

**UNITED STATES OF AMERICA**  
**before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 57705 / April 23, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2812 / April 23, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13018**

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**In the Matter of**  
**Claude Fernandez (CPA),**  
**Respondent**

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**ORDER INSTITUTING PUBLIC**  
**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 Claude Fernandez (“Respondent” or “Fernandez”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.<sup>1</sup>

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<sup>1</sup> 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. Fernandez, age 55, is a certified public accountant (“CPA”) with a lapsed New York license. He has served as Managing Director of W.P. Carey & Co. LLC (“Carey”) from 1997 through the present. Fernandez also served as Chief Accounting Officer of Carey from 1997 until June 14, 2007.

2. Carey was, at all relevant times, a Delaware corporation with its principal place of business in New York, New York. Carey is a real estate investment and advisory company. At all relevant times, Carey’s common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and traded on the New York Stock Exchange. Carey is the creator, manager, and advisor to a series of non-traded real estate investment trusts (the “CPA REITs”).

3. On March 18, 2008, the Commission filed a complaint against Fernandez in Securities and Exchange Commission v. W.P. Carey & Co. LLC et al. (Civil Action No. 08 Civ. 2846 (JSR) (S.D.N.Y.)). On March 21, 2008, the court entered an order permanently enjoining Fernandez, by consent, (i) from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”), Section 13(b)(5) of the Exchange Act, and Exchange Act Rule 13b2-1, and (ii) from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. Fernandez was also ordered to pay a \$75,000 civil money penalty.

4. The Commission’s complaint alleged, among other things, that from approximately April 2000 until December 2003, Fernandez, as Carey’s Chief Accounting Officer, participated in having the CPA REITs make a series of undisclosed revenue sharing payments totaling approximately \$9.7 million to a broker-dealer. These payments were omitted from the offering documents of the CPA REITs and misrepresented in quarterly and annual reports filed with the Commission, including registration statements and periodic reports signed by Fernandez. Fernandez also participated in improperly labeling and misclassifying these payments, which allowed Carey to evade a National Association of Securities Dealers rule limiting broker-dealer compensation payments.

#### IV.

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

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

A. Fernandez 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.

Nancy M. Morris  
Secretary