

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59803 / April 21, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2965 / April 21, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13453

In the Matter of

RANDY S. CASSTEVENS (CPA),

Respondent.

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**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION’S RULES OF
PRACTICE, MAKING FINDINGS, AND
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 Randy S. Casstevens (“Respondent” or “Casstevens”) 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. Casstevens, age 43, is a certified public accountant licensed to practice in the State of North Carolina, who is currently on inactive status. Casstevens was employed by Krispy Kreme Doughnuts, Inc. (“Krispy Kreme” or the “Company”) between May 1993 and January 31, 2004. During that time period, he held a variety of increasingly senior finance positions, including being made the Company’s Chief Financial Officer in January 2002, a position he held until December 23, 2003.

2. Krispy Kreme was, at all relevant times, a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina. Krispy Kreme was engaged in the business of making and selling doughnuts through stores owned either by Krispy Kreme or franchisees. At all relevant times, Krispy Kreme’s common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and listed on the New York Stock Exchange.

3. On March 4, 2009, the Commission filed a complaint against Casstevens in SEC v. Randy S. Casstevens, et al. (Civil Action No. 1:09cv159). On April 1, 2009, the court entered an order permanently enjoining Casstevens, by consent, from future violations of Section 17(a)(3) of the Securities Act of 1933 (“Securities Act”) and Section 13(b)(5) of the Exchange Act and Rules 13a-14 and 13b2-1 thereunder and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Casstevens was also ordered on consent to pay \$50,000 in disgorgement of ill-gotten gains plus \$18,964.05 in prejudgment interest and a \$25,000 civil monetary penalty.

4. The Commission’s complaint alleged, among other things, that between approximately February 2003 and December 2003, Casstevens, in a departure from Generally Accepted Accounting Principles, improperly accounted for Krispy Kreme’s Senior Executive Incentive Compensation Plan by improperly under-accruing or reversing amounts for the Company’s quarterly incentive compensation expense, thereby misrepresenting the Company’s earnings. In addition, the Complaint alleges that, in Company filings and analyst conference

calls, Casstevens misrepresented the Company's financial performance and failed to disclose that but for these under-accruals and reversals, the Company would have failed to exceed its previously announced quarterly earnings per share guidance by one penny in the affected quarters. As a result of his actions, Krispy Kreme filed materially false and misleading financial information for the fourth quarter of the Company's 2003 fiscal year in the Company's Form 10-K for the year ended February 2, 2003, in various current reports filed during the relevant periods, and in the Company's quarterly reports on Form 10-Q for the first three quarters of the Company's 2004 fiscal year.

IV.

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

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

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

B. After two 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