

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-6253

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of :

GARY L. JACKSON :

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INITIAL DECISION

Washington, D.C.  
July 23, 1984

Jerome K. Soffer  
Administrative Law Judge

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APPEARANCES: Thomas O. Gorman, Esq. and Ruth E. Eisenberg, Esq.  
of the Office of General Counsel, for the Office  
of the Chief Accountant.

Gary L. Jackson, pro se.

BEFORE: Jerome K. Soffer  
Administrative Law Judge

Gary L. Jackson

This proceeding was instituted by an Order of the Commission dated June 10, 1983 issued pursuant to Rule 2(e) of its Rules of Practice, 17 CFR 201.2(e), which temporarily suspended Gary L. Jackson (petitioner) from appearing or practicing before the Commission. Following the receipt by the Commission of a petition by Jackson to lift the temporary suspension, the Commission in an Order dated December 8, 1983 denied the petition and set the matter down for a public hearing.

The basis for the order of suspension is the allegation that petitioner was permanently enjoined by a consent judgment in an action brought by the Commission from aiding and abetting violations of Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 12b-20 thereunder.

A hearing was held and closed on March 1, 1984 in the city of San Francisco, California at which respondent appeared pro se. After the hearing successive proposed findings of fact and conclusions of law, and supporting brief, were filed by the Office of the Chief Accountant (OCA) and by petitioner, respectively. No reply brief was served by the OCA.

The findings and conclusions herein are based upon the record in this proceeding. The preponderance of evidence standard of proof has been applied. See Steadman v. SEC 405 U.S. 91 (1981).

Petitioner

Petitioner has been a certified public accountant since September 1977. His education includes the award of A.A. degree in 1965 from the City College of San Francisco, a bachelor of science degree in accounting from the University of California in 1967, a masters of business administration in accounting from the San Francisco State University in 1972, a masters of business administration in taxation from the Golden Gate University in 1975 and a juris doctor degree from the Lincoln University School of Law in 1981.

He has held various positions in the accounting field between June 1967 and October 1974. Thereafter, and until the present time he remains a self-employed certified public accountant except for a one-year period between September 1982 and September 1983 when he was employed as a tax manager by Wain, Samuel and Company (Wain).

Commission's Rule 2(e)

The pertinent portions of Rule 2(e) as applicable to petitioner herein, are as follows:

(3)(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 attorney, accountant, engineer or other professional or expert who, on or after July 1, 1971, has been by name

(A) permanently enjoined by any court of competent jurisdiction by reason of his misconduct in an action brought by the Commission from violation or aiding and abetting the violation of any provision of the federal securities laws 15 (U.S.C) §§77a- 80b-20) or of the rules and regulations thereunder;

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(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (i) may, within thirty days after service upon him of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within thirty days after service of the order by mail the suspension shall become permanent.

(iii) Within thirty days after the filing of a petition in accordance with paragraph (ii), the Commission shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Commission or both, and after opportunity for hearing, may censure the petitioner or may disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently.

\* \* \*

(iv) In any hearing held on a petition filed in accordance with paragraph (ii), the staff of the Commission shall show . . . that the petitioner has been enjoined as described in paragraph (i) (A) and that showing, without more, may be the basis for censure or disqualification; that showing having been made, the burden shall be upon the petitioner to show cause why he should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing the petitioner shall not be heard to contest any findings made against him or facts admitted by him in the judicial or administrative proceeding upon which the proceeding under this paragraph (3) is predicated, as provided in subparagraph (i) hereof. A person who has consented to the entry of a permanent injunction as described in subparagraph (i)(A) of this paragraph (3) without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (3) to have been enjoined by reason of the misconduct alleged in the complaint.

Procedural Matters

At the outset of the hearing, petitioner moved (among other motions) for a dismissal of the proceedings against him on the ground that the Commission staff failed to follow the procedural requirements of Rule 2(e). This motion was dismissed at the hearing. <sup>1/</sup> However, he has renewed this motion in his post-hearing brief and it is being reconsidered herein.

