UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53725 / April 26, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2421 / April 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12278

In the Matter of **CHAIM SCHWARTZBARD, CPA (Israel),** **Respondent.**	**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 that public administrative proceedings be, and hereby are, instituted against Chaim Schwartzbard, CPA ("Respondent" or "Schwartzbard") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1]

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, Respondent consents to the entry of this Order Instituting Public

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[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 unethical or improper professional conduct.

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[2] that:

A. SUMMARY

This matter concerns improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice by Schwartzbard in connection with two transactions between Lumenis Ltd. ("Lumenis"), an Israeli manufacturer, and its largest U.S. distributor ("the Distributor"). From 1999 to May 2004, Deloitte & Touche Brightman Almagor ("Brightman Almagor") served as Lumenis' outside auditor, and Schwartzbard was the audit engagement partner. In late 2001 and during 2002, Schwartzbard engaged in repeated instances of unreasonable conduct that resulted in violations of applicable professional standards. First, in connection with a transaction in which Lumenis improperly recognized a total of $1.1 million in revenue in the quarters ended December 31, 2001 and March 31, 2002, Schwartzbard, among other things, failed to make the inquiries or employ the necessary procedures to determine whether Lumenis' revenue recognition comported with generally accepted accounting principles ("GAAP"), and as such violated the applicable generally accepted auditing standards ("GAAS"). Second, in connection with a transaction in mid-2002 that resulted in Lumenis' improper recognition of $4 million in revenue, Schwartzbard, among other things, negligently failed to exercise due professional care and professional skepticism in reporting on Lumenis' financial statements for the quarter ended June 30, 2002. As a result of his improper professional conduct, the Commission is denying Schwartzbard the privilege of appearing or practicing before the Commission as an accountant, provided that he may apply for reinstatement after three years.

B. RESPONDENT

Chaim Schwartzbard, age 50, is an audit partner at Brightman Almagor, an Israeli member firm of Deloitte Touche Tohmatsu. Schwartzbard is a citizen of Israel and an Israeli certified public accountant ("CPA"). From 1999 to May 2004, Brightman Almagor was Lumenis' outside auditor, and Schwartzbard was the audit engagement partner. The services provided by Brightman Almagor included annual audits and quarterly reviews of the Lumenis financial statements to be conducted in accordance with GAAS.

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[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

C. FACTS

1. Background

a. Lumenis is an Israeli corporation with its headquarters in Yokneam, Israel that designs and manufactures laser and light based systems for aesthetic, surgical and other applications. Lumenis maintains manufacturing facilities and other operations in the United States. During the relevant period, Lumenis' stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934. Lumenis' fiscal year ends on December 31.

b. Brightman Almagor is the Israeli member firm of Deloitte Touche Tohmatsu. From 1999 to 2004, Brightman Almagor was engaged by Lumenis to audit Lumenis' operations. During the same time period, Brightman Almagor engaged Deloitte & Touche LLP ("Deloitte USA"), a subsidiary of Deloitte & Touche USA LLP, to audit Lumenis' U.S. operations. Deloitte & Touche USA LLP is the U.S. member firm of Deloitte Touche Tohmatsu.

c. During 1999 through May 2004, Brightman Almagor audited and reviewed financial statements that were included in filings made with the Commission on Forms 10-K and Forms 10-Q by Lumenis.

2. The $1 Million Transaction

a. Lumenis improperly recognized a total of $1.1 million in revenue in its Form 10-K for the year ended December 31, 2001 filed with the Commission on April 17, 2002 and its Form 10-Q for the quarter ended March 31, 2002 filed with the Commission on May 15, 2002, in connection with a transaction with the Distributor in late 2001.

b. Throughout 1998, 1999 and 2000, the Distributor amassed a large debt to Lumenis. By the beginning of 2001, the Distributor owed Lumenis over $3.5 million in overdue accounts payable. In February 2001, Lumenis began requiring the Distributor to pay for its orders via credit card. In connection with a new distribution agreement the parties entered "as of" December 31, 2001, Lumenis forgave the entire amount the Distributor owed it. As part of the agreement, Lumenis required the Distributor to place a $1 million order for Lumenis products. At the same time, Lumenis also agreed to "loan" the Distributor $1.25 million.

c. The $1.25 million loan primarily was intended to serve two purposes: $250,000 was to be used by the Distributor to pay for taxes resulting from the forgiveness of the payables, and the remaining $1 million permitted the Distributor to purchase $1 million of Lumenis products in what amounted to a transaction lacking economic substance.

