
ORDER INSTITUTING DISCIPLINARY
 PROCEEDINGS, MAKING FINDINGS, AND
 IMPOSING SANCTIONS

In the Matter of Mark K. Nelson, CPA,

Respondent.

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) PCAOB Release No. 105-2016-008
)
) February 18, 2016
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By this Order, the Public Company Accounting Oversight Board (the "Board" or "PCAOB") is censuring Mark K. Nelson ("Respondent" or "Nelson") and barring him from being an associated person of a registered public accounting firm.¹ The Board is imposing these sanctions on the basis of its findings that, in connection with the audit of the financial statements of Anchor Funding Services, Inc. ("AFS") for the fiscal year ended December 31, 2012 (the "Audit"), Nelson violated PCAOB rules and standards, as well as Section 10A(g) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10A-2 concerning auditor independence.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (the "Act"), and PCAOB Rule 5200(a)(1) against Respondent.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement ("Offer") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondent and the subject matter of these proceedings, which is admitted,

¹ Nelson may file a petition for Board consent to associate with a registered public accounting firm after one (1) year from the date of this Order.

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Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.²

III.

On the basis of Respondent's Offer, the Board finds that:³

A. Respondent

1. Mark K. Nelson ("Nelson"), age 50, of Matthews, North Carolina, is a certified public accountant licensed by the North Carolina State Board of Certified Public Accountant Examiners (License No. 19066). At all relevant times, he was a partner at a public accounting firm that was not registered with the PCAOB ("Nelson's non-PCAOB registered Firm"). Scott and Company LLC ("Scott"), a registered public accounting firm,⁴ engaged Respondent to assist with the Audit. In connection with the Audit, Nelson performed audit procedures in certain audit areas. Because of his role on the Audit, Nelson was, at all relevant times, an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

B. Summary

2. This matter concerns Nelson's violations of PCAOB rules and standards that require a registered public accounting firm and its associated persons to be independent of the firm's issuer audit clients throughout the audit, as well as Nelson's violations of Section 10A(g) of the Exchange Act and Exchange Act Rule 10A-2

² The findings herein are made pursuant to Respondent's Offer and are not binding on any other persons or entities in this or any other proceeding.

³ The Board finds that Respondent's conduct described in this Order meets the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

⁴ Scott has filed a Form 1-WD seeking leave to withdraw from registration with the Board. See Scott and Company LLC and Michael J. Slapnik, CPA, PCAOB Release No. 105-2016-007 (Feb. 18, 2016).

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concerning auditor independence. During the Audit, Nelson was not independent with respect to AFS because he prepared certain accounting records for AFS, and then performed audit procedures on those very records.⁵ Specifically, Nelson prepared AFS's tax provision and the informational tables in AFS's financial statement tax footnote for the year under audit contemporaneous with his work on the Audit, which included performing audit procedures on the tax provision and footnote information that he had prepared.

C. Nelson Violated PCAOB Rules and Standards and the Exchange Act

3. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing and related professional practice standards.⁶ PCAOB rules and standards also require that a registered public accounting firm be independent of an issuer audit client throughout the audit and professional engagement period.⁷ A registered public accounting firm's or associated person's independence obligation with respect to an audit client that is an issuer encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Securities and Exchange Commission ("Commission") under the federal securities laws.⁸

4. Section 10A(g) of the Exchange Act provides that it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs an audit for an issuer "to provide to that issuer, contemporaneously with the audit, any non-audit service, including

⁵ See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2, *Auditor Independence*; PCAOB Rule 3520, *Auditor Independence*; and AU §§ 220.01-02, *Independence*.

⁶ PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and PCAOB Rule 3200T, *Interim Auditing Standards*. All references to PCAOB standards are to the versions of those standards in effect at the time of the Audit.

⁷ See PCAOB Rule 3520; see also AU §§ 220.01-.02.

⁸ See PCAOB Rule 3520, Note 1.



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. . . [b]ookkeeping or other services related to the accounting records or financial statements of the audit client."

5. Exchange Act Rule 10A-2 states that it shall be unlawful for an auditor not to be independent with respect to, among other requirements, the prohibited non-audit services provisions of Commission Regulation S-X. Rule 2-01 of Regulation S-X provides that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides certain non-audit services for an audit client, including bookkeeping and financial statement preparation services.⁹

6. As described below, Nelson failed to comply with PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules in connection with the Audit.

Nelson's Work on the Audit of AFS's 2012 Financial Statements

7. On or about February 11, 2013, AFS engaged Scott as its auditor for the year ended December 31, 2012.¹⁰ Scott engaged Nelson to assist with the audit of AFS's 2012 financial statements. Nelson's work on the Audit was to include performing audit procedures concerning AFS's 2012 tax provision and the tax footnote for AFS's 2012 financial statements. During the Audit, Nelson provided Scott with a signed letter representing that he was independent of AFS, and he also signed off on a Supervision, Review, and Approval work paper affirming that he had maintained his independence throughout the performance of the Audit.

8. However, during the Audit, Nelson obtained source data from AFS – such as payroll, depreciation schedules, revenue by state, asset additions – and then prepared AFS's tax provision for 2012. He also created a document that contained the tax provision, the informational tables that appear in the tax footnote for AFS's 2012

⁹ See 17 C.F.R. §§ 210.2-01(b), (c)(4)(i).

¹⁰ At all relevant times, AFS was a Delaware corporation headquartered in Charlotte, North Carolina. AFS's public filings disclose that its business objective was to create a national financial services firm for small businesses providing services such as accounts receivable funding (factoring), purchase order finance, and outsourcing of accounts receivable management. At all relevant times, AFS's common stock was registered under Section 12(g) of the Exchange Act, and the company was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). In October 2013, AFS changed its name to FlexShopper, Inc.

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financial statements filed with the Commission, and source data as support for those tables.¹¹ Scott received this document (the "Tax Support") and included it as a work paper in its documentation for the Audit.

9. During the Audit, both Nelson and the engagement partner for the Audit signed off as having reviewed the Tax Support work paper. Although the Tax Support work paper contained the header, "Tax provision has been provided by client by way of [Nelson's non-PCAOB-registered Firm]. All S+C [Scott and Company] comments in red," Nelson did not inform Scott that he had prepared that document.

10. On March 27, 2013, Scott issued its unqualified audit report on AFS's financial statements for the fiscal year ended December 31, 2012. On that same day, AFS filed those financial statements and Scott's audit report with the Commission.

11. As a result of Nelson's work in both preparing and performing audit procedures on AFS's tax provision and tax footnote, he was not independent of AFS during the Audit, in violation of PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules.¹²

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Nelson's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Nelson is hereby censured;

¹¹ AFS disclosed in the tax footnote of its 2012 Form 10-K that its income tax provision was \$0 for the year, after applying net operating loss carryforwards to the current-year taxable income of \$161,000. The tax footnote also disclosed that AFS had recognized a valuation allowance in the full amount of the company's \$1,547,000 in gross deferred tax assets for 2012, to adjust the deferred tax assets to the amount of net operating losses that AFS expected to be realized.

¹² See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2; PCAOB Rule 3520; and AU §§ 220.01-.02.

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- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Nelson is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i);¹³ and
- C. After one (1) year from the date of this Order, Nelson may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

February 18, 2016

¹³ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Nelson. Section 105(c)(7)(B) provides: "It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."