The Commission's Order of June 10, 1983, suspending Jackson temporarily from practice provided, in accordance with the provisions of Rule 2(e)(3)(ii), that unless he petitioned the Commission within 30 days after service of the Order upon him to lift the temporary suspension, it shall become permanent. The order further provided that if such a petition is timely received, the Commission shall within 30 days either lift the temporary suspension or set the matter down for hearing, or both.

Jackson, in a letter dated July 7, 1983 addressed to an attorney in the Commission's Los Angeles Regional Office, (LARO) captioned "Petition to Life Suspension - Gary L. Jackson, CPA" wrote as follows:

I hereby petition the Securities and Exchange Commission to suspend the petition

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<sup>1/</sup> Although this motion was premature, since it was made prior to the presentation of the OCA's case [See Rule 11(e)], it was considered nevertheless in view of the fact that no objection was made and in the expectation that the OCA's case in chief was to be presented solely through documentary proof.

to practice before the Commission. As I am not represented by legal counsel, I am informally petitioning the Commission in order to protect my legal rights.

This letter was written on the letterhead of Wain, Jackson's then employer.

Not being sure of the meaning of this letter, the staff in LARO contacted Brian Stern, Esq., who had been Jackson's attorney in the Commission's injunction action, in order to obtain clarification from Jackson as to his intent. This was followed by a staff letter to Stern dated July 28, 1983, asserting that it was unclear from Jackson's July 7 letter whether he was petitioning for a hearing, applying for reinstatement pursuant to Rule 2(e)(4), or attempting to assure the preservation of his right to seek reinstatement at some future time. <sup>2/</sup>

The LARO staff followed this letter by one dated August 19, 1983 addressed to Jackson at the office of Wain, in which the LARO staff pointed to the lack of a reply to its letter to Mr. Stern and stating that the staff was

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2/ This part of Rule 2(e) provides:

(4)(i) An application for reinstatement of a person permanently suspended or disqualified under paragraphs (1) or (3) of this Rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

interpreting the July 7 letter from Jackson as one seeking reinstatement at some future time rather than seeking a hearing. This letter was unclaimed by Jackson and returned to LARO.

Again, on October 13, 1983, LARO staff wrote Jackson at his home in which it reviewed the provisions of Rule 2(e)(3)(ii), recited the sending of the prior letters to Stern and Jackson, at Wain, and requested that he clarify his original July 7 letter as to the relief he was seeking therein. This resulted in a letter from Jackson dated November 1, 1983 but postmarked November 15, 1983 addressed to the staff with the caption "Petition to Life Suspension - Gary L. Jackson, CPA" and in which he stated:

I previously protected my rights by petitioning the temporary suspension against me in my first communication on July 7, 1983; therefore, answering the second communication does not address itself to the issue.

Thereafter, as a result of the last letter from Jackson and within 30 days of the receipt thereof, the Commission issued its order of December 8, 1984 reciting the receipt of a petition by Jackson to lift the suspension, and, based upon his failure to submit a brief or to state any reason why the suspension should be lifted, continued the temporary suspension and set the matter down for public hearing.

The basis for petitioner's motion to dismiss the proceeding is his contention that his first letter dated



July 7, 1983 was a petition to lift the suspension; that under the provisions of Rule 2(e)(3)(iii) the Commission was required to take action including the ordering of a hearing within 30 days after receipt of his letter; and having failed to do so, the case must be dismissed.

Although the Commission does not insist upon strict compliance with the form that a petition to lift a suspension under Rule 2(e) must take, (See Matter of Bernard Jay Coven, SEA Rel. No. 16229, September 26, 1979, 18 SEC Docket 557, fn. 1), Jackson's July 7 letter does not in any way constitute a petition to lift the temporary suspension. It is not addressed nor was it sent to the Commission's Secretary as required for a petition (Rule 22(a), Commission's Rules of Practice). But more importantly, the language utilized in the letter is ambiguous and, considering that it is coming from a Certified Public Accountant who also holds a law degree, it does not express even the substance of the petition contemplated by Rule 2(e). The staff decision that at least it required further clarification was well founded and done for petitioner's benefit. <sup>3/</sup>

At that point, Jackson having failed to file the petition called for in the Rule, the Commission could have,

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<sup>3/</sup> In any event, there is nothing in the Rule that calls for a dismissal of the proceedings or for the lifting of the suspension should the Commission fail to order a hearing within 30 days.

after 30 days, made the suspension permanent without affording Jackson a hearing. Instead, the staff at LARO took steps intended to protect his right to a hearing by attempts to contact his former attorney and to write Jackson at his last employment address in order to obtain clarification of his position. Eventually these efforts resulted in a hearing being granted him and the avoidance of a permanent suspension of his rights to practice before the Commission.<sup>4/</sup> Thus, not only was Jackson not prejudiced by the action of LARO staff, but his rights were enhanced thereby. Under such circumstances, his motion to dismiss for the reasons stated was denied at the hearing and such denial is herewith affirmed.

#### The Hearing

As stated, the hearing was held herein on March 1, 1984. It had been postponed twice previously at the request of petitioner. Although scheduled to begin at 10:00 A.M., the hearing was held up for his arrival, which did not occur

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<sup>4/</sup> Jackson complains that the staff should not have contacted Brian Stern since he no longer represented petitioner at the time of the letter to him. In fact, Stern has not represented petitioner in this administrative proceeding. However, this is not relevant to the issues raised by the motion to dismiss. Contacting Stern, petitioner's counsel in the civil injunction suit, merely represents one effort by staff to communicate with Jackson, as was the letter sent to him at his last known employment address even though, as it turned out, he was no longer employed there. The advantages accruing to petitioner by these staff efforts have been stated above.

until 11:10 A.M., at which time he stated he was prepared to go ahead. At his request, a pre-hearing conference was held (Transcript, p. 4), during which he made several motions including one for a further postponement of the hearing, all of which were denied. There followed a discussion about the length of the luncheon recess, Jackson wanting a longer one than the administrative law judge allowed (40 minutes). The evidentiary hearing proper was to begin after lunch.

Petitioner did not return after the luncheon recess, (although an additional 20 minutes was waited for his return) at which time counsel for the OCA presented his case, consisting of an opening statement and the introduction of a series of exhibits. No witnesses were called. After the OCA rested the judge undertook to wait an additional period of 15 minutes for Jackson's return. During that interval, a telephone message was delivered from him to the effect that he was home sick and would not be coming back that day. The judge noted that at no time during the morning session did he appear to be ill in any way, and that his failure to return did not appear to be justified. <sup>5/</sup> Whereupon, the record was closed with an indication that no proof had been offered or received from petitioner (although he had offered two exhibits during the morning session, one of which was received in evidence).

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5/ At no time has petitioner ever offered proof of the nature of his illness or that he was, in fact ill the afternoon of the hearing.

It is clear from the foregoing that every effort was made to allow petitioner to present proof on his part, and that any failure to do so was wilful.

The Proof

On January 8, 1982 the Commission filed suit seeking a civil injunction against American Real Estate Investment Trust (AREIT) and petitioner. (SEC v. AREIT, and Jackson, Civil Action No. 81-61980 AAH (C.D. Calif.).

The complaint alleged, among other things, that AREIT had violated and that Jackson had aided and abetted AREIT in violating, Section 12(g) of the Exchange Act [15 USC Section 781(g)] and Rule 12b-20 [17 C.F.R. 240.12b-20] promulgated thereunder.

Based upon the consent executed by Jackson, the District Court on March 10, 1983 entered a final judgment of permanent injunction against petitioner in the said action which in part prohibits future violations of Section 12(g) and Rule 12b-20. In a filing on May 6, 1983 petitioner acknowledged the receipt of a certified copy of the final judgement of permanent injunction. <sup>6/</sup>

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6/ During the course of the pre-hearing conference held on January 10, 1984, Jackson asserted that the injunction should be canceled because the attorney who represented him in the injunction proceeding was in a "conflict of interest" situation. As I pointed out to him then any attack upon the validity of the injunction would have to be made in the District Court which issued it. He apparently has taken no action to set aside the injunction.

