

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51629 / April 28, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2240 / April 28, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11918

In the Matter of

Dawn Diaz, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTION 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 public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice¹ and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Dawn Diaz, CPA ("Diaz" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has 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 her and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of

¹ Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may...deny, temporarily or permanently, the privilege of appearing or practicing before it...to any person who is found...to have engaged in...improper professional conduct.

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 the Respondent's Offer, the Commission finds that:

A. RESPONDENT

Dawn Diaz, age 41, was Chief Financial Officer of Rexhall Industries, Inc. ("Rexhall") from February 2001 to July 2002, when her employment was terminated. Diaz is, and at all relevant times was, licensed in California as a certified public accountant. Prior to joining Rexhall, Diaz worked for three years at a large public accounting firm, and held various accounting positions at public and private companies, including director of accounting, controller, and vice-president of finance.

B. RELEVANT ENTITY

Rexhall Industries, Inc., based in Lancaster, California, designs, manufactures, and sells various models of motor homes. At all relevant times, Rexhall's common stock was registered under Section 12(g) of the Exchange Act and traded on the Nasdaq National Market.

C. SUMMARY

In preparing Rexhall's financial statements for the first quarter of 2002, Diaz was presented with two materially different calculations for raw materials inventory; one calculation was based on a physical inventory count, and the second calculation was based on a computer model that she designed. The computer model figure was materially higher than the physical count figure. Without reconciling the two figures, and without bringing the discrepancy to the attention of the outside audit firm, Diaz used the higher figure in preparing the financial statements for the quarter. In fact, the higher figure that Diaz used was incorrect. As a result, the company incorrectly reported net income of \$181,000 (earnings of \$.03 per share) in its Form 10-Q for the quarter. When Rexhall later discovered that Diaz had used the incorrect figure, the company restated its financial statements for the quarter to reflect the correct figure. Rexhall's restatement reported a net loss for the quarter of \$253,000 (a loss of \$.04 per share) instead of the previously reported net income of \$181,000 (earnings of \$.03 per share).

D. FACTS

1. Raw Materials Inventory and Its Relationship to Earnings

Rexhall's raw materials inventory includes all parts, other than the chassis, required to manufacture its motor homes. Raw materials inventory is one component of the cost of goods sold. When raw materials inventory is higher, cost of goods sold will be lower. And when cost of goods sold is lower, net income will be higher. Therefore, a higher raw materials inventory figure will result in higher earnings.

2. The 1st Quarter Inventory Calculations and Erroneous Reporting of Earnings

As part of its procedures for preparing quarterly financial statements, Rexhall conducts a physical count of raw materials inventory at the close of each quarter. At the close of the first quarter of 2002, Diaz received the physical count for the quarter which showed a raw materials inventory amount of \$2,695,872. At about the same time, Diaz used a computer model she had designed to derive a second inventory figure. Diaz's computer model showed a raw materials inventory calculation of \$3,374,024, which was \$678,152 higher than the physical count calculation.

Without reconciling the discrepancy between the two figures, and without bringing the \$678,152 discrepancy to the attention of the company's outside audit firm, Diaz used the higher figure in preparing Rexhall's financial statements for the quarter. It was later discovered that the higher figure was incorrect. By using the incorrect higher figure, the financial statements for the quarter reflected a lower cost of goods sold and correspondingly higher net income than if the lower (correct) inventory figure had been used. Accordingly, in its Form 10-Q for the first quarter of 2002, Rexhall incorrectly reported net income of \$181,000 and earnings of \$.03 a share.

The error was discovered at the end of the second quarter 2002, as Diaz prepared Rexhall's financial statements. At that time, Diaz's computer model showed an inventory calculation that was approximately \$1.5 million higher than the physical count inventory calculation. Diaz told Rexhall's chief operating officer about the \$1.5 million discrepancy and her inability to reconcile the two numbers. At about the same time, Diaz also informed the chief operating officer that she had used an unreconciled inventory calculation in the financial statements that were included in the Form 10-Q for the first quarter.

In July 2002, after Rexhall learned the full extent of the inventory calculation discrepancies for the first and second quarters, Diaz submitted a resignation letter to the company, and the company terminated her employment that same day. Rexhall also delayed filing its Form 10-Q for the second quarter and disclosed the nature of the accounting problems in a press release. Rexhall's audit committee retained outside counsel to conduct an independent investigation of the problems, and Rexhall shared the findings of the independent investigation with the Commission staff.

Upon completion of the investigation by outside counsel, Rexhall restated its first quarter earnings to reflect the accurate calculation for raw materials inventory. As a result of the restatement, Rexhall reported a net loss of \$253,000 and loss of \$.04 a share for the quarter, rather than the originally reported net income of \$181,000 and earnings of \$.03 a share.

E. VIOLATIONS

1. Reporting Violations: Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly reports with the Commission. See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979). Rule 12b-20 under the Exchange Act similarly requires that these reports contain any material information necessary to make the required statements made in the report not misleading. SEC v. Falstaff Brewing, 629 F.2d 62, 72 (D.C. Cir. 1980).

As discussed above, for the first quarter of 2002, Diaz caused Rexhall to file a false and misleading quarterly report with the Commission that misrepresented the financial results of Rexhall, overstating net income and earnings. Diaz caused Rexhall's violations of Section 13(a) and Rules 12b-20 and 13a-13 thereunder by participating in preparing and signing the quarterly report that included the overstated net income and earnings.

2. Record-Keeping Provisions: Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 Thereunder

Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Rule 13b2-1 prohibits the falsification of any book, record, or account subject to Section 13(b)(2)(A).

As a result of the actions taken by Diaz as described above, for the first quarter of 2002, Rexhall's books and records reflecting the transactions and dispositions of its assets were inaccurate. Diaz therefore caused Rexhall's violation of Section 13(b)(2)(A) and violated Rule 13b2-1.

3. Internal Controls Provision: Sections 13(b)(2)(B) and 13(b)(5) of the Exchange Act

Section 13(b)(2)(B) of the Exchange Act requires issuers with securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to reasonably assure, among other things, that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP. Section 13(b)(5) prohibits any person from knowingly circumventing a system of internal accounting controls or knowingly failing to implement a system of internal accounting controls.

Diaz caused Rexhall's violation of Section 13(b)(2)(B). As Rexhall's CFO, she was ultimately responsible for ensuring that the company had an adequate system of internal controls in place and that those controls were maintained and properly utilized. By recording materially incorrect inventory results in Rexhall's books and records, Diaz failed to assure that Rexhall maintained an adequate system of internal accounting controls to properly account for inventory.

Diaz also violated Section 13(b)(5) by entering into Rexhall's financial statements her calculated inventory number rather than the correct physical count.

4. Improper Professional Conduct: Rule 102(e)(1)(ii) of the Commission's Rules of Practice

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in part, that the Commission may censure or deny the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Rule 102(e)(1)(iv)(B)(1) defines one type of improper professional conduct with respect to persons licensed to practice as accountants to mean "a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted."

As Rexhall's Chief Financial Officer, Diaz was responsible for internal accounting, including implementing applicable accounting pronouncements and maintaining the books and records; communications with the company's outside auditors; and financial reporting. In the preparation of Rexhall's first quarter financials, Diaz failed to reconcile the discrepancy between the physical inventory count and an internally generated figure, failed to bring the discrepancy to the attention of the outside audit firm, and recorded the incorrect inventory amount in the financial statements for the quarter. The improper recording of the inventory figure caused Rexhall's income statement to be misstated by a material amount. Diaz's actions in connection with the reporting of Rexhall's materially incorrect financial statements for the first quarter of 2002 constitute improper professional conduct.

F. Findings

1. Based on the foregoing, the Commission finds that Diaz: (a) caused Rexhall's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder; and (b) violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder.

2. Based on the foregoing, the Commission finds that Diaz engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

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

A. Diaz shall cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13

thereunder, and from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 thereunder.

B. Diaz is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After three years from the date of this Order, Diaz may request that the Commission consider her 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 Diaz's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

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

(a) Diaz, or the public accounting firm with which she 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) Diaz, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in Diaz's or the firm's quality control system that would indicate that Diaz will not receive appropriate supervision; or, if the Board has not conducted an inspection, has received an unqualified report relating to her, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

(c) Diaz 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) Diaz acknowledges her responsibility, as long as she 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.

D. The Commission will consider an application by Diaz to resume appearing or practicing before the Commission provided that her state CPA license is current and she 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 Diaz's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jonathan G. Katz
Secretary