

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61607A / March 1, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3116A / March 1, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13797

In the Matter of

GERARD A. M. OPRINS,
CPA,
and
WENDY McNEELEY, CPA,

Respondents.

CORRECTED ORDER INSTITUTING
PUBLIC ADMINISTRATIVE
PROCEEDINGS PURSUANT TO
SECTION 4C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE
102(e) OF THE COMMISSION'S RULES
OF PRACTICE

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Gerard A. M. Oprins, CPA (“Oprins”) and Wendy McNeeley, CPA (“McNeeley”) (collectively “Respondents”) pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice to determine whether Respondents engaged in improper professional conduct.²

¹ 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 . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.”

² 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 unethical or improper professional conduct.”

II.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

Summary

1. These proceedings arise out of the Respondents' improper professional conduct during Ernst & Young LLP's ("Ernst & Young") independent audits of the 2004 financial statements for AA Capital Partners, Inc. ("AA Capital"), an investment adviser registered with the Commission, and the AA Capital Equity Fund ("Equity Fund"), one of AA Capital's affiliated private equity funds. During the audits, Oprins, the engagement partner, and McNeeley, the manager, learned that AA Capital's president, director and co-owner, John Orecchio ("Orecchio"), purportedly had borrowed \$1.92 million in funds belonging to AA Capital's clients between May and December 2004 to pay a personal tax liability arising from his ownership interest in AA Capital's private equity funds. In fact, Orecchio had invented the story about the so-called "tax loan" to conceal his ongoing misappropriation of client assets for his personal use. Despite learning about the "tax loan" during the audits, Oprins and McNeeley failed to review the transaction in accordance with Generally Accepted Auditing Standards ("GAAS"). Instead of properly evaluating the "tax loan" as a related party transaction, Oprins and McNeeley relied solely upon dubious and unsubstantiated information obtained from AA Capital's chief financial officer, Mary Beth Stevens ("Stevens"). As a result, Oprins and McNeeley caused Ernst & Young to issue unqualified audit reports for AA Capital's and the Equity Fund's 2004 financial statements even though Orecchio's purported "tax loan" was not adequately disclosed in conformity with General Accepted Accounting Principles ("GAAP") and Ernst & Young's audits were not conducted in accordance with GAAS. Accordingly, Oprins' and McNeeley's conduct constituted improper professional conduct within the meaning of Rules 102(e)(1)(ii) and (iv).

Respondents

2. **Gerard A. M. Oprins**, CPA, age 50, is a resident of Glen Ellyn, Illinois. Oprins has been licensed as a CPA in Illinois since August 1995. Oprins was first employed in Ernst & Young's audit department in 1982 and became a partner in Ernst & Young's Financial Services practice group in 1995. Oprins' employment with Ernst & Young ended in April of 2009.

3. **Wendy McNeeley**, CPA, age 33, is a resident of Tinley Park, Illinois. McNeeley passed the CPA examination in Illinois in November 1998 and obtained her CPA license in March 2007. McNeeley was employed as an audit manager in the financial services group of Ernst & Young from September 2004 until July 2006. McNeeley currently works for another auditing firm with offices in Chicago, Illinois.

Other Relevant Parties

4. **AA Capital Partners, Inc.** is a Delaware corporation headquartered in Chicago, Illinois. Since 2002, AA Capital has been registered with the Commission as an investment

adviser. Between 2003 and 2005, AA Capital solicited and obtained investment management agreements with six union clients, five of which were union pension funds. By mid-2004, AA Capital managed approximately \$141 million on behalf of these clients and invested the clients' money in four affiliated private equity funds. Of these four private equity funds, the Equity Fund was by far the largest with over \$131 million in assets during 2004. On September 8, 2006, the Commission filed an emergency action against AA Capital and Orecchio, SEC v. AA Capital Partners, Inc. and John A. Orecchio, Case No. 06-C-4859 (N.D. Ill.), seeking temporary, preliminary and permanent injunctive relief against them based on AA Capital's violations and Orecchio's aiding and abetting of violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). On September 12, 2006, the U.S. District Court for the Northern District of Illinois appointed W. Scott Porterfield of the law firm Barack Ferrazzano Kirschbaum & Nagelberg LLP as the receiver over AA Capital.

5. **John Orecchio**, age 41, is a resident of Arlington Heights, Illinois. Orecchio co-founded AA Capital in February 2002 and acted as its president and managing director from at least April 2002 until August 30, 2006 when his employment was terminated. Orecchio is a defendant in SEC v. AA Capital Partners, Inc. and John A. Orecchio. Orecchio also has been charged with one count of wire fraud and one count of embezzling funds owned by an employee pension benefit plan in a criminal information filed in the U.S. District Court for the Northern District of Illinois captioned United States v. John A. Orecchio.

6. **Mary Beth Stevens**, age 39, is a resident of Lincoln, Illinois. Stevens joined AA Capital as an accountant after it began operating in 2002. Shortly thereafter, Stevens became AA Capital's chief financial officer. In 2004, Stevens also became AA Capital's chief compliance officer. She continued in these roles until her employment was terminated in September 2006. Stevens has been named as a respondent in the Matter of Mary Beth Stevens, (Admin. Proc. File No. 3-13553).

7. **Ernst & Young LLP** is the United States arm of a global network of professional services firms that provide assurance, tax, transaction and advisory services throughout the world. Auditors from Ernst & Young's office in Chicago, Illinois conducted audits of AA Capital's and its affiliated private equity funds' financial statements for AA Capital's fiscal years 2002, 2003, 2004 and 2005.³ Ernst & Young also provided tax services to AA Capital and its affiliated private equity funds during the same time period.

Orecchio's Misappropriation of Client Funds

8. Shortly after he co-founded AA Capital in 2002, Orecchio began spending lavishly on travel and entertainment to build up AA Capital's advisory business, regularly entertaining clients in Detroit, Michigan and Las Vegas, Nevada. In August 2003, Orecchio began a relationship with a woman who performed at a Detroit strip club. Between 2003 and 2006, Orecchio spent substantial amounts of money on his mistress and her family.

³ Ernst & Young did not complete its audits of AA Capital's or the affiliated private equity funds' 2005 financial statements.

9. Starting in 2004, Orecchio began siphoning money from AA Capital's client trust accounts to fund his lavish lifestyle. Between 2004 and September 2006, Orecchio misappropriated more than \$23 million in client funds, including at least \$5.7 million under the guise of a purported "tax loan."

10. In May 2004, Orecchio told Stevens that he owed a significant amount of money to the Internal Revenue Service based on his ownership interest in one of AA Capital's affiliated private equity funds and a failure by Ernst & Young to timely file certain tax returns. Orecchio told Stevens that he needed to borrow money to pay his taxes. At Orecchio's direction, Stevens withdrew \$602,150 from AA Capital's client trust accounts and then wired the money to Orecchio's personal bank account.

11. Between May and December 2004, Stevens made three additional disbursements to Orecchio to pay his purported tax liability. During 2004, Orecchio received a total of four separate disbursements under the guise of the "tax loan" totaling approximately \$1.92 million. All of the disbursements consisted of funds withdrawn from AA Capital's client trust accounts. On three of the four occasions, Stevens withdrew the requested funds from the client trust accounts, deposited them into AA Capital's main bank account and then wired them to Orecchio's personal bank account. On the fourth occasion, Stevens transferred the funds from the client trust accounts through the Equity Fund's bank account to Orecchio's personal bank account.

12. Orecchio's claims that he needed a "tax loan" for \$1.92 million and that he had made payments of \$1.92 million in estimated taxes to the Internal Revenue Service were false. In reality, Orecchio only owed approximately \$25,000 to the Internal Revenue Service based on his ownership interest in the private equity fund and the failure to timely file the tax returns. Instead of using the funds to make payments to the Internal Revenue Service, Orecchio used the money to maintain a lavish lifestyle for himself and his mistress.

13. Orecchio continued to request funds from Stevens from time to time to pay his purported tax liability until October 2005. Stevens ultimately made at least 20 separate disbursements to Orecchio or other payees designated by Orecchio for a total "tax loan" of over \$5.7 million.

14. Orecchio never signed any loan documentation for his purported "tax loan" and never agreed to repay the "tax loan" with interest.

Ernst & Young's Audits of the 2004 Financial Statements

15. In March 2005, AA Capital engaged Ernst & Young to conduct independent audits of AA Capital's and its affiliated private equity funds' 2003 and 2004 financial statements. As part of the engagement, AA Capital requested that Ernst & Young complete the audits and issue its audit reports on the financial statements by June 30, 2005, so that AA Capital could provide the

Equity Fund's financial statement reports to its clients in time for the clients to prepare their tax returns.⁴

16. Ernst & Young's audit team conducted their onsite work for the audits of the 2004 financial statements in May and June 2005. The seven-member audit team included McNeeley, as the audit manager, Oprins, as the engagement partner, an independent review partner, two senior auditors and two staff members. McNeeley, as the audit manager, was responsible for planning the audits, leading the onsite work and reviewing any work performed by the junior members of the audit team. Oprins, as the engagement partner, was responsible for the overall supervision of the audits.

