

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65680 / November 3, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Rel. No. 3334 / November 3, 2011

Admin. Proc. File No. 3-14532

In the Matter of

RAN H. FURMAN

ORDER DENYING MOTION
TO LIFT TEMPORARY SUSPENSION
AND DIRECTING HEARING

On September 6, 2011, we issued an order instituting proceedings ("OIP") against Ran H. Furman, formerly a certified public accountant ("CPA"), pursuant to Commission Rule of Practice 102(e)(3)¹ that temporarily suspended him from appearing or practicing before the

¹ Rule of Practice 102(e)(3)(i), 17 C.F.R. § 201.102(e)(3)(i), provides, in pertinent part, that:

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any . . . accountant . . . who has been by name:

(A) 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; or

(B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Commission as an accountant.² Furman has filed a petition, pursuant to Rule 102(e)(3)(ii),³ requesting that his temporary suspension be lifted.

Furman, who was the chief financial officer of Island Pacific, Inc. ("Island Pacific"), oversaw the company's financial operations, participated in the preparation of its financial statements, and certified the accuracy of the company's quarterly and annual reports that were filed with the Commission.⁴ On September 4, 2008, the Commission filed a complaint in the United States District Court for the Southern District of California alleging that Furman, among other things, engaged in a fraudulent scheme to overstate Island Pacific's financial results for the quarters ended September 30, 2003 and December 31, 2003, and its fiscal year ended March 31, 2004.⁵

On November 18, 2009, the district court entered an order granting partial summary judgment in the Commission's favor, holding that Furman violated Exchange Act Section 13(b)(5) (internal controls requirements) and Exchange Act Rules 13b2-1 (recordkeeping requirements) and 13b2-2 (misrepresentations to accountants).⁶ On February 25, 2011, following a trial on the Commission's remaining claims, a jury found that Furman violated Exchange Act Section 10(b) and Exchange Act Rule 10b-5 and 13a-14 by engaging in fraudulent conduct and falsely certifying certain Forms 10-Q. The jury also found that Furman aided and abetted one or more violations by Island Pacific of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13 in connection with the company's issuer reporting requirements. On July 8, 2011, the district court entered a final judgment against Furman permanently enjoining him from future violations of Exchange Act Section 10(b) and 13(b)(5) and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 13b2-2, and from aiding and abetting violations of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, and 13a-13.⁷ The final judgment further

² *Ran H. Furman, CPA*, Securities Exchange Act Rel. No. 65271 (Sept. 6, 2011), __ SEC Docket __, 2011 WL 3911514, at *3 (Sept. 6, 2011).

³ 17 C.F.R. § 201.102(e)(3)(ii).

⁴ *Furman*, __ SEC Docket at __, 2011 WL 3911514, at *4.

⁵ *SEC v. Retail Pro, Inc. (fka Island Pacific, Inc.), et al.*, No. 08-CV-1620 WQH (RBB), available at <http://www.sec.gov/litigation/complaints/2008/comp20703.pdf>.

⁶ *Furman*, __ SEC Docket at __, 2011 WL 3911514, at *1.

⁷ *Id.*

prohibited Furman from serving as an officer or director of a public company for seven years and ordered him to pay a third-tier civil money penalty of \$75,000.⁸

In issuing the OIP, we found it "appropriate and in the public interest" that Furman be temporarily suspended from appearing or practicing before the Commission, based on the district court's final judgment. We stated that the temporary suspension would become permanent unless Furman filed a petition challenging it within thirty days of service of the order, pursuant to Rule of Practice 102(e)(3)(ii). We further advised that, pursuant to Rule of Practice 102(e)(3)(iii), upon receipt of such petition, we would either "lift the temporary suspension, or set the matter down for hearing . . . , or both."

In his petition, Furman states that he challenged the jury verdict and the district court's final judgment, "yet the court denied both motions by an order dated September 28, 2011." Furman also states that he "will appeal the verdict and the court's rulings imposing the injunction and other relief to the Ninth Circuit, and, if necessary, to the United States Supreme Court." Furman argues that the current suspension is not in the public interest because "(1) the restrictions already imposed on him provide substantial assurance that he will not violate the securities laws; (2) he has a strong reputation for honest and diligent performance of his professional duties as an accountant and executive; (3) he would be substantially prejudiced if he were suspended while the judgment could be (and very likely will be) overturned on appeal; and (4) numerous factors mitigate Furman's purported misconduct." The Division of Enforcement and the Office of the Chief Accountant (collectively, the "Division") oppose Furman's petition.

Rule 102(e)(3)(i) permits the Commission to suspend any accountant or other professional or expert who has been "permanently enjoined . . . from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder; or . . . found by any court of competent jurisdiction in an action brought by the Commission . . . to have violated . . . any provision of the Federal securities laws or rules and regulations thereunder."⁹ Although Furman is entitled to appeal the underlying case against him, the possibility of an appeal to the court of appeals "does not alter the effect" of the jury's finding of securities law violations or the court's imposition of an injunction here.¹⁰ Generally, a respondent in a "follow-on" proceeding is

⁸ *Id.* In the district court's June 23, 2011 orders in support of the final judgment and making findings of fact and conclusions of law concerning the relief sought by the Commission, the court found that the evidence presented at trial and on summary judgment demonstrated that "Furman played an essential and knowing role in the securities law violations at issue." *Id.*

⁹ 17 C.F.R. § 201.102(e)(3)(i).

¹⁰ *Daniel S. Lezak*, 57 S.E.C. 997, 1000 n.16 (2004); *see also Michael T. Studer*, 57 S.E.C. 890, 896 (2004) (noting that "the fact that Studer is still litigating that action [on appeal]

precluded from challenging the basis for, or findings in, the underlying injunctive action.¹¹ At this stage, it appears that the findings made in the injunctive proceeding and the injunction issued against Furman justify continuing his suspension "until it can be determined what, if any, action may be appropriate to protect the Commission's processes."¹²

Furman further asserts that he will suffer prejudice if the suspension remains in effect pending his appeal of the underlying action. Furman states that he currently is not employed by a public company or by an accounting firm, that he is not a CPA because he allowed his license to expire several years ago, and that he is not seeking to be an independent accountant. He states that any accounting-related work he might do for a public company as a consultant would be subject to review by the company executive(s) responsible for review and approval of his work, the company's audit committee, and such company's outside auditors. The Division counters that "Furman's ongoing consulting services, including the 'CFO-type' consulting services he provides to small companies that do not need a full time CFO, . . . support the need for a Rule 102(e) suspension to protect the Commission's processes"

Under the circumstances, we find it appropriate that the suspension remain in effect pending the holding of a public hearing and decision by an administrative law judge. As provided in Rule 102(e)(3)(iii), we will set the matter down for public hearing. We express no opinion as to the merits of Furman's claims.

Accordingly, IT IS ORDERED that this proceeding be set down for public hearing before an administrative law judge in accordance with Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

¹⁰ (...continued)

does not affect our statutory authority to conduct this proceeding"), *aff'd*, 148 F. App'x 58 (2d Cir. 2005).

¹¹ See, e.g., *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598, 2604-05 n.20 (noting the appropriate forum for respondent's challenges to underlying litigation is the appellate court).

¹² *Lezak*, 57 S.E.C. at 1001.

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this order; and it is further

ORDERED that the temporary suspension of Ran H. Furman, entered on September 6, 2011, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy
Secretary