

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62563 / July 23, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3158 / July 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13977

In the Matter of

KENNETH J. ABOD, CPA,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice² against Kenneth J. Abod, CPA (“Abod” or “Respondent”).

¹ Section 4C provides, in relevant part, that: “The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.”

² Rule 102(e)(1)(iii) provides, in pertinent part, that: “The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.”

II.

In anticipation of the institution of these proceedings, Respondent has submitted an offer of settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

Summary

1. These proceedings arise out of Abod’s failures to comply with Generally Accepted Accounting Principles (“GAAP”) at Sunrise Senior Living, Inc. (“Sunrise” or the “Company”) for the year-end 2004 and the first fiscal quarter of 2005. Abod helped determine the amount of the 2004 year-end bonus accrual and was aware that Sunrise was planning to pay \$1 million in 2004 bonuses in 2005 but had failed to accrue for them at 2004 fiscal year-end. Abod also instructed Sunrise employees to make an adjustment to eliminate the corporate bonus accrual account for the first quarter of 2005, ended on March 31, 2005. Sunrise would not have met previously issued earnings per share (“EPS”) forecasts if it had properly accrued for bonuses at year end 2004 and the first fiscal quarter of 2005. The accounting for the corporate bonus accrual account failed to comply with GAAP, because it was probable that Sunrise was going to pay bonuses and could reasonably estimate the bonus payment amounts. Consequently, Abod caused Sunrise to issue an annual report for fiscal year 2004 and a quarterly report for the first quarter of 2005 that failed to comply with GAAP. On March 24, 2008, Sunrise filed a Form 10-K for the year ended December 31, 2007. The filing included restated audited financial statements for fiscal year 2004, and unaudited quarterly financial information for fiscal years 2005 (restated). The restatement corrected the improper accounting for the bonus accruals.

Respondent

2. **Abod**, 45, who is a licensed CPA in Virginia, was Sunrise’s Treasurer from 2001 until December 1, 2005, when he resigned from the Company. As Treasurer, he was responsible for maintaining corporate forecasts, facilitating the budget process, and managing Sunrise’s cash position. He was in charge of Sunrise’s investor relations department from mid-2004 until December 1, 2005.

³ The findings herein are made pursuant to Respondent’s offer of settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Party

3. **Sunrise** is a Delaware Corporation headquartered in McLean, Virginia. Its securities are registered pursuant to Section 12(b) of the Exchange Act, and the Company's common stock trades on the New York Stock Exchange under the symbol SRZ. Sunrise is a provider of residential communities and services for the elderly. Sunrise has a fiscal year end of December 31.

Facts

4. On November 4, 2004, as part of its earnings call for the 2004 third quarter, ended on September 30, 2004, Sunrise publicly stated that it estimated its EPS would be between \$.55 to \$.59 per share for the fourth quarter.

5. Sunrise improperly accounted for approximately \$2.8 million of 2004 bonuses so it could meet 2004 earnings guidance. Of the \$2.8 million, Sunrise failed to accrue at all for approximately \$1 million as of December 31, 2004. Abod helped determine the amount of the year-end bonus accrual and was aware that Sunrise was planning to pay \$1 million in 2004 bonuses in 2005 but had failed to accrue for them at 2004 fiscal year-end. Sunrise's failure to accrue for the bonuses did not comply with GAAP, because it was probable that Sunrise was going to pay the bonuses and could reasonably estimate the bonus amounts. Statement of Financial Accounting Standards No. 5 ("FAS 5") requires that "[a]n estimated loss from a loss contingency . . . shall be accrued by a charge to income" if it is probable that a liability has been incurred and the amount of loss can be reasonably estimated.

6. On March 7, 2005, Sunrise reported fourth quarter earnings of \$.57 per share. Sunrise's failure to treat the approximately \$1 million of bonuses paid in 2005 as a 2004 expense overstated Sunrise's EPS for the 2004 fourth quarter by approximately \$.03 (approximately 5%). Without the improper adjustment to the corporate bonus accrual account, Sunrise would have reported fourth quarter EPS of \$.54, \$.01 per share short of its fourth quarter EPS guidance.

