

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

Admin. Proc. File No. 3-21841

In the Matter of the Application of

AHMED MOHIDIN, CPA, and
GEORGE WEINBAUM, CPA,

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S
REPLY IN SUPPORT OF ITS MOTION TO TERMINATE STAY IMPOSED
BY SECTION 105(e)(1) OF THE SARBANES-OXLEY ACT OF 2002**

April 1, 2024

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I. INTRODUCTION

On March 1, 2024, the Public Company Accounting Oversight Board (Board or PCAOB) filed a motion under Section 105(e) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7215(e) (Sarbanes-Oxley), and Rule of Practice 401(e) of the Securities and Exchange Commission (Commission or SEC), 17 C.F.R. § 201.401(e), to lift the stay on the Board's imposition of associational bars and censures on Applicants Ahmed Mohidin, CPA (Mohidin), and George Weinbaum, CPA (Weinbaum), pending Commission review of the Board's disciplinary action. Applicants did not timely file, or otherwise seek any extension of time to file, an opposition to the motion, which was due on March 8, 2024. *See* 17 C.F.R. §§ 201.154(b), 160(a). Instead, Mohidin filed his response on March 27, 2024, and Weinbaum has never filed a response.

Mohidin's contentions in response to the PCAOB's motion are meritless and do nothing to detract from the strong need to (1) lift the stay of sanctions that are the subject of the motion and (2) permit the Board to publicly report its decisions on its website. Absent effectiveness of the Board-ordered bar from associating with a registered public accounting firm and censure, Mohidin will continue to pose a high risk of harm to investors. Highlighting this risk, Mohidin continues to indicate in this appeal that he did nothing wrong, despite plainly conceding fundamental wrongdoing in a sworn declaration before the Board. Yet Mohidin's opposition does not come close to shifting the balance of factors cited in the PCAOB's motion in favor of continued operation of the stay.^{1/}

^{1/} In this reply, the PCAOB responds directly to Mohidin's March 27 opposition, which does not contest the legal standard applied in the PCAOB's motion to lift the stay pending decision of an appeal of Board action to the Commission and in a prior Commission opinion granting such a motion. We will submit the additional briefing on the legal standard for lifting the stay that the Commission requests in its March 26, 2024 order according to the briefing schedule in that order.

II. ARGUMENT

A. Mohidin's Opposition to Lifting the Stay Is Meritless

The contentions in Mohidin's opposition do not diminish the strong need, in this case, to terminate the statutory stay with respect to the non-monetary sanctions. Of Mohidin's contentions, one appears to relate to the availability of the relief sought by the PCAOB, three relate to the likelihood of success on the merits, one relates to irreparable injury, and two relate to harm to the public. We address each below.

1. Lifting of the Stay During Pendency of the Appeal is Available under the Statute and SEC Rule

Mohidin erroneously contends that termination of the stay is inappropriate because the "SEC did not start its review" in this case, noting that the Commission lifted the stay in *Mark E. Laccetti, CPA*, only "after the SEC ruled against him not before." Opposition (Opp.) 1. As discussed in the Board's motion, both Sarbanes-Oxley and SEC Rules of Practice authorize lifting the stay during the pendency of an appeal to the Commission. *See* Sarbanes-Oxley Section 105(e)(2) (directing the Commission to "establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection") (emphasis added); 17 C.F.R. § 201.401(e) ("[a]ny person aggrieved by a stay of an action by the Board entered in accordance with 15 U.S.C. § 7215(e) for which review has been sought pursuant to [SEC Rule of Practice 440] . . . may make a motion to lift the stay") (emphasis added).^{2/}

^{2/} In addition, Sarbanes-Oxley Section 105(e)(1) and SEC Rule of Practice 401(e)(2) provide that the Commission may "summarily" order, without "notice and opportunity for hearing," that "no such stay shall continue to operate," and Rule of Practice 401(e)(1) states that the Commission may, "at any time," on its own motion "determine whether to lift the automatic stay." *See Mark E. Laccetti, CPA*, SEC Rel. No. 34-79138, 2016 WL 6137057, *2 (Oct. 21, 2016) (stating that Sarbanes-Oxley Section 105(e)(1) "provides the Commission with broad

