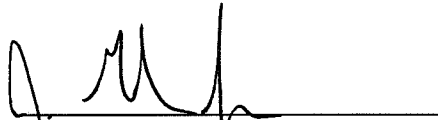




Commission to order review. If the Firm files an application for review by the Commission or the Commission orders review of sanctions ordered against the Firm, the effective date of the sanctions ordered against the Firm shall be the date the Commission lifts the stay imposed by Section 105(e) of the Sarbanes-Oxley Act of 2002.



J. Gordon Seymour  
Secretary

January 9, 2012

In the Matter of Buckno Lisicky & Company,  
P.C.,

Respondent.

PCAOB No. 105-2011-004

Hearing Officer – DMF

**INITIAL DECISION**

November 17, 2011

*Summary*

*The Division of Enforcement and Investigations' motion for summary disposition, submitted in accordance with PCAOB Rule 5427, is granted. The undisputed facts establish that Respondent, a registered public accounting firm, violated Section 102(d) of the Sarbanes-Oxley Act of 2002 and PCAOB Rule 2200 by failing to file annual reports for 2010 and 2011. For those violations, pursuant to Sections 105(c)(4) and(c)(5) of the Act and PCAOB Rule 5300(a), Respondent's registration is suspended for one year and Respondent is ordered to pay a \$5,000 civil money penalty.*

*Appearances*

David B. Florenzo, Esq., Washington, DC, for the Division of Enforcement and Investigations.

Anthony J. Buczek, Shareholder, on behalf of Respondent Buckno Lisicky & Company, P.C.

**DECISION**

**1. Procedural History**

The Public Company Accounting Oversight Board (PCAOB or Board) issued the Order Instituting Disciplinary Proceedings (OIP) in this matter on August 5, 2011. The OIP alleges that Respondent Buckno Lisicky & Company, P.C. (Respondent), a registered public accounting

firm, violated Section 102(d) of the Sarbanes-Oxley Act of 2002 (the Act) and PCAOB Rule 2200 by failing to file annual reports for 2010 and 2011. On September 15, 2011, the Hearing Office received a letter from Anthony J. Buczek, a shareholder of Respondent, which I deemed Respondent's Answer to the OIP (September 15 letter). In the September 15 letter, Buczek did not deny that Respondent had failed to file its 2010 and 2011 annual reports, but offered explanations for Respondent's failure to do so, along with supporting documents.

On October 3, 2011, I held a telephonic pre-hearing conference (Conference) with counsel for the Division of Enforcement and Investigations (Division) and Buczek, who appeared on behalf of Respondent. During the Conference, I discussed with the parties the allegations in the OIP, the explanations for Respondent's failure to file its annual reports set forth in the September 15 letter, and a procedure for resolving the charges in the OIP. In substance, it was agreed that the Division would file a motion for summary disposition, pursuant to PCAOB Rule 5427, by October 14, 2011, and that Respondent would file a response to the Division's motion by October 28, 2011, which might include an affidavit and additional documents supporting the explanations offered in the September 15 letter. It was further agreed that, for good cause, Respondent could file a request for additional time to respond to the Division's motion prior to the October 28 deadline. On October 3, I issued an order confirming the schedule and procedures discussed during the Conference.

The Division filed a motion for summary disposition on October 14, 2011, together with a supporting affidavit and exhibit.<sup>1</sup> In its motion, the Division requested that I issue an Initial

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<sup>1</sup> The exhibit was a copy of an issuer's annual report, filed with the SEC on April 1, 2011, that included Respondent's audit report on the issuer's financial statements, also dated April 1, 2011. On November 10, 2011, the Division filed a motion to supplement the record by substituting an SEC-certified copy of the issuer's annual report for the uncertified copy filed with the Division's motion. Because the certified copy does not substantively alter the evidence supporting the Division's summary disposition motion, the Division's motion to supplement the record is granted.

Decision holding that Respondent violated Section 102(d) of the Act and PCAOB Rule 2200 by failing to file annual reports for 2010 and 2011, as alleged in the OIP, and that as sanctions for those violations, pursuant to Section 105(c)(4) of the Act, I suspend Respondent's registration with the PCAOB for one year and order Respondent to pay a \$10,000 civil money penalty.