The complaint in the injunction action alleges all of the following:

On or about October 1, 1981 AREIT filed with the Commission a registration statement on Form 10 seeking to register 4,732,747 shares of beneficial interest pursuant to Section 12(g) of the Exchange Act. The registration statement became effective on November 30, 1981. The complaint charges that the registration statement failed to comply with Section 12(g) in that it contains materially false statements, omits information required to be stated therein and fails to contain such further information as is necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

The Form 10 registration statement contains financial statements for the two-month period ended June 30, 1981 which were not prepared in accordance with generally accepted accounting principals (GAAP) and do not fairly present AREIT's financial condition. Included in the financial statements are reported assets of \$73,326,659 of which \$59,411,784 is attributed to certain gold and other mining claims. Between May 1 and June 1, 1981, AREIT purportedly acquired certain unpatented gold and other mining claims from Gold Depository and Loan Company, Inc. (GD&L), a company controlled by AREIT's president, vice-president and secretary. GD&L at a negligible cost had previously acquired these rights to unpatented mining

claims by making certain filings on abandoned claims pursuant to federal law. AREIT thereafter acquired the claims from GD&L in exchange for promisory notes with a face value of \$59,411,670 which were convertible into AREIT shares at \$15 per share. There has never been a trading market for these shares and at the same time they were being issued to GD&L for \$15, AREIT was issuing shares to other insiders at \$3.81 per share. Thus, AREIT acquired the unpatented claims from an affiliate in a non-arm's length transaction. There was no other data or information to support the valuation of properties.

Pursuant to GAAP, under the circumstances described in the acquisition of the mining claims, AREIT should have valued these claims at GD&L's cost which was negligible. Instead, AREIT valued the assets on its balance sheet at \$59,411,670 thereby overstating the company's total assets by this amount and did not fairly present AREIT's financial position.

A significant number of the unpatented mining claims were once held by Phelps Dodge Corporation which has disputed the claim of GD&L thereto. AREIT did not disclose in its Form 10, as it was required to do, the controversy between it and Phelps Dodge regarding a material portion of AREIT's assets. Further, its financial statements included in the Form 10 should have disclosed the controversy.

AREIT's financial statements included in its Form 10 were further false and misleading and failed to meet the

requirements of GAAP as well as Section 12 of the Exchange Act in that, among other things, it included as assets \$9,533,112 of loan receivables from what AREIT calls a "relending operation".

AREIT states in its Form 10 that it has obtained from CO-OP Investment Bank Limited (CO-OP) an entity controlled by Mr. A.V. Laurins (who also controls AREIT) and located in St. Vincent, West Indies, a \$100,000,000 line of credit which AREIT could use to lend to others. As of June 30, 1981, AREIT reports that it has many loans from the line of credit to third parties in amounts from \$25,000 to \$7,000,000 giving rise to the claim of \$9,533,112 loan receivables as an asset, as stated above. However, the agreement establishing the line of credit states that AREIT may use the funds "only for the making of loans to third parties where the proceeds of such loans are paid into a savings account at CO-OP on terms specified by CO-OP." The agreement further provides that the third party borrower can have access to the funds only with the express consent of CO-OP. Thus, the third party "borrower" and AREIT have no control over the "borrowed" funds. Hence, AREIT could not obtain the funds for its own use and the purported third party borrower had no access to or control of the funds. In such circumstances, GAAP do not permit AREIT to claim the loan receivables as an asset.

The financial statements of AREIT included in the Form 10 filed with the Commission were certified by petitioner Jackson. At the time defendant Jackson certified the financial statements he knew or was reckless in not knowing that the financial statements would be included in defendant AREIT's Form 10 for filing with the Commission. Also included in the Form 10 was an August 26, 1981 accountant's opinion letter signed by defendant Jackson which falsely states that Jackson's audit was made in accordance with generally accepted auditing standards (GAAS) and that the financial statements present fairly the financial position of AREIT and are in conformity with GAAP.

When petitioner certified AREIT's financial statements included in the Form 10 he knew or was reckless in not knowing that AREIT did not have sufficient basis to support the valuation of its mining claims. A geologist employed by GD&L wrote Jackson a letter dated July 27, 1981 stating, among other things, that "we have yet to find the time to do a detailed evaluation of each mine now being held". Another geologist stated in another letter dated July 27, 1981 that AREIT's claim "could possibly" be worth as much as \$59,000,000 but that the geologist so opined "without any knowledge or review of any information concerning the value of these claims" and "that no actual worth of any property can be assessed without adequate and proper examination or investigation".



Further, AREIT's management stated to petitioner in a letter dated August 5, 1981 that the values of mining claims currently held are extremely difficult to ascertain.

Further, petitioner knew, or was reckless in not knowing, that GAAP do not permit AREIT to record as assets the loan receivables involved in the relending operation. Nevertheless, he issued an unqualified opinion on the financial statement including such receivables as assets.

As a result of the foregoing, Jackson aided and abetted AREIT in violating Section 12(g) of the Exchange Act and Rule 12b-20 thereunder.

Based upon the foregoing allegations in the complaint in the civil injunction action, it is concluded that petitioner has been enjoined by a court of competent jurisdiction by reason of his misconduct in aiding and abetting the violation of the stated provisions of the federal securities laws and the rules and regulations thereunder. As provided in Rule 2(e) paragraph (iv), that showing, without more, may be the basis for censure or disqualification. Further, as provided in subparagraph (A) thereof, Jackson, having consented to the entry of the permanent injunction, is presumed for all purposes to have been enjoined by reason of the misconduct alleged in the complaint. The foregoing showing having been made, the burden fell upon petitioner "to show cause why he should not be censured or temporarily

or permanently disqualified from appearing and practicing before the Commission". As stated, Jackson walked out of the hearing without presenting any evidence either in avoidance or mitigation concerning the permanent injunction issued against him. <sup>7/</sup>

Post-Hearing Activities by Respondent

Immediately following the close of the hearing and continuing up to the writing of this initial decision, petitioner has pursued a course of conduct designed to call attention to events and situations not in the formal record which he believes serve to exculpate or mitigate the findings against him resulting from the injunction action.

Thus, petitioner has been directing numerous communications by way of telephone calls, mailgrams, letters, motions, etc., accompanied with literally hundreds of papers and documents, to me, counsel for the OCA, the Chairman and other Commission members, and members of Congress both in the Senate and House, among others.

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<sup>7/</sup> The fact that the burden of proof would be shifted to petitioner was made clear to him as early as the pre-hearing conference on January 10, 1984, not once but twice. (See Transcript of that Conference on pages 8 and 9). Although this was well in advance of the March 1 hearing, petitioner has implied in his proposed findings of fact and conclusions of law as well as in subsequent correspondence that he was unaware until recently of his burden of proof.

As a result of the first such post-hearing communication, two documents out of 37 were allowed to be received in evidence as late-filed exhibits on behalf of the petitioner in my Order dated March 26, 1984, which contained the advisory that no further late-filed exhibits would be received "absent the showing of most exigent circumstances, detailed in a proper motion". Nevertheless, the flow of such papers and documents continued, generally by furnishing for my "information" copies of documents sent to others.<sup>8/</sup>

On March 23, 1984, petitioner had made a series of post-hearing motions including one that I disqualify myself on the ground of "prejudice", that the proceeding be dismissed because of the Commission's alleged failure to schedule a hearing within 30 days of his letter of July 7, 1983, that I personally audit the books and records of the Commission to determine the expenditures made in the investigation herein,

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8/ A perusal of these documents discloses that they relate to many things and events in the life of respondent, including, for example, notices from credit-card companies and other creditors, papers relating to his divorce, correspondence with his clients, attorneys, mortgage trustees, government agencies, and numerous others related neither by time nor circumstance with the issues in this proceeding. These papers also included copies of orders and memoranda in this very case and already part of the record. There is even enclosed a General Accounting Office Report of an investigation in December 1954, into allegations of waste at the Department of the Army's facility at Tooele, Utah.

and that his temporary suspension from practice be lifted because of his past cooperation with the Commission staff. These motions were denied in my Order of March 30, 1984.

In a letter dated May 30, 1984, Jackson raised a series of "objections" to alleged obstruction of justice by counsel for OCA, and to the provisions of my order of March 26, 1984 concerning the admission of current and future filings of late exhibits. It contained several other "objections" the nature of which is not clear.

The May 30 letter also contained several motions by petitioner (1) that the proceeding be dismissed on the ground that he did not receive a fair hearing; (2) that, in the alternative, the issuance of an initial decision be postponed pending the result of the investigation of his charges against counsel for the OCA made to the District of Columbia and California Bar Associations; (3) that I examine all of the documents sent in all of the correspondence heretofore referred to, including a letter by Jackson to AREIT dated January 4, 1982 attempting to withdraw his certification of his audit and of the financial documents; and (4) that I require the OCA to reimburse him for all his expenses in this case and for his time expended.

In my order of June 29, 1984, the aforesaid objections were overruled and the motions were denied. No reason is seen for changing these rulings. As will be seen, petitioner

has received an eminently fair hearing; the question of the hundreds of post-hearing documents has been discussed hereinabove; there is no reason to await the outcome of misconduct charges to various Bar Associations; and I have neither the authority nor jurisdiction to direct the OCA to reimburse petitioner for expenses and time expended, assuming he is entitled to seek reimbursement in the first place.

#### Petitioner's Post-Hearing Pleadings

The proposed findings of fact and conclusions of law and supporting brief filed by petitioner contained numerous statements, allegations and references outside of the record as made, and not related to the issues. However, some general outlines of his position would indicate claims that:

1. He has not received a fair hearing, in that he has been denied the opportunity to introduce exhibits and witnesses concerning a number of matters, he was unrepresented by counsel, and he was not granted a one-year postponement.

2. Since the Commission waited more than 30 days after his letter of July 7, 1983 in ordering a hearing, it had violated its own rules and the proceeding should be dismissed.

3. The District Court injunction which underlies the case against him should be disregarded because he allegedly never read it, his lawyer was in a "conflict of interest" situation, and besides, he understood by consenting to it, he

would no longer be involved with additional proceedings such as this one. He also disputes the allegations concerning his audit report in the complaint filed in the civil injunction suit.

4. He had been prevented from sustaining his burden of proof because of alleged obstruction of justice tactics by counsel for the OCA.

Petitioner's claim of lack of a fair hearing is totally unsupported by the record. In fact, there has been a tendency to lean over backwards to be sure his rights were being protected. Thus, on December 21, 1983, prior to the hearing scheduled for January 10, 1984, I caused to be sent to him a letter outlining all of his rights, including the right to counsel of his choice, to subpoena witnesses, to cross-examine witnesses, and to plead his Fifth Amendment rights where appropriate. Immediately prior to the hearing on January 10, a pre-hearing conference was held as a result of which the hearing was postponed for one month at his request to permit him to obtain counsel. At that time, he was again advised of his rights, he was given a copy of all the exhibits to be introduced against him and was informed that these exhibits would constitute the entire case against him. Thereafter, the hearing was again postponed at his request for 3 more weeks to allow him to obtain counsel.

In addition, because of difficulty in reaching him by phone and by mail, Commission staff undertook to send notices concerning the hearing and other matters by using various forms of expedited costly procedures, such as Express Mail and telegram.

When the hearing was called on March 1, 1984, he was extended all of the considerations outlined heretofore in order to assure the opportunity to present his case, including whatever exhibits and witnesses he might wish to introduce. As seen, he walked out and never returned. Thereafter, at my direction, counsel for the OCA sent him additional copies of the exhibits along with the briefing schedule. Nevertheless, he persists in charging the lack of a "fair hearing", an allegation totally without support in the record.

The claim by petitioner concerning the "30-day" period in Rule 2(e) has been discussed under "Procedural Matters" above. Suffice it to say that similar motions had been denied twice before, first at the March 1 hearing, thence post-hearing in my order of March 23, 1984.

