

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98492 / September 25, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4460 / September 25, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21710

In the Matter of

DAVID C. POWELL

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF 1934 AND
RULE 102(e) OF THE COMMISSION’S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against David C. Powell (“Respondent” or “Powell”) pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

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 . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(ii) 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 be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

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 Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:³

A. RESPONDENT

1. **David C. Powell**, age 50, is a resident of Atlanta, Georgia. Powell previously was licensed in Ohio as a certified public accountant (“CPA”) between June 15, 2001, and December 31, 2008, and has never been licensed in any other jurisdiction.

B. FACTS

2. From 2005 to July 2020, Powell was employed in the Atlanta office of a public accounting firm (the “Accounting Firm”), within its audit and assurance services division. In 2013, Powell was promoted to Director, and was authorized by the Accounting Firm to sign audit reports for private company audit engagements in the name of the Accounting Firm. In 2019, Powell’s signing authority was taken away for performance-related reasons.

3. As an accountant within the audit and assurance services division, the Accounting Firm required Powell to hold a CPA license in the state of Georgia. Powell represented to the Accounting Firm that he did hold a CPA license in Georgia, as required during the Accounting Firm’s annual certification process. Contrary to these annual certifications, including, on at least one occasion, the provision of a falsified license, Powell had never held a license in the state of Georgia and was not actively licensed in any jurisdiction after 2008.

4. During his time as a Director, Powell represented that he performed numerous audits and signed audit reports for five non-public clients, purportedly on behalf

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.

of the Accounting Firm. Powell also represented to these clients that the audits were “conducted in accordance with auditing standards generally accepted in the United States of America (“GAAS”).” The Accounting Firm was unaware that Powell was conducting these audits and issuing these audit reports (the “unauthorized audits”). Moreover, for these unauthorized audits, Powell did not comply with GAAS. For example, Powell failed to obtain annual engagement letters, prepare audit documentation, and ensure proper review sign-off on workpapers and other final reports.

5. Powell took affirmative steps to conceal the unauthorized audits from the Accounting Firm, including making misrepresentations about the status of these clients on reports circulated to his supervisors and falsifying invoices related to the work performed for these clients. Powell also hid the unauthorized status of these audits from each of the clients.

6. Powell performed unauthorized audits from 2013 until 2019. Neither the Accounting Firm nor any of the clients who received unauthorized audit reports discovered the nature of Powell’s activity until after the Accounting Firm terminated him in July 2020 for unrelated performance-based reasons.

7. Powell also directly engaged in the due diligence process for a private, unregistered securities offering by a client, purportedly on behalf of the Accounting Firm. Specifically, Powell made representations regarding an unauthorized audit Powell had performed, including that the unauthorized audit was performed by the Accounting Firm in accordance with GAAS.

Violations

8. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice state that the Commission may deny to any person the privilege of appearing or practicing before it if such person is found “to be lacking in character or integrity or to have engaged in unethical or improper professional conduct.” Section 4C(b)(1) and Rule 102(e)(1)(iv)(A) define improper professional conduct to include “[i]ntentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards.”⁴

9. Powell’s falsification of his CPA license to the Accounting Firm, his deficient performance of unauthorized audits, the misrepresentations he made to conceal the unauthorized audits from the Accounting Firm, and his participation in a due diligence process involving the unauthorized audits demonstrate that Powell is lacking in character and integrity and that he engaged in unethical and improper professional conduct.

⁴ Such standards include, among others, GAAS and the AICPA Code of Professional Conduct and Commission Regulations. *Amendment to Rule 102(e) of the Commission’s Rules of Practice*, 63 Fed. Reg. 57163, 57167 (Oct. 26, 1998).

10. Specifically, with respect to the unauthorized audits, Powell represented to his clients that the audits were conducted in accordance with “auditing standards generally accepted in the United States of America.” Yet, the unauthorized audits failed to comply with GAAS. Further, Powell failed to comply with Section 0.300.040 of the AICPA Code of Professional Conduct, which provides, among other things, that “[t]o maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity.”

Findings

11. Based on the foregoing, the Commission finds that Powell lacks character and integrity and engaged in unethical and improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) 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 Respondent Powell’s Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

Respondent Powell is denied the privilege of appearing or practicing before the Commission as an accountant.

By the Commission.

Vanessa A. Countryman
Secretary