

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 56301 / August 22, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2669 / August 22, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12733

In the Matter of	:	
	:	
Kenneth W. DiFonzo, 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 Kenneth W. DiFonzo (“DiFonzo” or “Respondent”) pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, DiFonzo 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, DiFonzo consents to the entry of this

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.”

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. DiFonzo, age 55, resides in Newport Beach, California. DiFonzo was ConAgra Foods Inc.’s Corporate Controller from May 1994 through February 1999. From February 1999 until May 2004, DiFonzo held other senior positions with ConAgra. From May 2004 to September 2005, DiFonzo served in an advisory capacity at ConAgra regarding various operational/management issues. Since September 1, 2005, DiFonzo has served as a consultant to ConAgra. DiFonzo is a Certified Public Accountant licensed in Illinois; however, his license has become inactive. For approximately eight years (1973 to 1981), DiFonzo worked as an auditor in public accounting, rising to the position of Senior Manager.

2. ConAgra, a Delaware corporation with headquarters in Omaha, Nebraska, is a diversified international food company. ConAgra’s common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and during the relevant time period, traded on the New York Stock Exchange. ConAgra’s fiscal year ends on the last Sunday in May of each year.

3. On June 29, 2007, the Commission filed a complaint against DiFonzo in SEC v. Kenneth W. DiFonzo (Civil Action No. 07-cv-1374). On August 15, 2007, the Court entered a final judgment against DiFonzo which permanently enjoined DiFonzo, by consent, from future violations of Exchange Act Rule 13b2-1, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13. DiFonzo was also ordered to disgorge (a) \$139,988, plus prejudgment interest of \$65,590, and (b) \$136,296, representing the market value, determined as of the date the Commission accepts DiFonzo’s settlement offer, of 5,048 shares of ConAgra common stock; and to divest 20,192 of unexercised ConAgra stock options. It is understood that 8,712 ConAgra stock options had previously been divested on September 20, 2006 pursuant to this settlement agreement and that the balance to be divested pursuant to this Offer is 11,480 options.

4. The Commission's complaint alleged, among other things, that during fiscal year 1999, DiFonzo directed certain improper accounting practices at ConAgra relating to the establishment and use of excess reserves in FY 1999. The complaint alleged that DiFonzo knew, or should have known, that ConAgra improperly accounted for excess reserves in FY 1999. According to the allegations in the complaint, as a result of the accounting practices, which were not in accordance with Generally Accepted Accounting Principles (“GAAP”), certain of ConAgra’s filings with the Commission in fiscal year 1999 were materially false and misleading because they misstated ConAgra’s reported income before income taxes and overstated its reported net income and earnings per share. The complaint also alleged that had ConAgra’s accounting for its reserves been in accordance with GAAP, it would have reduced its excess reserves in earlier periods, which would have resulted in a corresponding increase in ConAgra’s income before income taxes in those earlier periods. Additionally, the complaint alleged that DiFonzo violated,

and aided and abetted violations of, the provisions of the federal securities laws as described in Section III.3 above.

IV.

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

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

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

B. After one (1) year 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 dependant 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