As shown, petitioner was previously informed that his allegations concerning defects in the civil injunction proceeding are matters that should be addressed to the Court that issued the injunction (see footnote 6 above).

The allegations of misconduct on the part of counsel for the OCA are completely unfounded. Counsel's acts complained

of were properly those of an attorney representing the interests of his client.

As to petitioner's complaint that he was unrepresented by counsel, it is observed, as seen above, that he was given ample opportunity to obtain a lawyer. Moreover, he indicated at the March 1 hearing that he was prepared to go ahead. And it must be borne in mind that he is a certified public accountant and a law school graduate.

Finally there is a recurring statement by petitioner in his proposed findings and conclusions that he has been denied the right to introduce relevant exhibits and testimony. He refers, of course, to the multitudinous papers and documents mentioned heretofore under the heading of "Post-Hearing Activities". Attempts to offer these into evidence should have been made at the hearing, but petitioner walked out without good cause. Their effect has heretofore been discussed. A perusal of them would indicate that few, if any, would have been admitted.

#### Public Interest

The record having shown that petitioner was permanently enjoined by reason of his misconduct in an action brought by the Commission for aiding and abetting violations of the provisions of the Federal Securities Laws, and an opportunity for hearing having been afforded petitioner and he having failed to sustain his burden to show cause why he should not



be sanctioned in accordance with the provisions of Rule 2(e), it becomes necessary to determine which, if any, of the stated sanctions should be invoked herein.

Petitioner's misconduct involves the submission of financial statements by AREIT in connection with the filing of a Form 10 registration statement, which thereafter became effective, containing untrue information, or omitted to state necessary information and which petitioner certified as having been based upon GAAP and GAAS. It has further been established that he knew or was reckless in not knowing the falsity of the information which he certified. Specifically, he overstated AREIT's assets by over 90 percent as a result of two related-party transactions having no economic substance and ignoring evidence in his files and letters from geologists and management stating that the value of mining claims had not been ascertained. Further, he ignored the fact that stated "relending" operations were paper transactions with no economic substance. Moreover, the financial statements should have disclosed the controversy between AREIT and Phelps Dodge over the ownership of mining claims.

Form 10 to which were attached the financial statements so certified by petitioner is required to be filed to register a new issue of securities. Those members of the public to whom the securities are to be sold must rely on the integrity of the financial statements, part of the registration, in

order to make their investment decisions. Thus, the seriousness of the conduct by petitioner, who knew or was reckless in not knowing the use to which the financial statements would be made, becomes quite apparent.

As the Court of Appeals stated in Touche Ross and Company v. S.E.C., (2d Cir., 1979) 609 F.2d 570, 581, Rule 2(e) represents an attempt by this Commission to protect the integrity of its own processes. The court stated:

\* \* \* the Commission necessarily must rely heavily on both the accounting and legal professions to perform their tasks diligently and responsibly. Breaches of professional responsibility jeopardize the achievement of the objectives of the securities laws and can inflict great damage on public investors. As our Court observed in U.S. v. Benjamin, 328 F.2d 854 (2d Cir.), cert. denied, 377 U.S. 953 (1964) 'In our complex society the accountant's certificate and the lawyer's opinion can be instruments for inflicting pecuniary loss more potent than the chisel or the crow bar'. (Underscoring added)

The Court of Appeals concluded that Rule 2(e) provides the Commission:

with the means to insure that those professionals on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence.

Petitioner asserts that at the time he was preparing the AREIT audit and certification of financial reports, he was experiencing financial, personal and domestic problems of considerable magnitude, which seem to continue to the present. However, this does not account for the preparation and certification of the false and deceptive financial statements.

The pressures of private problems offer no justification for petitioner's failure to conform to GAAP and GAAS. His acts were not emotional or casual. They had to be deliberate and conscious. That is the way an audit is done and certification made.

