

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95609 / August 25, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4325 / August 25, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21003

In the Matter of

James H. Roberts

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against James H. Roberts (“Respondent”).

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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Granite Construction Inc. ("Granite") is a publicly traded company that specializes in the construction of infrastructure projects. From at least 2017 through the third quarter of 2019 ("the Relevant Period"), Granite recognized revenue in incorrect periods with respect to multiple projects managed by its significant subdivision, the Heavy Civil operating group ("Heavy Civil Group"). As a result, Granite materially overstated revenue for certain reporting periods and understated revenue in other periods.

2. In February 2021, Granite announced material misstatements in its financial statements for its Forms 10-K for fiscal years 2017 and 2018 and its Forms 10-Q for each of the quarters of 2018 and 2019.

3. James H. Roberts, who was Granite's Chief Executive Officer during the Relevant Period, received bonuses, incentive-based compensation, and equity-based compensation during the 12-month periods following the filings containing financial results that Granite misstated as a result of misconduct. Roberts, who is not being charged with misconduct, has not reimbursed Granite for this compensation as required under Section 304(a) of the Sarbanes-Oxley Act of 2002.

Respondent

4. **James H. Roberts** is 65 years old and resides in Carmel, California. Roberts was Granite's Chief Executive Officer and President from 2010 until September 2020.

Related Entity

5. **Granite Construction Inc.** is a Delaware corporation headquartered in Watsonville, California that was founded in 1922. Granite's common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934. Granite's stock has been publicly traded since 1990. Granite's common stock trades on the New York Stock Exchange. Granite files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

¹ 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.

Facts

6. On March 2, 2020, Granite announced that its Audit Committee was conducting an internal investigation into the accuracy of the Heavy Civil Group's prior-period reporting, and that it would need to delay the filing of its Form 10-K for fiscal year 2019.

7. On February 19, 2021, Granite announced material misstatements in its financial statements and related disclosures for fiscal years 2017 and 2018 and the quarterly reports for 2018 and 2019 because of errors in the Heavy Civil Group's project forecasts.

8. On February 22, 2021, Granite restated its previously issued consolidated financial statements for its Forms 10-K for fiscal years 2017 and 2018 and its Forms 10-Q for each of the quarters of 2018 and 2019. The restatement corrected misstatements that overstated its revenue for certain periods and understated its revenue in other periods.

9. The restatement of Granite's revenues resulted from its improper deferral of expected costs in quarterly project forecasts for several of the Heavy Civil Group's largest projects. According to Granite's critical accounting policies disclosed in its Forms 10-K for fiscal years 2017 and 2018, the company recognized quarterly and annual revenues under long-term construction contracts using a percentage of completion ratio, which analyzed actual incurred costs and total expected costs for each construction project, to determine how much revenue was earned by Granite during that period. Thus, an increase in the total expected costs from period to period would result in lower earned revenues.

10. The Senior Vice President of the Heavy Civil Group, while acting on behalf of Granite, approved and certified project forecasts despite, among other things, being presented with warning signs that the project forecasts understated costs, and thus overstated revenue, during multiple quarters. These inaccurate project forecasts caused Granite to recognize revenue earlier in incorrect periods for fiscal years 2017 and 2018.

Compensation of CEO Roberts

11. During the 12-month periods that followed the filing of financial statements in Granite's quarterly and annual reports requiring restatement, Roberts received bonuses, incentive-based compensation, and equity-based compensation.

12. Roberts has not reimbursed these amounts to Granite.

Violation

13. As a result of the conduct described above, Roberts violated Section 304 of the Sarbanes-Oxley Act of 2002, which requires the chief executive officer and chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for (1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission of the financial document

embodying such financial reporting requirement and (2) any profits realized from the sale of securities of the issuer during that 12-month period. Section 304 does not require that a chief executive officer or chief financial officer engage in, or be aware of, misconduct to trigger the reimbursement requirement.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations of Section 304(a) of the Sarbanes-Oxley Act of 2002.

B. Roberts shall, within 365 days of the entry of the Order, reimburse Granite for a total of \$629,000 pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002. Payment of the reimbursement shall be made in the following installments: (1) a payment of \$62,900 within 21 days of the entry of this Order; (2) a payment of \$62,900 on or before January 30, 2023; (3) a payment of \$62,900 on or before April 30, 2023; and (4) a payment of \$440,300 within 365 days of the entry of this Order. Payments shall be deemed made on the date they are received by Granite and shall be applied first to post order interest, which shall accrue pursuant to SEC Rule of Practice 600 on any unpaid amounts due after 21 days of entry of the Order. Prior to making the final payment herein, Respondent shall contact the staff of the Commission for the amount due for the final payment. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. Payments made pursuant to this payment schedule shall be sent to Granite.

In addition, within 365 days of the entry of the Order, Roberts will return to Granite 27,527 shares he received as incentive compensation (or the cash equivalent value calculated based on the last closing price as of June 17, 2022). Roberts shall simultaneously deliver proof of satisfying each reimbursement obligation detailed herein to Monique C. Winkler, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by

Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary