provides, in relevant part, 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 . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

## II.

In anticipation of the institution of these proceedings, 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 Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offer, the Commission finds<sup>3</sup> that:

### A. RESPONDENTS

1. Darilek, Butler & Co., P.C. (the “Firm”) is a Texas professional corporation and a public accounting firm headquartered in San Antonio, Texas. The Firm audited Health Discovery Corporation’s (“HDC”) financial statements for the company’s 2003 fiscal year ended December 31, 2003.

2. Robert F. Darilek, CPA, (“Darilek”), 52, of San Antonio, Texas, is a certified public accountant licensed in the state of Texas. Darilek was the engagement partner in connection with the Firm’s audit of HDC’s financial statements for the company’s 2003 fiscal year ended December 31, 2003. Darilek has been licensed as a CPA in Texas since 1982.

### B. FACTS

1. HDC is a Georgia corporation with its headquarters in Savannah, Georgia. HDC’s common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on the OTC Bulletin Board under the symbol HDVY. For its fiscal year ended December 31, 2003, HDC reported revenues of \$50 and total assets of \$941,000.

2. HDC has at all relevant times been an issuer as defined by the Sarbanes-Oxley Act of 2002 (the “Act”).

3. The Firm audited HDC’s 2003 financial statements included in HDC’s annual report for fiscal year 2003 on Form 10-KSB, filed with the Commission on March 30, 2004. As part of that audit, the Firm prepared and issued an audit report dated February 27, 2004 (the “HDC audit report”), which the company included in its 2003 Form 10-KSB. HDC paid the Firm

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<sup>3</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.

\$10,000 for the audit work.<sup>4</sup>

4. At the time the Firm issued the HDC audit report, it was not registered with the Public Company Accounting Oversight Board (the “Board”), as required by Section 102(a) of the Act.

5. Darilek was the engagement partner on the Firm’s audit of HDC’s 2003 financial statements. Darilek participated in the preparation and issuance of the HDC audit report.

### **C. VIOLATIONS**

1. 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>5</sup>

2. The provisions of Section 102(a) of the Act became effective on October 22, 2003.<sup>6</sup>

3. Based on the conduct described above, the Firm willfully<sup>7</sup> violated Section 102(a) of the Act.

4. Based on the conduct described above, Darilek caused the Firm’s violation of Section 102(a) of the Act.

### **D. FINDINGS**

Based on the foregoing, the Commission finds that the Firm willfully violated Section 102(a) of the Sarbanes-Oxley Act of 2002, and that Darilek caused the Firm’s violation of Section 102(a) of the Act.

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<sup>4</sup> During the course of the Commission’s investigation, the Firm voluntarily reimbursed HDC the \$10,000 in audit fees through the provision of non-audit or other services to the issuer. In view of the Firm’s reimbursement, the Commission is not ordering disgorgement in this matter.

<sup>5</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>6</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>7</sup> “Willfully” as used in this Order means intentionally committing the act that constitutes the violation. There is no requirement that the actor also be aware that he is violating a rule or statute. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

## **E. UNDERTAKING**

Respondents have undertaken not to request, demand, or accept, directly or indirectly, any compensation from HDC in connection with the audit work associated with the HDC audit report. In determining whether to accept the Offer, the Commission has considered this undertaking.

## **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. Darilek, Butler & Co., P.C.**

A. The Firm shall cease and desist from committing or causing any violations and any future violations of Section 102(a) of the Act.

B. The Firm is censured.

C. The Firm may practice before the Commission as an independent accountant provided that:

1. It is registered with the Board in accordance with the Act, and such registration continues to be effective; and

2. It has submitted to the Commission staff (attention: Office of the Chief Accountant) the Board's letter notifying the Firm that its registration application has been approved.

### **2. Robert F. Darilek, CPA**

A. Darilek shall cease and desist from committing or causing any violations and any future violations of Section 102(a) of the Act.

B. Darilek 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 Board in accordance with the Act, and such registration continues to be effective; and

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

By the Commission.

Nancy M. Morris  
Secretary