Respondent neither filed a response to the Division's motion for summary disposition by the October 28 deadline nor requested additional time to file a response. Nevertheless, considering that Respondent is not represented by counsel in this proceeding, and in light of the representations in Buczek's September 15 letter and the discussion during the Conference, I issued an order on November 4, 2011, extending the deadline for Respondent to file a response to the Division's summary disposition motion until November 11, 2011, and advising Respondent that if it failed to file a response to the Division's motion by that date, I would consider the Division's motion based on the existing record.

Respondent did not file any response to the Division's motion by the November 11 deadline. Rule 5421(c) provides: "Any allegation [in the OIP] not denied [in Respondent's Answer] shall be deemed admitted." Buczek's September 15 letter, which I deemed to be Respondent's Answer to the OIP, did not deny the allegations in the OIP; on the contrary, in substance Buczek admitted that Respondent was required to file annual reports for 2010 and 2011, but failed to do so until September 14, 2011, and asserted certain potentially mitigating circumstances related to Respondent's failures. During the Conference I advised Buczek that in responding to the Division's summary disposition motion, "any factual support that you want to offer [in support of mitigating circumstances] should be either documentary or in the form of an affidavit," and Buczek acknowledged that he understood that requirement. Respondent, however, did not submit any additional materials in response to the Division's motion.

Accordingly, for purposes of the Division's motion for summary disposition, the relevant record consists of the OIP; Buczek's September 15 letter, including the documents attached to the letter; the transcript of the Conference; the Division's motion for summary disposition; and the affidavit and exhibit submitted in support of the Division's motion. Upon consideration of those materials, I find, in accordance with Rule 5427(d), that there is no genuine issue as to any material fact and that the Division is entitled to a disposition in its favor as a matter of law. Therefore, the Division's motion for summary disposition is granted.

## **2. Facts**

Respondent is a professional corporation located in Pennsylvania and is licensed to engage in the practice of public accounting under the laws of Pennsylvania. At all relevant times, Respondent has been registered with the PCAOB pursuant to Section 102 of the Act.

Section 102(d) of the Act requires each registered public accounting firm to submit an annual report to the PCAOB "to provide to the Board such additional information as the Board or the [Securities and Exchange] Commission may specify." In accordance with that provision, PCAOB Rule 2200 requires each registered public accounting firm to file an annual report with the PCAOB on Form 2, and Rule 2201 provides that the deadline for filing the Form 2 annual report is June 30 of each year. Respondent did not file an annual report for 2010 by June 30 of that year.

Respondent received a letter from the staff of the Division of Registration and Inspections dated December 17, 2010, regarding Respondent's failure to file its 2010 annual report, and Buczek sent the staff a reply letter dated February 2, 2011, on behalf of Respondent (February 2 letter). In the February 2 letter, Buczek stated that he "was under the belief" that Respondent's 2010 annual report had been filed. Buczek stated that around the time the annual

report was due, his mother passed away and he was dealing with “a significant number of other family issues.” As a result, Buczek’s February 2 letter stated, he was “away from the office during normal working hours” and “had to enlist the help of supporting staff to complete the submission [of Respondent’s 2010 annual report] but [Buczek] failed to confirm that the report was filed properly.” Buczek stated that, “[i]f it is possible,” he would “complete the [2010] annual report within the next five days but would need a new user name and password in order to do so.”

In his September 15 letter, Buczek stated: “Subsequent to my February 2, 2011 letter ... on April 8, 2011 I was able to speak with someone at the PCAOB and obtain the correct user name and establish a new password needed to complete the annual reports for my firm.” Buczek further stated that on April 21, 2011, he prepared both the 2010 and 2011 annual reports for Respondent on the PCAOB website, but forgot to electronically submit the documents, so they remained in draft status until, after receiving the OIP, he realized that the reports had not been submitted. On September 14, 2011, Buczek electronically submitted Respondent’s 2010 and 2011 annual reports on the PCAOB website.

### **3. Discussion and Conclusions**

It is undisputed that Respondent failed to file its annual reports for both 2010 and 2011 until September 14, 2011. Therefore, I conclude that Respondent violated Section 102(d) of the Act and Rule 2200, as charged in the OIP. The remaining issue is what sanctions should be imposed for Respondent’s violations.