17. While conducting the onsite work for the audits, the audit team reviewed an accounts receivable spreadsheet prepared by Stevens that included disbursements made by AA Capital and its private equity funds during 2004. During their review, the audit team noticed that the accounts receivable spreadsheet listed four sizeable disbursements to Orecchio described as "John – tax payment." McNeeley and an audit team member then discussed these disbursements with Stevens. The notes of this conversation in the audit workpapers state:

Per conversation with Mary Beth Stevens, CFO, all of the Funds held under AA Capital, Inc. had not finalized their audits, tax filings, and therefore John Orecchio (managing member) did not have a final tax return draft that included taxable income w/set figures. Therefore he had to estimate his tax liability & made a payment to the IRS for 1,921,050. . . . The 1,921,050 is essentially a loan to John Orecchio. Mary Beth Stevens expects to receive payment from either Mr. Orecchio or the IRS after taxes are finalized.

As noted in the audit workpapers, the audit team observed that the Equity Fund had established a receivable due from AA Capital for the amount of Orecchio's "tax loan" and that AA Capital had established both a reciprocal payable due to the Equity Fund and a receivable due from Orecchio for the \$1.92 million "tax loan."

18. Stevens further told McNeeley that she believed that Orecchio's "tax loan" would be repaid within calendar year 2005, but did not produce any documentation that supported her belief.

19. Oprins was made aware of the purported "tax loan" and the explanation provided to the audit team by Stevens during his review of the audit workpapers.

20. After learning about Orecchio's purported "tax loan," Oprins and McNeeley failed properly to evaluate the transaction or require other audit team members to do so. The audit team did not obtain any documentation reflecting Orecchio's tax liability or the terms of the "tax loan." They did not discuss the "tax loan" with Orecchio. They did not take steps to confirm Stevens' statements that Orecchio "made a payment to the IRS for \$1,921,050" or that the "tax loan" would

⁴ AA Capital's investment management agreements with its clients and the Equity Fund's limited partnership agreement required AA Capital to provide audited financial statements to its clients each year.

be repaid by Orecchio or the IRS during 2005. They did not take steps to assess the collectability of the “tax loan.” They also failed to discuss Orecchio’s tax liability with their colleagues in Ernst & Young’s tax department who prepared the tax filings for AA Capital and its affiliated private equity funds.

21. Oprins and McNeeley also failed to scrutinize Orecchio’s “tax loan,” or require other audit team members to do so, in light of several red flags that the audit team encountered related to Orecchio’s spending habits. Included among these red flags were other payments to Orecchio listed in the accounts receivable spreadsheet. At least 26 of these other payments, totaling over \$1.44 million, were allegedly made to reimburse Orecchio for fees and expenses. Many of these payments were in large, round dollar amounts and included notations such as “Amex-John” or “John” without any additional detail.

22. In June 2005, after the audit team finished its field work for the audits of AA Capital’s and the Equity Fund’s 2004 financial statements, Ernst & Young issued unqualified audit opinions on the financial statements. Oprins authorized the issuance of these reports, each of which falsely stated that the 2004 financial statements issued by AA Capital and the Equity Fund were presented in conformity with GAAP and that Ernst & Young had conducted its audits of those financial statements in accordance with GAAS.

23. Oprins and McNeeley allowed Ernst & Young to issue an unqualified audit opinion for the Equity Fund’s 2004 financial statements even though the financial statements did not properly identify Orecchio’s “tax loan” as a related party transaction with Orecchio, and did not disclose the parties to the transaction, the nature of the transaction or its terms as required by GAAP. Instead, the Equity Fund’s financial statements falsely presented the “tax loan” as a balance sheet asset described as “[a]ccounts receivable from AA Capital” in the amount of \$1,921,150 and did not make any reference to Orecchio. Although the “tax loan” constituted a related party transaction, the notes to the Equity Fund’s financial statements did not include a note describing any related party transactions and did not discuss the “tax loan.” The Equity Fund’s 2004 financial statements also did not disclose the possible risk that the “tax loan” would not be repaid in whole or in part.

24. Similarly, Oprins and McNeeley allowed Ernst & Young to issue an unqualified audit opinion for AA Capital’s 2004 financial statements even though the financial statements did not properly identify Orecchio’s “tax loan” as a related party transaction with Orecchio and did not disclose the parties to the transaction, the nature of the transaction or its terms as required by GAAP.⁵ Instead, AA Capital’s balance sheet combined the “tax loan” with several other assets described as “[a]ccounts receivable from affiliates” in the amount of \$2,251,107. Although AA Capital’s financial statements included a note concerning related party transactions, this note only further described \$264,176 in other expenses and did not include any information about Orecchio’s “tax loan.”

⁵ Although AA Capital’s 2004 financial statements were prepared on a tax basis rather than a GAAP basis, GAAS requires auditors to apply essentially the same auditing criteria to non-GAAP-based financial statements.

Oprins' and McNeeley's Improper Professional Conduct

25. The “applicable professional standards” for accountants practicing before the Commission include, but are not limited to, GAAP and GAAS.

26. As the engagement partner and engagement manager, Oprins and McNeeley were responsible for ensuring that Ernst & Young’s audits of AA Capital’s and the Equity Fund’s 2004 financial statements were conducted in accordance with GAAS. Oprins and McNeeley failed to conduct themselves in accordance with GAAS by failing to obtain sufficient competent evidential matter with respect to Orecchio’s purported “tax loan,” failing to exercise due professional care in connection with the audits and failing to render accurate audit reports. In addition, Oprins violated GAAS by failing properly to supervise the audits.

27. Oprins and McNeeley failed to obtain sufficient competent evidential matter about Orecchio’s purported “tax loan” during Ernst & Young’s audits of AA Capital’s and the Equity Fund’s 2004 financial statements. Although Oprins and McNeeley identified Orecchio’s “tax loan” as a related party transaction, they failed to apply heightened scrutiny or perform any additional audit steps to evaluate it. Instead, Oprins and McNeeley relied upon Stevens’ unsupported assertions and documentation about Orecchio’s purported “tax loan” as sufficient evidential matter.

28. Oprins and McNeeley also failed to exercise due professional care during the audits. As discussed above, Oprins and McNeeley failed to exercise professional skepticism in relying upon Stevens’ unsupported assertions and documentation about Orecchio’s “tax loan” despite several red flags that should have caused them to further scrutinize the “tax loan.”

29. Oprins and McNeeley also caused Ernst & Young to fail to render accurate audit reports. Ernst & Young’s audit reports inaccurately represented that AA Capital’s and the Equity Fund’s 2004 financial statements were free of material misstatements and that Ernst & Young’s audits were performed in accordance with GAAS. In fact, AA Capital’s and the Equity Fund’s financial statements were not free of material misstatements because they failed to provide any meaningful information about the nature of Orecchio’s “tax loan” or properly to present it as a related party transaction with Orecchio. Ernst & Young’s audits were not performed in accordance with GAAS because the audit team failed to take steps to assess the collectability of the “tax loan” and failed to obtain sufficient competent evidential matter about Orecchio’s “tax loan.”

30. Oprins further failed properly to supervise Ernst & Young’s audits of AA Capital’s and the Equity Fund’s 2004 financial statements. Even though Oprins was made aware of Orecchio’s “tax loan,” he never required the audit team to obtain the minimal information necessary to evaluate it as a related party transaction.

Violations

As a result of the conduct described above, Respondents Oprins and McNeeley engaged in improper professional conduct as defined in Section 4C of the Exchange Act and Rule 102(e)(1)(ii)

and (iv), in that their conduct constituted (A) intentional or knowing conduct, including reckless conduct, that resulted in a violation of applicable professional standards, or in the alternative, (B) negligent conduct, consisting of a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which Respondents knew, or should have known, that heightened scrutiny was warranted.

III.

In view of the allegations made by the Division of Enforcement and the Office of the Chief Accountant, the Commission deems it appropriate that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and to afford Respondents Oprins and McNeeley an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate against Respondents Oprins and McNeeley pursuant to Rule 102(e) of the Commission's Rules of Practice, including, but not limited to, censure and/or denying, temporarily or permanently, the privilege of appearing or practicing before the Commission.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents Oprins and McNeeley shall file their answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents Oprins and McNeeley fail to file the directed answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against the Respondents upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served upon the Respondents in accordance with the provisions of Rule 141 of the Commission's Rules of Practice, 17 C.F.R. § 201.141.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary