

**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

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In the Matter of Paul Gaynes )	PCAOB File No. 105-2011-006
Respondent. )	<b>Notice of Finality of Initial Decision</b>
_____ )	January 3, 2012

On November 10, 2011, the Chief Hearing Officer of the Public Company Accounting Oversight Board issued the attached Initial Decision pursuant to PCAOB Rule 5204(b) ordering, as sanctions, that the PCAOB registration of Paul Gaynes ("the Firm") be permanently revoked and that the Firm pay a civil money penalty in the amount of \$5,000.

There having been no petition for Board review of the Initial Decision filed by any party pursuant to PCAOB Rule 5460(a) and no action by the Board to call the matter for review pursuant to PCAOB Rule 5460(b), the Initial Decision has today become final pursuant to PCAOB Rule 5204(d).

The Firm shall pay the civil money penalty by (a) wire transfer pursuant to instructions provided by Board staff; or (b) United States postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006; and (e) submitted under a cover letter which identifies Paul Gaynes as a respondent in these proceedings, sets forth the title and PCAOB File Number of these proceedings, and states that payment is made pursuant to this Notice, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: J. Gordon Seymour, General Counsel and Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

Effective Date of Sanctions: If the Firm does not file an application for review by the Securities and Exchange Commission ("Commission") and the Commission does not order review of sanctions ordered against the Firm on its own motion, the effective date of the sanctions shall be the later of the expiration of the time period for filing an application for Commission review or the expiration of the time period for the

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.

  
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J. Gordon Seymour  
Secretary

January 3, 2012

In the Matter of Paul Gaynes,  
  
Respondent.

PCAOB No. 105-2011-006

Hearing Officer –DMF

**INITIAL DECISION (DEFAULT)**

November 10, 2011

*Summary*

***Respondent was held in default, pursuant to PCAOB Rule 5409(a), for failing to file an Answer in response to the Order Instituting Disciplinary Proceedings (OIP). The allegations in the OIP, which are deemed true and are supported by evidence in the record, establish that Respondent 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, and violated Section 102(f) of the Act and Rule 2202 by failing to pay the annual fee for 2011. For these violations, pursuant to Sections 105(c)(4) and(c)(5) of the Act and PCAOB Rule 5300(a), Respondent’s registration with the PCAOB is permanently revoked and Respondent is ordered to pay a civil money penalty in the amount of \$5,000.***

*Appearances*

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

No appearance by or on behalf of Respondent Paul Gaynes.

**DECISION**

**1. Introduction**

On August 5, 2011, the Public Company Accounting Oversight Board (PCAOB or the Board) issued an Order Instituting Disciplinary Proceedings (OIP) alleging that Respondent Paul

Gaynes (Respondent) 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, and violated Section 102(f) of the Act and Rule 2202 by failing to pay the annual fee for 2011. The OIP required that Respondent file an Answer to the OIP by September 15, 2011. The OIP was personally served on Respondent on August 9, 2011.

Respondent failed to file an Answer by September 15. On September 16, 2011, I issued an order directing Respondent to show cause why it should not be held in default, pursuant to Rule 5409(a)(2), for failing to file an Answer, and requiring Respondent to file its response to the order by September 26, 2011. The order to show cause warned Respondent that if it failed to file a response to the order within the time allowed, it would be held in default, and that if Respondent was held in default, a default decision might be issued finding that Respondent committed the violations alleged in the OIP and imposing sanctions.

Respondent did not file any response to the order to show cause by September 26, 2011. Accordingly, on September 27, 2011, I issued an order holding Respondent in default, pursuant to Rule 5409(a)(2), and directing the Division of Enforcement and Investigations (Division) to file a motion for issuance of a default decision, with appropriate supporting materials, by October 27, 2011. The Division filed its motion for entry of a default decision, with supporting materials, on October 25, 2011. For the following reasons, the Division's motion is granted.

## **2. Facts**

The following statement of facts is based on the allegations in the OIP, which are deemed true, pursuant to Rule 5409(a), and the materials filed by the Division in support of its motion.<sup>1</sup>

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<sup>1</sup>See James M. Russen, Jr., Exch. Act Rel. No. 32895, 51 S.E.C. 675, 678 n.12 (1993) (“The Association did not base its conclusion simply on the complaint’s allegations; rather, it reviewed the record evidence presented by its staff and determined that the evidence supported a finding of violation. This approach affords this Commission a basis for discharging its review function under Section 19 of the Securities Exchange Act.”).

Respondent is a proprietorship located in New York and is licensed to engage in the practice of public accounting under the laws of New York. 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,” and Section 102(f) of the Act requires the PCAOB to assess and collect a registration fee and an annual fee from each registered public accounting firm “in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.” In accordance with these provisions, 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. Rule 2202 requires that each registered public accounting firm “pay an annual fee to the Board on or before July 31 of any year in which the firm is required to file an annual report on Form 2.”

Respondent failed to file an annual report on Form 2 for 2010 by June 30 of that year, as required by Rules 2200 and 2201. On December 17, 2010, PCAOB Division of Registration and Inspections (Registration) staff sent Respondent a “Charging Letter” alerting Respondent to its failure to file an annual report for 2010, and warning Respondent that if it did not either file its annual report or submit a Form 1-WD to withdraw from PCAOB registration by January 17, 2011, Registration would recommend that the Board institute a disciplinary proceeding against Respondent. On December 21, 2010, Respondent sent Registration staff an email stating that it “need[ed] real guidance on filing the annual report.” Respondent indicated that it would telephone Registration staff to obtain such guidance. Nevertheless, Respondent failed to file its

annual report for 2010. Further, although it had not filed its annual report for 2010, Respondent issued audit reports on the financial statements of four broker-dealers in February 2011.

Respondent also failed to file its annual report on Form 2 for 2011 by June 30 of this year, as required by Rules 2200 and 2201. In addition, Respondent failed to pay its annual fee for 2011 by July 31 of this year, as required by Rule 2202.

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

The foregoing facts establish that Respondent violated Section 102(d) of the Act and PCAOB Rule 2200 by failing to file annual reports for 2010 and 2011, and violated Section 102(f) of the Act and Rule 2202 by failing to pay its annual fee for 2011, as alleged in the OIP.

The remaining issue is what sanctions should be imposed for those violations. The Division requests that Respondent's registration be permanently revoked.

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 permanently revoked 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 this case, the record demonstrates that Respondent was notified of its failure to file its 2010 annual report, and was given an opportunity to correct that failure by either submitting the report or withdrawing from PCAOB registration. Instead of following either course, Respondent issued audit reports for broker-dealers, and subsequently failed to file its 2011 annual report and failed to pay its 2011 annual fee. These facts are sufficient to demonstrate that Respondent's conduct satisfied the requirements of Section 105(c)(5).

I also find that the facts justify permanently revoking Respondent's registration. 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. By failing to file its annual reports, while continuing to issue audit reports for broker-dealers, Respondent has impeded the PCAOB's ability to fulfill its statutory mandate. Similarly, the annual fee imposed pursuant to the Act provides essential support for the PCAOB's annual report program.

I conclude, therefore, that a permanent revocation of Respondent's registration is an appropriate sanction. In addition, although the Division did not request the imposition of a civil money penalty, I find that such a penalty is appropriate in this case.

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.

In this case, Respondent's violations involved deliberate or reckless disregard of regulatory requirements, and there is a need to deter not only Respondent, but also other registered public accounting firms, from such conduct. In particular, I note that, in its Charging Letter, the Registration staff offered Respondent the opportunity to avoid disciplinary action by either filing its 2010 annual report or submitting a Form 1-WD withdrawing from PCAOB registration. Respondent followed neither course of action, but instead issued audit reports for several broker-dealers, and subsequently failed to file its 2011 annual report or to pay its 2011 annual fee. Under these circumstances, merely revoking Respondent's registration would not adequately protect the interests of investors or further the public interest.

Accordingly, I conclude that a \$5,000 civil money penalty should be imposed to properly fulfill the Board's disciplinary and remedial responsibilities. While this amount 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.

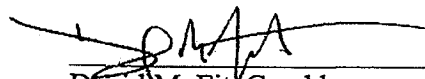
#### **4. Order**

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, and for violating Section 102(f) of the Act and



Rule 2202 by failing to pay the annual fee for 2011, the registration of Respondent Paul Gaynes is permanently revoked and Respondent Paul Gaynes 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.

  
David M. FitzGerald  
Hearing Officer