Thus, Sarbanes-Oxley and SEC Rules of Practice expressly contemplate, and authorize, the Commission’s lifting of the stay in appropriate cases pending review of Board action. The stay is a function of the Commission’s oversight of the Board, not a privilege to be maintained inflexibly for the duration of an appeal, and may be lifted by the Commission based on the circumstances of a particular matter. *See* Sarbanes-Oxley Sections 107(a) & (c)(2)(A); *see generally Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 486 (2010) (describing Sarbanes-Oxley as “plac[ing] the Board under the SEC’s oversight, particularly with respect to the issuance of rules or the imposition of sanctions (both of which are subject to Commission approval and alteration)”); *Mark E. Laccetti, CPA*, SEC Rel. No. 34-79138, 2016 WL 6137057, *1 (Oct. 21, 2016). Nor does the Commission’s order in *Laccetti* indicate any preference for the timing of lifting the stay, as Mohidin implies, as there was no suggestion that the statutory stay be lifted during the pendency of that appeal. *See Laccetti*, 2016 WL 6137057, *1.^{3/}

discretion to lift the automatic stay summarily”); *see also Allan v. SEC*, 577 F.2d 388, 391 (7th Cir. 1978) (“[a]uthority for the SEC to ‘summarily’ determine the question of a stay [of New York Stock Exchange action pending appeal] demonstrates the breadth of discretion granted by Congress”).

^{3/} If Congress had intended that the statutory stay remain in place until the Commission disposed of the appeal, it certainly knows how to write such a provision, as former Exchange Act Section 15A(g) did just that. *See Otis & Co. v. NASD*, 84 F.Supp. 395, 398 (D.D.C. 1949) (“It is provided by statute that, if any registered security association shall take any disciplinary action against any member thereof, such action shall be subject to review by the . . . Commission, and such application to the Commission for review shall operate as a stay of such action until an order is entered upon such review.”); *see also Provision for Notices by Self-Regulatory Organizations of Disciplinary Sanctions; Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons*, SEC Rel. No. 34- 13726, 1977 WL 176035, *7 (July 8, 1977) (noting that “[t]he 1975 Amendments abrogated the automatic stay provisions for NASD [now FINRA] disciplinary actions which Section 15A(g) of the [Exchange] Act previously contained”); *Maloney Act*, Pub. L. No. 75-719, 52 Stat. 1070, 1073 (1938).

2. Mohidin Has No Likelihood of Success on the Merits

Mohidin essentially makes three claims relating to his likelihood of success on the merits of his appeal, all of which are insubstantial. First, he again incorrectly claims, as he did in his application, that this action is time-barred because “[t]he statute of limitations (SOL) has passed.” As discussed in the Board’s motion (at 15-16), Mohidin forfeited this claim. *See Canady v. SEC*, 230 F.3d 362, 365 (D.C. Cir. 2000). Furthermore, Mohidin’s opposition shows that he continues to fundamentally misapprehend a statute of limitations defense, assuming that the defense is based on the length of time between the underlying conduct and the present. This is apparent not only from his posing of questions in the opposition—“[h]ow could I invoke the SOL before the five year SOL ran out,” “what is the triggering event to begin the SOL”—but also from his citation of cases that refute his assumption. Opp. 2-3. As illustrated by each decision he cites (*id.*), such a defense is based on the timespan between the underlying conduct and the commencement of the action. Even if those statute of limitations decisions were to apply to the PCAOB, the timespan between the PCAOB’s December 20, 2019 order instituting disciplinary proceedings against Mohidin and the violations he was found to have committed is well inside of five years. *See* Index to the Record, Record Document (RD) 132 at 2-3.

Second, despite admitting violations before the Board, Mohidin now again contests his liability on the grounds that he “did not prepare, sign-off or review any documents in [the audit firm’s] audit binders.” Opp. 3. Yet liability under Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rules 5000 and 5301(a) is not contingent on whether the barred individual touches the official audit binder. As the Board explained, Mohidin’s “numerous, substantial, and persistent” activities in connection with eight issuer audits and reviews violated these provisions by

establishing that he acted as an associated person of a registered public accounting firm, under Sarbanes-Oxley Section 2(a)(9) and PCAOB Rule 1001(p)(i), while being barred from doing so.

Third, also unavailing is Mohidin’s claim that he did not receive any compensation for the audits and reviews while he was barred. The Board, however, did not predicate its findings of his violations upon the compensation prong of Sarbanes-Oxley Section 2(a)(9)(A) and PCAOB Rule 1001(p)(i) but rather upon the participation prong under those provisions. RD 132 at 6-7, 12-14. In its sanctions analysis, the Board considered that Mohidin “had a particular financial interest” in accommodating the issuer clients involved through his continued audit work for them, but Mohidin does not contest that fact. RD 142 at 10, 11 n.7.^{4/}

Thus, Mohidin is unable to counter the motion’s points that he is unlikely to succeed on the merits of his appeal and that the Board’s imposition of sanctions is unlikely to be overturned.

3. Mohidin Will Not Suffer Irreparable Injury

To establish irreparable injury, Mohidin “must show an injury that is ‘both certain and great’ and ‘actual and not theoretical.’” *Allen Holeman*, SEC Rel. No. 34-86769, 2019 WL 4044065, *1 (Aug. 26, 2019) (quoting *Wis. Gas Co. v. FERC*, F.2d 669, 674 (D.C. Cir. 1985)). The only harm asserted by Mohidin is a claim that, because the PCAOB reported its decision to the California State Board of Accountancy (CBA), the CBA will “piggyback[]” on the PCAOB’s order and impose sanctions that will result in him “not be[ing] able to practice public

^{4/} In a passing reference, Mohidin also disparages the Board’s use of the term “recidivist” to describe him. But that term is commonly used to describe a wrongdoer who continues to violate regulatory requirements. *See, e.g., The Dratel Grp. Inc.*, SEC Rel. No. 34-77396, 2016 WL 1071560, *15 n.89 (Mar. 17, 2016) (describing FINRA’s sanction guidelines, which state that “adjudicators should always consider a respondent’s disciplinary history in determining sanctions” and that “[a]n important objective of the disciplinary process is to deter and prevent future misconduct by imposing escalating sanctions on recidivists”) (citation omitted). As discussed in the motion (at 9-10), Mohidin has made no showing of selective prosecution.

accounting for the rest of my life thus depriving me of my livelihood.” Opp. 3-4. But Sarbanes-Oxley Section 105(d) directs that “the Board shall report the sanction” to “any appropriate State regulatory authority . . . with which such firm or person is licensed or certified,” irrespective of any stay on the imposition of such sanction. Whether the stay is lifted has nothing to do with whether the CBA is informed of the Board’s decision. Nor, in any event, does the CBA’s website show any reciprocal action against Mohidin, despite the Board having reached its decision three months ago. Any potential sanction by the CBA is thus theoretical. *See* CBA License Lookup, available at <https://www.dca.ca.gov/cba/consumers/license-lookup.shtml> (search “Mohidin”) (last visited Mar. 29, 2024).

Moreover, even if the CBA were to suspend or revoke Mohidin’s license as a CPA, his inability to engage in a particular line of business does not rise to the level of irreparable injury. *See The Dratel Grp., Inc.*, SEC Rel. No. 34-72293, 2014 WL 2448896, *5 (June 2, 2014); accord *Colley v. James*, 254 F. Supp. 3d 45, 69 (D.D.C. 2017) (“the loss of employment income does not necessarily establish irreparable harm—even when the loss is unrecoverable”). Overall, Mohidin makes no attempt to substantiate his injury, let alone establish that it is both certain and great. *See, e.g., Robbi J. Jones*, SEC Rel. No. 34-91045, 2021 WL 396767, *3 (Feb. 2, 2021) (stating that “[w]ithout submitting evidence about an inability to meet financial obligations or continue in business because of the bars, we cannot find that Applicants have established they will suffer irreparable harm”); *Paul H. Giles*, SEC Rel. No. 34-92177, 2021 WL 2419849, *4 (June 14, 2021) (finding “unspecific, speculative, and unsupported” claim of harm to applicant’s business was insufficient to establish irreparable harm).^{5/}

^{5/} It bears noting in this regard that a recent scholarly article undercuts any assumption that a PCAOB sanction is necessarily career ending. *See* Krishnan, Jagan and Li, Meng and Mehta, Mihir N. and Park, Hyun Jong,

The “necessity of protection to the public far outweighs any personal detriment” to Mohidin. *Associated Sec. Corp. v. SEC*, 283 F.2d 773, 775 (10th Cir. 1960).

4. Mohidin’s Attempts to Downplay the Public Interest in Lifting the Stay Are Unavailing

Mohidin makes two weak claims in contesting the public interest in lifting the stay. First, based on a market capitalization theory, Mohidin asserts that “small investors can’t be materially harmed by me or Mr. Weinbaum.” Mohidin’s claim suggests a fundamental misunderstanding of his role as auditor to safeguard the public, further underscoring the risk he poses to investors. “Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public.” *United States v. Young & Co.*, 465 U.S. 805, 810 (1984). Public auditors owe the same responsibility to comply with fundamental regulatory obligations, such as those at issue here, for all issuer audits and reviews. Those responsibilities are not subject to selective, discretionary disregard at the liberty of the auditor, and non-compliance with those obligations can “jeopardize the achievement of the objectives of the securities laws and can inflict great damage on public investors” by posing a threat to the investing public “more potent than the chisel or the crowbar.” *Touche Ross & Co. v. SEC*, 609 F.2d 570, 581 (2d Cir. 1979).

Second, without elaboration, Mohidin repeats a contention made by Weinbaum that the PCAOB “looked at nine of MJF’s audits and found no problem.” Opp. 4. Mohidin fails to explain how Weinbaum’s argument applies to Mohidin, who was barred from participating in any audit or review at the time. In any event, this matter involves Mohidin’s multiple violations

Consequences for Culpable Auditors (Nov. 8, 2023), available at SSRN: <https://ssrn.com/abstract=4627460> (finding that “90%” of PCAOB-sanctioned individuals from “non-Big 4 affiliated” firms in the study “obtain alternate employment” “within one year after the enforcement event” and that “77%” “obtain subsequent employment at other public accounting firms”).

of a bar order and the provision of false and misleading statements to the Board. In committing these violations, Mohidin repeatedly evaded an important investor protection safeguard and subverted the Board's regulatory processes. Even in this proceeding, as discussed in the motion, Mohidin continues to demonstrate a pattern of deceit and dishonesty unbecoming of an auditor.

In light of the seriousness of Mohidin's repeated misconduct, the Commission will powerfully advance the public interest by lifting the stay on the non-monetary sanctions.

B. Mohidin's Opposition is Untimely

Alternatively, Mohidin's opposition is untimely and should be rejected. SEC Rule of Practice 154(b) provides that an opposition to a motion "shall be filed within five days after service of the motion." Mohidin was served with the Board's motion on March 1, 2024. His opposition was therefore due no later than March 8, 2024. *See* 17 C.F.R. § 201.160(a) (time computation rule); *see also BDO China Dahua CPA Co.*, SEC Rel. No. 72753, 2014 WL 3827605, *1 n.2 (Aug. 4, 2014) (explaining that rule).

Mohidin, however, did not file an opposition during this period or request an extension of time to file. Nor does he now provide any explanation for his delay in filing his opposition 20 days late. Based on the timing of his opposition, Mohidin appears to have sent it only after the Commission issued an order dated March 26, 2024, served on the parties via the Electronic Filings in Administrative Proceedings system earlier in the day on March 27, 2024, requesting additional briefing on the statutory stay. *See Ahmed Mohidin, CPA*, SEC Rel. No. 34-99857, 2024 WL 1284562. Indeed, the Commission stated in that order that "[n]either Mohidin nor Weinbaum has responded to the PCAOB's motion." *Id.* at *1. Mohidin filed his opposition so late that it now overlaps with the briefing schedule set forth in the SEC's supplemental briefing request on the PCAOB's motion. Moreover, if Mohidin had filed his opposition on time (on

March 8, 2024), it would have been filed before the Commission issued its March 12, 2024 order scheduling the merits briefing in this appeal. *See Ahmed Mohidin, CPA*, SEC Rel. No. 34-99714, 2024 WL 1091211. Instead, his late filing interferes with that briefing as well.

Mohidin, having provided no explanation for his long delay in filing his opposition, has not met his burden of establishing that it should be accepted. As the Commission has repeatedly made clear, “a ‘party seeking to excuse an untimely filing bears the burden of showing that it is entitled to such relief’ and failure ‘to offer an acceptable excuse, or any excuse at all, for its failure’ to timely file alone warrants denial of the filing as untimely.” *Edward M. Daspin*, SEC Rel. No. 34-98554, 2023 WL 6307096, *1 n.8 (Sept. 27, 2023) (rejecting submission as untimely) (quoting *Helpeo, Inc.*, SEC Rel. No. 34-82551, 2018 WL 487320, *2 (Jan. 19, 2018), and *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987)). Mohidin’s *pro se* status is no excuse. *See, e.g., Casimer Anthony Polanchek*, SEC Rel. No. 34-95199, 2022 WL 2643541, *2 (July 5, 2022) (stating the Commission “expect[s] all parties, including those appearing *pro se*, to familiarize themselves with the Rules of Practice and to comply with procedural requirements”) (citation omitted).^{6/}

^{6/} Mohidin’s opposition should also be rejected for failing to conform to the Commission’s certification requirements. SEC Rules of Practice 151(d) and 151(e)(3) require parties filing papers with the Commission to, respectively, provide certifications stating (i) “the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service”; and (ii) that sensitive personal information “has been omitted or redacted from the filing.” Mohidin’s filing includes neither of these certifications, and is unsigned, presenting “separate and independent ground[s]” for rejecting his filing. *See, e.g., Daspin*, 2023 WL 6307096, *1 n.10.

III. CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Commission reject the meritless contentions in Mohidin's opposition, or alternatively reject the filing as noncompliant with SEC Rules of Practice, and lift the stay on the bar and censure imposed on him, as on Weinbaum, by the Board.

Dated: April 1, 2024

Respectfully submitted,

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Attachment

CERTIFICATION OF COMPLIANCE WITH SEC RULE 151

I, Jerome P. Sisul, certify that I have complied with Rule 151 of the Commission's Rules of Practice by filing this reply of the Public Company Accounting Oversight Board filed in support of its motion for termination of the stay imposed by Section 105(e)(1) of the Sarbanes-Oxley Act of 2002, which omits or redacts any sensitive personal information described in Rule of Practice 151(e).

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