d. Schwartzbard was aware that only $250,000 of the $1.25 million loan was to be used for taxes. A December 20, 2001 document sent to Schwartzbard described the deal as a $1 million loan to the Distributor with the Distributor required to purchase not less than $1 million in equipment at closing, and a $250,000 loan for taxes. In subsequent emails between Schwartzbard and Lumenis, Schwartzbard acknowledged that there was a connection between the loan and the expected $1 million purchase, and expressed concerns that this may cause a revenue recognition issue.

e. Lumenis took steps in late December 2001 to hide the fact that $1 million of the loan was provided in connection with the Distributor's purchase of an identical amount of Lumenis products. Lumenis deleted from the distribution agreement references to the requirement that the Distributor purchase $1 million in products, though the Distributor in fact placed such an order at the time that it entered the agreement. Lumenis also began to claim that the entire $1.25 million loan, and not just $250,000 of the loan, was for taxes the Distributor would incur as a result of the forgiveness of the payables. Schwartzbard accepted management's revised representation that the entire loan was to be used for taxes without further inquiry or testing. Notwithstanding the link between the loan and the Distributor order, Lumenis recognized a combined $1.1 million from this purchase as revenue in the fourth quarter of 2001 and the first quarter of 2002. Schwartzbard did not raise any objection to the revenue recognition.

f. Lumenis' recognition of $1.1 million in revenue in connection with this transaction was not in conformity with GAAP because, among other things, the transaction lacked economic substance. As a result, the Lumenis financial statements published in its Form 10-K for the year ended December 31, 2001 filed with the Commission on April 17, 2002 and its Form 10-Q for the quarter ended March 31, 2002 filed with the Commission on May 15, 2002 were materially misstated.

3. **<u>The $4 Million Transaction</u>**

a. A $4 million transaction at the close of the quarter ended June 30, 2002 resulted in revenue recognition in Lumenis' Form 10-Q filed with the Commission on August 15, 2002 that did not comport with GAAP.

b. As the second quarter of 2002 was coming to a close, Lumenis contacted the Distributor and requested that it place a $4 million order under a special arrangement. Instead of requiring the Distributor to pay for the products pursuant to the terms of the new distribution agreement, Lumenis offered the Distributor extended payment terms, including $2 million being due in 270 days, to facilitate the Distributor's ability to resell the products to pay for the goods. The Distributor agreed to the terms. It was the largest order the Distributor had ever placed with Lumenis.

c. On August 2, 2002, prior to the filing of Lumenis' second quarter 2002 financial statements, Deloitte USA notified Schwartzbard that it needed to consult with the

Deloitte USA national office to determine if a clause in the Distributor's distribution agreement constituted a revenue incentive that would require a reduction in the amount of reported Distributor revenue. On August 3, Schwartzbard, without waiting to learn the results of the consultation between Deloitte USA and its national office, approved the Lumenis' publication of a press release announcing the second quarter 2002 financial results. The release announced revenue of $92.2 million, including $4 million from the Distributor transaction, and stated that Lumenis' revenue was in line with previous revenue guidance of $90-95 million. Lumenis' stock price, which had been declining steadily, more than doubled in the days following the release, jumping from $3.19 per share on August 5 to $6.55 per share on August 26, 2002.

d. On August 12, 2002, Deloitte USA informed Schwartzbard of its conclusions that (1) Lumenis needed an independent third party valuation to determine if the clause in the Distributor's distribution agreement constituted a revenue incentive requiring a reduction in revenue and (2) recognition of revenue on sales to the Distributor should be deferred until the Distributor sold the products to end users. With respect to the latter point, Deloitte USA stated that revenue should not be recognized when products were sold to the Distributor because Lumenis had forgiven the Distributor's payables that had been earned in the normal course of business under the previous distribution agreement. Deloitte USA also stated its conclusion to defer sales revenue was based on the fact that the Distributor did not appear to be a viable entity without Lumenis' business.

e. On August 13, 2002, Schwartzbard emailed a senior Lumenis executive and informed him that after discussions with Deloitte USA, both he and Deloitte USA had concerns with respect to the revenue incentive issue, the waiver of debt issue and the viability of the Distributor without Lumenis business. Schwartzbard requested that Lumenis provide him with substantial information to resolve these outstanding issues, and also requested that the issues be discussed with the Lumenis audit committee. By August 15, Lumenis had not provided the requested information to Schwartzbard. Despite this, Schwartzbard authorized the release of a review report signed by him for use in the Form 10-Q Lumenis filed with the Commission that day. The financial statements included with the Form 10-Q improperly recognized the entire $4 million order as revenue in the second quarter of 2002.

f. Lumenis' recognition of $4 million in revenue in connection with this transaction violated GAAP because, among other things, collectability from the Distributor was not reasonably assured, and as such Lumenis materially misstated its financial statements published in its Form 10-Q filed with the Commission on August 15, 2002.

4. **Schwartzbard Engaged in Improper Professional** **<u>Conduct Within the Meaning of Rule 102(e)</u>**

a. Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in part, that the Commission may censure or deny, temporarily or permanently, 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) defines improper professional conduct with respect to persons licensed to practice as accountants. As applicable here, improper professional conduct means "[r]epeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." Rule 102(e)(1)(iv)(B)(2). As stated below, Schwartzbard acted unreasonably in failing to require Lumenis to comply with GAAP and in failing to comply with GAAS during Brightman Almagor's audit and reviews of Lumenis' 2001 and first and second quarter 2002 financial statements.

b. GAAS requires that auditors conducting an audit exercise due professional care and maintain a proper level of professional skepticism. Codification of Statements on Auditing Standards (2001) ("AU") AU § 230.01; AU § 230.07. Auditing standards also require auditors to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01; AU § 326.21; AU § 326.22. Under GAAS, representations from management are not a substitute for the application of auditing procedures necessary to afford a reasonable basis for the auditor's opinion. AU § 333.02. An auditor has a responsibility to perform an audit to obtain reasonable assurance that material misstatements in financial statements due to fraud are detected. AU § 316.01.

c. GAAS requires that auditors "state whether the financial statements are presented in accordance with generally accepted accounting principles." AU § 410.01. "Generally accepted accounting principles recognize the importance of reporting transactions and events in accordance with their substance. The auditor should consider whether the substance of transactions or events differs materially from their form." AU § 411.06. An auditor can issue an audit report with an unqualified opinion only if he has conducted the audit in accordance with GAAS. AU § 508.07.

d. GAAS also requires an independent accountant to both consider matters that have required adjustments in prior years and quarters and the consistency of management's responses relative to other inquiries and procedures performed. AU § 722.13.

e. In connection with interim reviews of financial statements, if "the accountant becomes aware of information that leads him or her to question whether the interim financial information to be reported conforms with generally accepted accounting principles, the accountant should make additional inquiries or employ other procedures he or she considers appropriate to provide the limited assurance for a review engagement." AU § 722.18.

f. By accepting management's representations regarding the purpose of the $1 million loan described above without further inquiry, despite knowledge of seemingly contradictory information, Schwartzbard failed to exercise due professional care and maintain a proper level of professional skepticism. Schwartzbard further violated GAAS by failing to make the inquiries or employ the necessary procedures to determine whether Lumenis' $1.1 million in revenue recognition in connection with this late 2001 transaction comported with GAAP. Schwartzbard failed to obtain sufficient competent evidential matter to afford a reasonable basis for his opinion regarding the financial statements at issue.

g. Schwartzbard's failure to obtain a complete understanding of the $4 million, end of second quarter of 2002 Distributor sales transaction and failure to properly assess the Distributor revenue incentive, viability and past debt forgiveness issues constituted a failure to exercise due professional care and maintain a proper level of professional skepticism. Schwartzbard violated GAAS when he signed the Brightman Almagor review report and allowed the use of the firm's name to be associated with Lumenis' financial statements for the quarter ended June 30, 2002. Schwartzbard violated GAAS by not exercising due professional care and professional skepticism in reporting on Lumenis' June 30, 2002 financial statements. Finally, Schwartzbard was negligent in not knowing that recognition of the $4 million did not comport with GAAP and in not knowing that additional procedures were needed to determine whether Lumenis' quarterly financial statements were materially misstated.

5. **Findings**

Based on the foregoing, the Commission finds that Schwartzbard engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice by engaging in repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

IV.

A. **Ongoing Cooperation Undertakings**

In determining to accept the Offer, the Commission further considered the following efforts voluntarily undertaken by Respondent:

Respondent shall cooperate fully with the Commission in any and all investigation, litigation or other proceeding relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent has undertaken:

1. To appear and be interviewed by Commission staff, subject to the privileges and protections available under the attorney-client privilege and attorney work-product

protections, at such reasonable times and places as the staff requests upon reasonable notice;

2. To accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff;

3. To appoint Stephen M. Sacks, Esq. as agent to receive service of such notices and subpoenas;

4. With respect to such notices and subpoenas, to waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and

5. To consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

V.

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

B. After three years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application 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 or an equivalent Israeli organization acceptable to the Chief Accountant of the Commission 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 or equivalent Israeli organization, and has complied with all terms and conditions of any sanctions imposed (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 CPA license is current and he has resolved all other disciplinary issues with the applicable boards of accountancy. However, if CPA 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary