

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57244 / January 31, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Rel. No. 2779 / January 31, 2008

Admin. Proc. File No. 3-12064

In the Matter of
GREGORY M. DEARLOVE, CPA

OPINION OF THE COMMISSION

CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Causing Violations of Reporting Provisions

RULE 102(e) PROCEEDING

Grounds for Remedial Action

Improper Professional Conduct

Certified public accountant acting as engagement partner engaged in improper professional conduct in the audit of the financial statements of a public company and caused company's violations of Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 12b-20. Held, it is in the public interest to order that accountant cease and desist from causing any violations or future violations of Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 12b-20, and to deny the accountant the privilege of appearing or practicing before the Commission with a right to reapply after four years.

APPEARANCES:

Joseph V. Sedita, Benjamin M. Zuffranieri, Michelle Merola Kane, and Robert J. Fluskey, Jr., of Hodgson Russ LLP, for Gregory M. Dearlove.

Nancy A. Brown, Alistaire Bambach, Jack Kaufman, and Panayiota K. Bougiamas, for the Division of Enforcement.

Appeal filed: August 30, 2006

Last brief received: December 4, 2006

Oral argument: July 24, 2007

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I. Introduction

Gregory M. Dearlove, a certified public accountant and formerly a partner with the accounting firm Deloitte & Touche LLP ("Deloitte"), appeals from the decision of an administrative law judge. The law judge found that Dearlove, who served as the engagement partner on Deloitte's audit of the financial statements of Adelphia Communications Corporation ("Adelphia"), a public company, for the fiscal year ended December 31, 2000, engaged in improper professional conduct within the meaning of Rule of Practice 102(e). 1/ The law judge found that Adelphia's financial statements were not in accordance with generally accepted accounting principles ("GAAP"), and that Dearlove violated generally accepted auditing standards ("GAAS"). 2/ The law judge also found that Dearlove was a cause of Adelphia's

1/ 17 C.F.R. § 201.102(e). Rule 102(e) permits the Commission to censure or deny, permanently or temporarily, the privilege of appearing or practicing before it to persons found to have engaged in improper professional conduct. As applied to accountants, "improper professional conduct" includes the following:

- (A) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or
- (B) either of the following two types of negligent conduct:
 - (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.
 - (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

Rule 102(e)(1)(iv), 17 C.F.R. § 201.102(e)(1)(iv). With the passage in 2002 of Section 602 of the Sarbanes Oxley Act, Pub. L. No. 107-204, 116 Stat. 745, 794, this language was codified in Exchange Act Section 4C, 15 U.S.C. § 78d-3.

2/ The law judge concluded that Dearlove engaged in repeated instances of unreasonable conduct as well as a single instance of highly unreasonable conduct under Rule 102(e)(iv)(B)(1). However, it is unclear which conduct constituted the single instance of highly unreasonable conduct. We therefore decline to consider whether any of Dearlove's conduct was "highly unreasonable." We limit ourselves to the question of whether Dearlove engaged in "repeated instances of unreasonable conduct, each resulting in a violation of applicable standards, that indicate a lack of competence to practice before the Commission." Rule of Practice 102(e)(iv)(B)(2).

violations of the reporting and recordkeeping provisions of the Exchange Act. ^{3/} The law judge permanently denied Dearlove the privilege of appearing or practicing in any capacity before the Commission. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II. Background

Adelphia, a cable television company incorporated in Delaware and headquartered in Coudersport, Pennsylvania, was founded in 1952 by John Rigas and went public in 1986. Adelphia had several large subsidiaries, some of which were public companies, and Adelphia consolidated its financial statements with those of its subsidiaries. The Rigas family retained control over Adelphia through their exclusive ownership of Adelphia's Class B shares. ^{4/} Whenever Adelphia raised capital by issuing Class A shares, the Rigas family would arrange for Adelphia to make a direct placement of Class B shares so that the Rigases' ownership and majority voting interests would not be diluted. The Rigases' Class B stock was convertible into shares of Class A stock. In addition to their controlling ownership of Adelphia, the Rigas family held five of nine seats on Adelphia's board of directors.

Members of the family also owned several dozen private companies ("Rigas Entities"). The largest of these Rigas Entities also were engaged in the cable television business, and Adelphia used its own personnel, inventory, trucks, and equipment to provide services to the customers of these companies. Adelphia, its subsidiaries, and the Rigas Entities shared a centralized treasury system organized using cost centers, in which the cash balances of each company were separately maintained. Adelphia charged a fee for providing the Rigas Entities management, accounting, and other services.

By 2000, Adelphia was among the largest cable television and telecommunications providers in the United States. Adelphia had grown substantially at the end of 1999 by acquiring several other cable companies (more than doubling Adelphia's cable subscribers), and Adelphia continued to grow in 2000. Concomitant with this growth in assets, Adelphia's debt increased significantly. Between 1996 and 2000, Adelphia, its subsidiaries, and some Rigas Entities entered as co-borrowers into a series of credit agreements. By 1999, Adelphia and the Rigas Entities had obtained \$1.05 billion in credit; in 2000, they tripled their available credit and drew down essentially all of the funds then available under the agreements.

Deloitte served as the independent auditor for Adelphia, one of its largest audit clients, from 1980 through 2002. The audits were complex. Several of Adelphia's subsidiaries filed their own Forms 10-K, and Adelphia frequently acquired other companies. For several years, Deloitte had concluded that the Adelphia engagement posed a "much greater than normal" risk of

^{3/} 15 U.S.C. §§ 78m(a), 78m(b)(2)(A).

^{4/} Class A shares each received one vote; Class B shares each received ten.

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