Jackson further asserts that he ultimately attempted to withdraw the audit and his certification thereof in his letter of January 4, 1982 to the AREIT officials, in which he advised them that the involved reports and financial statements could not be relied upon, and that they should so notify those to whom the reports might have been given. Considering the fact that this "withdrawal" was made after the Commission's investigation had begun, and but a few days prior to the institution by the Commission of the civil injunction action, the withdrawal was rather late. Hence, no great weight can be given petitioner's action in mitigation of the sanction to be imposed herein.

Finally, petitioner offers that the AREIT audit was the first he has ever conducted, that he has not done any since then, and that he has no intention of ever doing one again. Rather, he intends to limit his practice to preparing tax returns only. He also asserts that he has no intention of ever practicing before this Commission in the future. Hence, he contends that there would be no purpose served in imposing a sanction against him. However, such a promise is unenforceable.

Petitioner may very well change his mind, particularly if he should ever become a member of the bar. His past conduct indicates that he might in the future engage in the same conduct found to have been committed herein.

In the landmark decision Matter of Carter and Johnson, (SEA Rel. No. 17597, February 28, 1981), 22 SEC Docket 292 [also reported in 1981 Fed. Sec. L. Rep. (CCH), ¶82847], the Commission in recognizing the intent of Rule 2(e) to protect the integrity of its processes, stated, at page 297-8:

"Rule 2(e) represents a balancing of public benefits. It rests upon the recognition that the privilege of practicing before the Commission is a mechanism that generates great leverage - for good or evil - in the administration of the securities laws. A significant failure to perform properly the professional's role has implications extending beyond the particular transaction involved, for wrong-doing by a lawyer or accountant raises the spectre of a replication of that conduct with other clients. (Underlining added).

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Accountants, of course, issue audit reports that speak directly to the investing public and publicly represent that the code of conduct embodied in the statements of auditing standards promulgated by the AICPA has been followed. The duty of accountants to those who justifiably rely on those reports is well-recognized.

In view of the sentiments embodied in the cases cited it follows that the Commission would be unable effectively to administer securities laws in an environment in which issuers, underwriters and others involved in the capital raising process were not routinely served by professionals of the highest integrity and competence, well versed in the requirements

of the statutory scheme Congress has created. An incompetent practitioner has the ability to inflict substantial damage on the Commission's processes, and thus the investing public, and to the level of trust and confidence in our capital markets. Where such individuals engage in professional misconduct which impairs the integrity of the Commission's processes, the Commission has an obligation to respond through the application of Rule 2(e). See Matter of Keating, Muething and Klekamp, SEA Rel. No. 15982 (July 2, 1979), 17 SEC Docket 1149, 1165-6.

Consideration of all the circumstances justifies the conclusion that the petitioner should be permanently suspended from practice before the Commission. <sup>9/</sup> Petitioner, by issuing a false unqualified audit report on financial statements, which he knew or was reckless in not knowing were false, to be inserted in a Form 10 registration statement filed with the Commission has exhibited complete disregard of professional standards. This in turn resulted in an authorization of trading in the nation's capital markets. As a result of his professional misconduct he has injured both the integrity of the Commission's processes and the public interest. Such

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<sup>9/</sup> It is noted that no suspension under Rule 2(e) is actually "permanent", since the Rule provides for reinstatement to practice upon appropriate application. See footnote 2 hereinabove.

conduct is contrary to the principles enunciated in the decisions heretofore cited and which are applicable to this proceeding. <sup>10/</sup>

ORDER

Based upon the foregoing IT IS ORDERED that petitioner Gary L. Jackson, CPA, be permanently disqualified from appearing or practicing before the Commission.

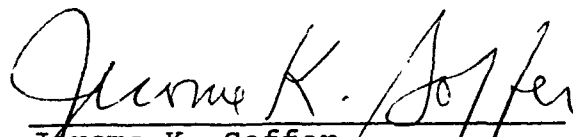
This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party

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<sup>10/</sup> In their briefs and arguments, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such arguments herein have been fully considered and the Judge concludes that they are without merit, or that further discussion is unnecessary in view of the findings herein.

timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

  
Jerome K. Soffer  
Administrative Law Judge

Washington, D.C.  
July 23, 1984