The annual report requirement is an integral part of the regulatory scheme established by the Act and the PCAOB’s rules. In that regard, Form 2 requires each registered public accounting firm to provide updated information annually concerning, *inter alia*: (1) the firm’s

structure; (2) the firm's services, including those services related to the Act's registration requirement; (3) fees billed to audit clients by the firm; (4) audit reports issued by the firm, or as to which the firm played a substantial role; (5) any disciplinary history of persons associated with the firm; and (6) arrangements for the firm to receive consulting or certain other professional services. All of this information is highly relevant to the PCAOB's oversight of registered public accounting firms in accordance with the Act.

In its motion for summary disposition, the Division requests that Respondent's registration be suspended for one year. The imposition of disciplinary sanctions is governed by Sections 105(c)(4) and (c)(5) of the Act. Pursuant to Section 105(c)(5), Respondent's registration may be suspended, as the Division requests, only if Respondent's violations involved "intentional or knowing conduct, including reckless conduct," or "repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard."

In his February 2 letter, Buczek asserted that Respondent's initial failure to submit its 2010 annual report was attributable to his reliance on Respondent's support staff to file the report, in light of his absence due to family matters, but admitted that he failed to follow up to ensure that the report had, in fact, been filed. Moreover, at least by the time of his February 2 letter, Buczek was aware that Respondent's 2010 annual report had not been filed with the PCAOB, and was more than seven months overdue.

In his February 2 letter, Buczek stated that he would attempt to file the annual report within five days, but in his September 15 letter he admits that he did not even obtain the necessary user name and password until April 8, 2011. After obtaining a user name and password, he failed to prepare draft annual reports for 2010 and 2011 until April 21, 2011. And



even then, he failed to properly submit the annual reports until September 14, 2011. Moreover, during the period between Buczek's February 2 letter and his submission of Respondent's 2010 annual report, an issuer filed its annual report with the SEC that included Respondent's audit report, dated April 1, 2011, on the issuer's financial statements.<sup>2</sup>

Based on these undisputed facts, I find that Respondent's failures to timely file its 2010 and 2011 annual reports involved repeated instances of negligent conduct, each resulting in a violation of Section 102(d) of the Act and Rule 2200, and thus satisfy the requirements for the imposition of a suspension under Sections 105(c)(4) and (c)(5) of the Act. Further, I conclude that the one-year suspension requested by the Division is appropriate under the circumstances. As explained above, annual reports are an essential component of the PCAOB's oversight responsibilities, and thus Buczek's inattention to Respondent's obligations as a registered public accounting firm placed investors at risk by impeding the PCAOB's ability to fulfill its statutory duties. On the other hand, while the undisputed facts establish that Buczek's failures to file Respondent's annual reports were negligent, they are not sufficient to establish, for purposes of summary disposition, that the failures were attributable to intentional or reckless conduct.<sup>3</sup> A one-year suspension of Respondent's registration, therefore, appropriately addresses Respondent's violative conduct. I also note that by failing to respond to the Division's motion

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<sup>2</sup> The OIP alleges, and Respondent has not denied, that "[p]ublic records indicate that [Respondent] issued one audit report for an issuer in 2011, one audit report for an issuer in 2010, one audit report for an issuer in 2009, two audit reports for issuers in 2008, and one audit report for an issuer in 2007." Because Respondent did not deny those allegations, they are deemed admitted, pursuant to Rule 5421(c).

<sup>3</sup> The Division argues that Respondent's conduct should be characterized as intentional or reckless, rather than negligent. "Recklessness in this context . . . is an 'extreme departure from the standards of ordinary care, . . . which presents a danger' to investors or the markets 'that is either known to the (actor) or is so obvious that the actor must have been aware of it.'" Gately & Assocs., LLC, Exch. Act Rel. No. 62656, 2010 SEC LEXIS 2535, at \*33 (Aug. 5, 2010) (quoting Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164, 57,166 (Oct. 26, 1998)). It is generally inappropriate to resolve issues regarding intent or state of mind through summary disposition, unless the appropriate resolution of such issues is clear based on the undisputed facts. In light of the extremely limited record in this proceeding, I do not find the undisputed facts sufficient to conclude that Respondent's conduct was intentional or reckless, rather than negligent.

for summary disposition, even after I extended the deadline for filing a response, Respondent waived its opportunity to argue for a shorter suspension.

The Division also requests that Respondent be ordered to pay a \$10,000 civil money penalty. In determining whether a civil money penalty is an appropriate sanction and, if so, the amount of the penalty, the Board has considered the factors set forth in Section 21B(c) of the Securities Exchange Act of 1934 (Exchange Act) as providing helpful and relevant guidance.

The factors specified in section 21B(c) include (1) whether the conduct for which a penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to other persons resulting directly or indirectly from the conduct; (3) the extent to which any person was unjustly enriched; (4) whether the person against whom a penalty is assessed has previously been found by the Commission, another appropriate regulatory agency, or self-regulatory organization (“SRO”) to have violated federal securities laws, state securities laws, or SRO rules, or has been enjoined from such violations or convicted of certain offenses; (5) the need to deter such person and other persons from such conduct; and (6) such other matters as justice may require.

Section 21B does not require that all of these factors be present as a condition to imposing a penalty, but sets them out as factors to be considered.

Larry O’Donnell, CPA, P.C. and Larry O’Donnell, CPA, PCAOB File No. 105-2010-002 (Oct. 19, 2010), at 9-10.

The undisputed facts are not sufficient to establish that (1) Respondent’s conduct was deliberate or reckless, rather than negligent; (2) there was actual harm to other persons resulting from Respondent’s conduct; (3) there was any unjust enrichment; or (4) Respondent has previously been found to have committed any relevant violations. As explained above, however, Respondent’s failure to file timely annual reports interfered with the PCAOB’s ability to fulfill its oversight responsibilities and thus placed investors at risk. Although Respondent was aware that its 2010 annual report was long overdue, Respondent issued at least one audit report for an

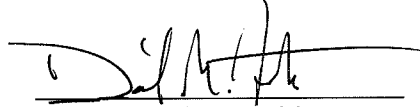
issuer, on which investors might reasonably have relied, before even attempting to file its overdue report.

Therefore, there is a clear need to deter Respondent, as well as other registered public accounting firms, from failing to comply with the annual reporting requirement in the future. Further, I conclude that a one-year suspension would not, by itself, be adequate to accomplish that goal; therefore, the imposition of a civil money penalty, in addition to the suspension, is appropriate. I find, however, that the \$10,000 penalty proposed by the Division would be excessive. The Division's argument for a \$10,000 penalty rests on its characterization of Respondent's conduct as deliberate or reckless; as explained in footnote 3 above, however, I do not find the record sufficient to support such a characterization of Respondent's conduct for purposes of summary disposition. Instead, treating Respondent's violations as involving repeated instances of negligent misconduct, I conclude that a \$5,000 civil money penalty, coupled with the one-year suspension, will properly accomplish the Board's disciplinary and remedial goals. While the amount of the penalty is well below the maximum authorized by Sections 105(c)(4) and (c)(5) of the Act, it reflects the seriousness of Respondent's violations, under the standards set forth in Section 21B(c) of the Exchange Act, without being punitive.

#### **4. Order**

For the foregoing reasons, **IT IS ORDERED**, pursuant to Section 105(c)(4) and (c)(5) of the Act and Rule 5300(a), that for violating Section 102(d) of the Act and PCAOB Rule 2200 by failing to file annual reports for 2010 and 2011, the registration of Respondent Buckno Lisicky & Company, P.C. is suspended for one year and Respondent Buckno Lisicky & Company, P.C. shall pay a \$5,000 civil money penalty.

This Initial Decision shall become final in accordance with Rule 5204(d)(1) upon issuance of a notice of finality by the Secretary. Any party may obtain Board review of this Initial Decision in accordance with Rule 5460(a), or the Board may, on its own initiative, order review, in which case this Initial Decision will not become final.

A handwritten signature in black ink, appearing to read "David M. FitzGerald", written over a horizontal line.

David M. FitzGerald  
Hearing Officer