7. On April 19, 2005, approximately two weeks after Sunrise's March 31, 2005 quarter ended, Abod prepared a spreadsheet entitled "Analysis of Q1 2005." The spreadsheet listed a number of adjustments "[n]eeded" to increase Sunrise's pre-tax income for the March 31 quarter by \$2.8 million. The spreadsheet listed adjustments that would allow Sunrise to increase EPS from \$.29 to \$.37, the low end of its EPS forecast made on March 7, 2005. The spreadsheet included an adjustment to eliminate the 2005 year-to-date corporate bonus accrual.

8. That same day, Abod instructed Sunrise employees to eliminate the 2005 corporate bonus accrual then reflected on Sunrise's books and records, improperly boosting Sunrise's earnings by \$725,000. This bonus accrual adjustment was not in accordance with GAAP because it was not the result of a determination that the payment of 2005 corporate bonuses was not probable and reasonably estimable. If Sunrise had not improperly reversed the bonus accrual, it would have missed its EPS forecast for the quarter by approximately \$.02 per share.

9. On March 24, 2008, Sunrise filed a Form 10-K for the year ended December 31, 2007. The filing included restated audited financial statements for fiscal years 2004 and 2005, audited financial statements for fiscal year 2006, and unaudited quarterly financial information for fiscal years 2005 (restated) and 2006. The restatement corrected the improper accounting for the bonus accruals described in paragraphs 4-8 above.

Violations

1. Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13 require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. Exchange Act Rule 12b-20 further requires that, in addition to the information expressly required to be included in such reports, the issuer must include such additional material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. The obligation to file such reports also embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). Exchange Act Rules 13a-1 and 13a-13 also require issuers to file annual and quarterly financial statements that comply with Regulation S-X. Regulation S-X, Section 4-01(a) mandates that financial statements and the accompanying notes be presented in conformity with GAAP. No showing of scienter is necessary to establish a violation of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder. *See SEC v. McNulty*, 137 F.3d 732, 740-741 (2d Cir. 1998).

2. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets. No showing of scienter is necessary to establish a violation of Exchange Act Sections 13(b)(2)(A) or 13(b)(2)(B). *See McNulty* at 740-741.

3. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly falsify any such book, record, or account or circumvent internal controls. Exchange Act Rule 13b2-1 also prohibits the falsification of any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

4. By failing to accrue for bonuses as required by FAS 5, misstating its financial results in its Form 10-K for its fiscal year 2004 and in its Form 10-Q for the first quarter of 2005, Sunrise violated Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

5. Abod helped determine the amount of the 2004 year-end bonus accrual and was aware that Sunrise was planning to pay \$1 million in 2004 bonuses in 2005 but had failed to accrue

for them at 2004 fiscal year-end. Abod also instructed Sunrise employees to make an adjustment to eliminate the corporate bonus accrual account for the first quarter of 2005, ended on March 31, 2005. Abod knew or should have known that Sunrise's Form 10-K for the year ended December 31, 2004 and Form 10-Q for the quarter ended March 31, 2005 materially overstated Sunrise's reported net income. As a result of his conduct, Abod willfully⁴ violated Exchange Act Section 13(b)(5) and Rule 13b2-1 thereunder and caused and willfully aided and abetted Sunrise's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1 and 13a-13 thereunder.

Findings

1. Based on the foregoing, the Commission finds that Abod willfully violated Exchange Act Section 13(b)(5) and Rule 13b2-1, and caused and willfully aided and abetted Sunrise's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

2. Based on the foregoing, the Commission finds that Abod willfully violated and willfully aided and abetted the violation of provisions of the federal securities laws and rules thereunder within the meaning of Exchange Act Section 4C and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Abod shall cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1, and from causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. Abod is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After one year from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
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