

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61771 / March 24, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3122 / March 24, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13832

In the Matter of	:	
	:	
	:	
	:	
BRIAN K. RABINOVITZ, CPA,	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS PURSUANT TO RULE
	:	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 Brian K. Rabinovitz (“Respondent” or “Rabinovitz”) 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 Section III.3 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. Rabinovitz, age 41, is and has been a certified public accountant licensed to practice in the State of California as of 2007. He also was or is licensed to practice in the State of New York. Rabinovitz was employed by Merdinger, Fruchter, Rosen & Corso, P.C. (later Merdinger, Fruchter, Rosen & Company, P.C.) (“MFRC”) as a senior manager and, later, as a non-equity partner from 1995 until August 2002. In the latter capacity, he supervised MFRC’s audit and other engagements concerning Exotics.com, Inc. (“Exotics.com”) in 2001 and 2002.

2. Exotics.com was, at all relevant times, a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Exotics.com was engaged in the business of owning, operating, and licensing adult-oriented websites. At all relevant times, Exotics.com’s common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934, and was approved for quotation on the OTC Bulletin Board.

3. On March 15, 2010, a final judgment was entered against Rabinovitz, permanently enjoining him from future violations of Rule 2-02 of Regulation S-X in the civil action entitled Securities and Exchange Commission v. Exotics.com, Inc., et. al, Civil Action Number 2:05-cv-00531-PMP-GWF, in the United States District Court for the District of Nevada. Rabinovitz was also ordered to pay a \$30,000 civil money penalty.

4. The Commission’s complaint alleged, among other things, that Rabinovitz and others participated in a scheme that resulted in Exotics.com filing materially false and misleading financial statements in its Commission filings, including, among others, an amended current report on Form 8-K filed on September 24, 2001, a quarterly report on Form 10-QSB for the quarter ended September 30, 2001, and an annual report on Form 10-KSB for the fiscal year ended December 31, 2001. The complaint further alleged that Rabinovitz and audit staff under his supervision committed acts and/or omissions that caused them to become non-independent during audits of Exotics.com and that Rabinovitz approved the issuance by MFRC of audit reports which, among other things, falsely stated that the audits had been conducted by an independent auditor

and in accordance with generally accepted auditing standards (“GAAS”). The Complaint also alleged that Rabinovitz and audit staff under his supervision engaged in a number of improper accounting practices that caused Exotics.com’s financial statements to depart from generally accepted accounting principles (“GAAP”).

IV.

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

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

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

B. After three 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 provided that his state CPA license 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.

Elizabeth M. Murphy
Secretary