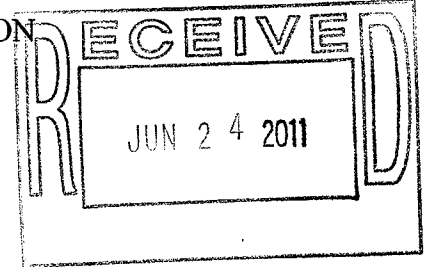


UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
June 14, 2011



In the Matter of the Application of

DAVIS ACCOUNTING GROUP, P.C. and
EDWIN R. DAVIS, JR. CPA
c/o Elliot N. Taylor, Esq.
Brian A. Lebrecht, Esq.
The Lebrecht Group, APLC
406 West South Jordan Parkway, Suite 160
South Jordan, Utah 84095

For Review of Disciplinary Action Taken by

PCAOB

CORRECTED
ORDER
PARTIALLY
LIFTING
STAY

I.

Edwin R. Davis, Jr. and Davis Accounting Group, P.C.,¹ a registered public accounting firm ("Firm" and together with Davis, "Applicants"), filed an application pursuant to Section 107(c) of the Sarbanes-Oxley Act of 2002² for review of disciplinary action taken by the Public Company Accounting Oversight Board ("Board" or "PCAOB"). The Board found that Applicants refused to cooperate with an investigation by the Board's Division of Enforcement and Investigations for which sanctions were warranted under Sarbanes-Oxley Act Section 105(b)(3) and Board Rule 5300(b).³ In doing so, the Board rejected Applicants' contention that Davis suffered from depression that "was so severe that it prevented him from producing any documents in response to [accounting board demands] for more than 20 months,"

¹ The firm changed its name, effective October 1, 2010, to Etania Audit Group P.C. Because the disciplinary action here was instituted before that date, we continue to use the name Davis Accounting Group, P.C.

² 15 U.S.C. § 7217(c).

³ 15 U.S.C. § 7215(b)(3), Rule 5300(b) *available at* http://pcaobus.org/Rules/PCAOBRules/Pages/Section_5.aspx#rule5300.

particularly in light of the fact that Applicants issued more than thirty audit reports during that time period.

The Board barred Davis from associating with any registered public accounting firm, imposed on him a \$75,000 civil money penalty, and permanently revoked the Firm's registration. Applicants filed an application for Commission review, which automatically stays the Board's action pursuant to Sarbanes-Oxley Act Section 105(e) "unless and until the Commission orders" that "no such stay shall continue to operate."⁴ In connection with Applicants' appeal, the PCAOB requests that the Commission lift the stay of the Board's order, which Applicants oppose. For the reasons stated below, the request to lift the stay is partially granted.

II.

Applicants present three main arguments in response to the Board's motion. They assert that the "documents and information in connection with a PCAOB inspection or investigation" receive "confidential and privileged treatment" unless and until they are "presented in connection with a public proceeding," and that the PCAOB is attempting to circumvent Applicants' "right of confidentiality" by seeking to lift the stay. Applicants further claim that the stay "is not harming the public because Applicants' prior public company audit clients and the public are on notice," given that the clients acknowledged having received a resignation letter from the Firm. Finally, Applicants argue that the Board's motion is inconsistent with precedent, citing review proceedings in *Gately and Associates, LLC*,⁵ where the Commission upheld Board disciplinary action but allowed the automatic stay to remain in place until issuance of the Commission opinion. Applicants assert that the Commission "has established its position regarding the timing for terminating the stay" and should therefore "wait until it has finalized its review and issued its Opinion."

In support of its motion, the Board notes that "[n]either the Act nor the Commission's rules describe the test the Commission should apply in considering whether to terminate a stay imposed pursuant to Section 105(e), and the Commission has not yet ruled on this issue." The Board further notes that, in considering stay requests in connection with appeals of self-regulatory action under the Exchange Act, the Commission focuses on the following factors: (1) whether there is a strong likelihood that the applicant will succeed on the merits; (2) whether, absent a stay (or, as here, continuation of the stay), the applicant will suffer irreparable injury; (3) whether a stay will result in substantial harm to the public; and (4) whether a stay will serve the public interest.⁶ The PCAOB contends that application of these factors is "appropriate in this context as well and weigh[s] strongly in favor of lifting the stay in this case."

⁴ 15 U.S.C. § 7215(e)(3).

⁵ Securities Exchange Act Rel. No. 63167 (Oct. 22, 2010), 99 SEC Docket 33752.

⁶ See *Navistar Int'l Corp.*, Exchange Act Rel. No. 55304 (Feb. 13, 2007), 89 SEC Docket 3384, 3387.

The PCAOB argues that there is no likelihood that Applicants will succeed on the merits because Applicants "cannot reconcile their issuance of more than 30 audit reports" with their claim that, during the same period, Davis's depression prevented them from cooperating with the Board. The PCAOB asserts that the Commission rejected a similar argument in *Gately* and "routinely upholds bars imposed by SROs in cases, like this one, of a total failure to cooperate."⁷ With respect to the issue of irreparable harm, the PCAOB notes that Applicants are no longer licensed to practice in any state and therefore cannot lawfully engage in public company auditing. According to the PCAOB, Applicants would therefore suffer no injury if the stay is lifted because it would not "restrict their conduct any more than it is already restricted by state and federal law."

The Board further contends that the public interest strongly supports lifting the stay. Pointing to Commission filings of three public companies that identify the Firm as their auditor, the PCAOB claims that "Applicants have demonstrated that they are unlikely to let their unlicensed status stop them from attempting to conduct additional public company audits." In turn, unknowing "investors, issuers, and ultimately the markets will continue to be harmed" until the stay is lifted, at which point the public would be notified about the PCAOB disciplinary sanction imposed on Applicants pursuant to Sarbanes-Oxley Act Section 105(d)(1)(C).⁸ The PCAOB argues that the public will suffer further harm in the likely event that issuers will need to audit financial statements for a second time to address the first audit conducted by Applicants improperly.

III.

It appears appropriate to consider the motion, as the Board argues, based on the factors the Commission previously has considered in evaluating similar requests for stays in connection with self-regulatory organization proceedings. A consideration of those factors supports the Board's position.

Final resolution must await the Commission's determination on the merits of Applicants' appeal, but there does not appear to be a strong likelihood, at this point, that Applicants will succeed on appeal. Nor, based on the fact that Applicants are no longer licensed to practice, do

⁷ The PCAOB does not address Applicants' argument that *Gately* stands for the proposition that a stay should remain in place until the Commission has issued an opinion. In *Gately*, however, the PCAOB did not seek to lift the stay of sanction pending the Commission's consideration of the appeal. *Gately* therefore is inapposite. No other Commission decision has addressed this issue.

⁸ 15 U.S.C. § 7215(d)(1)(C) (requiring the PCAOB to report the imposition of a disciplinary sanction to the public once any stay on the sanction has been lifted).

they appear likely to suffer irreparable harm.⁹ Any detriment that Applicants may incur from lifting the stay is outweighed by the danger that Applicants would pose to the investing public, particularly given that Davis was convicted in state court on two counts of unlawful professional conduct in a case arising out of charges for practicing without a license.¹⁰ Therefore, under the circumstances, the granting of the PCAOB's request to lift the stay is warranted. With respect to the civil money penalty, however, it appears appropriate, and consistent with Commission precedent, to deny the lifting of the stay of that sanction, pending the Commission's determination of this appeal.¹¹

Accordingly, IT IS ORDERED that the request of the Public Company Accounting Oversight Board to lift the stay of the order permanently revoking the registration of Davis Accounting Group, P.C. and permanently barring Edwin R. Davis, Jr. from association with a registered public accounting firm, pending Commission review of their appeal, be, and it hereby is, granted, and it is further

⁹ To the extent that Applicants are concerned about preserving the confidentiality of certain "documents and information" in connection with this proceeding, they may file a motion for a protective order pursuant to Commission Rule of Practice 322. Under Commission Rule 322, any party "may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information." 17 C.F.R. § 201.322(a).

¹⁰ See 15 U.S.C. § 7215(d)(1)(C) (requiring the PCAOB to report the imposition of a disciplinary sanction to the public once any stay on the sanction has been lifted); *cf. Andrew P. Gonchar*, Order Denying Stay, Admin. Proc. File No. 3-13243 (Oct. 14, 2008) (denying request for stay of sanctions in self-regulatory organization proceeding in part because detriment was "outweighed by the danger [applicants'] continued presence in the securities industry posed to the investing public" (citations omitted)); *David Henry Disraeli*, Exchange Act Rel. No. 57027 (Dec. 21, 2007), 92 SEC Docket 852, 876-77 (finding that public interest in imposing bar outweighed impact of bar on respondent's clients because his clients "remain[ed] free to choose another investment adviser" and the Commission "has an obligation to protect the investing public" in general).

¹¹ See, e.g., *Guy P. Riordan*, Partial Stay Order, Admin. Proc. File No. 3-12829 (Jan. 11, 2010) (denying request for stay as to disgorgement order and fine pending the filing and determination of an appeal with a Court of Appeals); *David Henry Disraeli*, Partial Stay Order, Admin. Proc. File No. 3-12288 (Jan. 16, 2008) (denying request for stay as to bar and revocation orders, but granting *sua sponte* stay of financial sanctions pending appeal); *Valicenti Advisory Servs., Inc.*, Partial Stay Order, Admin. Proc. File No. 3-8854 (Dec. 3, 1998) (staying financial sanctions pending appeal).

ORDERED that the request of the Public Company Accounting Oversight Board to lift the stay of the civil money penalty imposed on Edwin R. Davis, Jr. by Public Company Accounting Oversight Board pending Commission review of Applicants' appeal be, and it hereby is, denied.

For the Commission by the Office of the General Counsel pursuant to delegated authority.

Elizabeth M. Murphy
Secretary


By: Jill M. Peterson
Assistant Secretary