

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MEMBER REGULATION,

Complainant,

v.

GREMO INVESTMENTS, INC.
(CRD No. 132121),

Respondent.

Expedited Proceeding
No. FPI100016

STAR No. 20100229622

Hearing Officer – MC

HEARING PANEL DECISION

September 17, 2010

Respondent failed to file its annual audit report prepared by an independent public accountant registered with the Public Company Accounting Oversight Board as required by Exchange Act Section 17(e) and SEC Rule 17a-5, in violation of FINRA Rule 2010. Respondent is suspended from FINRA membership until the report is filed, fined \$1,000, and assessed costs.

Appearances

Mario T. Price, Counsel, Washington, DC, for the Department of Member Regulation.

Edward J. Gremo, Jr., President, Gremo Investments, Inc., North Aurora, IL, for Respondent.

DECISION

I. Procedural History

This Expedited Proceeding originated when, on May 3, 2010, the Department of Member Regulation (“Member Regulation”) issued a Notice of Suspension (“Notice”) to Respondent Gremo Investments, Inc. (“GII”).¹ The Notice stated that, pursuant to FINRA Rule 9552, GII’s

¹ The Notice is Complainant’s Exhibit CX-1. In this Decision, “CX” refers to Complainant’s exhibits; “PHC Tr.” refers to the transcript of the pre-hearing conference held on June 14, 2010; and “Tr.” refers to the transcript of the hearing.

FINRA registration would be suspended because the firm failed to file an annual audit conducted by an accounting firm registered with the Public Company Accounting Oversight Board (“PCAOB”). In response to the Notice, on May 24, 2010, GII filed a hearing request pursuant to Rule 9559. The hearing was held by telephone on July 12, 2010, before a FINRA Hearing Panel consisting of a Hearing Officer and two current members of the District 8 Committee.

II. Factual Findings and Legal Conclusions

SEC Exchange Act Rule 17a-5 requires every registered broker-dealer to file annually a report audited by an independent public accountant. Failure to comply with SEC Rule 17a-5 violates FINRA Conduct Rule 2010.² In 2002, for the stated purpose of protecting investors by improving the accuracy of public disclosures, the Sarbanes-Oxley Act of 2002 (the “Act”) created the PCAOB and, pursuant to Exchange Act Section 17(e), mandated that the required annual audit be conducted by an accounting firm registered with the PCAOB.

GII has been a FINRA member since October 1, 2004.³ It is a registered broker-dealer with a net capital requirement of \$5,000.⁴ GII’s approved business activities are limited to the sales of mutual funds and variable life insurance or annuities.⁵

The deadline for GII to file its 2009 annual audit was November 30, 2009. The firm requested a month-long extension, which was granted, and filed an audited financial statement on December 31, 2009.⁶

² *E. Magnus Oppenheim & Co.*, Exch. Act. Rel. No. 51, 2005 SEC LEXIS 764 at *7 (Apr. 6, 2005) (applying former NASD Conduct rule 2110).

³ Tr. 62.

⁴ Tr. 63-64; CX-8.

⁵ Tr. 64; CX-8.

⁶ Tr. 64-65.

The audit was conducted by Apple Accounting & Financial Services (“Apple”),⁷ a firm that is not registered with the PCAOB.⁸ Consequently, pursuant to Section 4(g) of Schedule A to FINRA’s By-Laws, on April 20, 2010, FINRA deemed the audit of GII incomplete and thus not to have been filed.⁹ This, in turn, caused FINRA to issue the Notice of Suspension to GII.

There is no dispute that GII failed to file a 2009 fiscal year annual audit prepared by a PCAOB-registered accounting firm. Neither is there any disagreement that the firm fully understood that it was required to do so.¹⁰

At the outset of the hearing, however, GII claimed that the United States Supreme Court recently ruled the Act unconstitutional, thereby invalidating the requirement that the mandatory annual audits be conducted by public accounting firms registered with the PCAOB. GII argued that because the PCAOB had been ruled unconstitutional, the case should be dismissed.¹¹ The Hearing Officer ruled that the constitutionality of the Act was not an issue properly before the Hearing Panel, and that in any event, the Supreme Court did not declare the Act unconstitutional or otherwise invalidate the PCAOB.¹²

⁷ Tr. 66.

⁸ Tr. 66-67.

⁹ CX-1; Tr. 67-69.

¹⁰ At the hearing, FINRA Senior Regulatory Coordinator Shazad Sultan testified that after the Notice of Suspension was issued to GII, he spoke with the firm’s president, who confirmed that he was aware of the requirement that the firm’s audit had to be conducted by a PCAOB-registered accounting firm. Tr. 70, 76. As recently as June 14, 2010, GII’s president indicated he intended to explore locating and retaining the services of a PCAOB-registered accounting firm to conduct an audit and prepare a report. Member Regulation expressed its willingness to postpone the hearing, if necessary, to allow GII additional time to submit an acceptable annual report. PHC Tr. 14-18.

¹¹ Tr. 6-8.

¹² Tr. 8-9. The case GII referred to is *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 2010 U.S. LEXIS 5524 (2010). In it, the Supreme Court held that the limitations imposed by the Act on removal of the members of the PCAOB violate the Constitution’s separation of powers, and are therefore unconstitutional. *Id.* at **3154-55. The Court also held that “the unconstitutional tenure provisions [of the Act] are severable from the remainder of the statute” and that the other provisions of the Act remain “fully operative as a law” with the tenure restrictions excised. Thus, contrary to GII’s claims, the Court explicitly sustained the constitutionality of the rest of the Act and held that “the existence of the [PCAOB] does not violate the separation of powers.” *Id.* at **3161-62.

At the hearing, Maurice Birt, a licensed certified public accountant whose firm, Apple, prepared GII's annual audits in the past, testified that he applied for PCAOB registration in August 2009.¹³ For a period of months thereafter, Birt said he was repeatedly told to redraft and resubmit the application.¹⁴

While Apple's application for PCAOB registration was pending, on December 29, 2009, Birt completed the 2009 audit of GII.¹⁵ Edward J. Gremo, Jr., president of GII, testified that he immediately delivered to FINRA and the SEC the 2009 fiscal year annual audit report prepared by Apple, expecting that approval of Apple's application for PCAOB registration was imminent,¹⁶ and that the audit report would comply with the requirements of the Act.¹⁷ Gremo conceded, however, that when he filed GII's 2009 annual audit report, he knew Apple was not registered with the PCAOB as required.¹⁸ Ultimately, Apple's application for registration was denied because it had conducted the 2009 audit of GII without being registered with the PCAOB.¹⁹

Gremo testified that GII did not subsequently submit its 2009 fiscal year annual audit prepared by a PCAOB-registered accounting firm because it could not afford to do so. According to Gremo, Apple charged \$750 to conduct GII's annual audit,²⁰ but PCAOB-

¹³ Tr. 88, 91, 93; CX-4.

¹⁴ Tr. 91-92; CX-4.

¹⁵ Tr. 98.

¹⁶ Tr. 108-110.

¹⁷ Tr. 112.

¹⁸ Tr. 116-17.

¹⁹ Tr. 93, 101-02.

²⁰ Tr. 113.

registered firms would charge \$5,000 to \$30,000. Gremo claimed that GII would be unable to pay that much for the audit and still retain sufficient funds to meet its net capital requirement.²¹

Based upon these facts, the Hearing Panel finds that GII failed to file its 2009 fiscal year annual audit prepared by a public accounting firm registered with the PCAOB, in violation of SEC Exchange Act Section 17(e) and Rule 17a-5, and FINRA Conduct Rule 2010.

III. Sanctions

Member Regulation recommends imposition of the sanctions described in the Notice. These sanctions include suspension until such time as GII files its fiscal 2009 annual audit prepared by a PCAOB-registered accounting firm,²² and a fine of \$1,000.²³

GII requests that the Hearing Panel “put into abeyance” the PCAOB’s denial of registration to Apple, and impose a late fine of \$100.²⁴

The Hearing Panel finds that the recommended sanctions proposed by Member Regulation are appropriate. The Hearing Panel lacks the authority to grant GII’s request with respect to the PCAOB denial of Apple’s registration application. As for a reduction of the fine, the Hearing Panel finds that GII has failed, since December 29, 2009, to file its 2009 fiscal year annual audit as required, and has presented no persuasive reason to reduce the fine below the level recommended by Member Regulation, as specified in the Notice of Suspension, and required by Section 4(g), Schedule A of FINRA’s By-Laws.

²¹ Tr. 114-15. GII raised two other arguments: (i) that the PCAOB improperly denied registration to Birt and Apple; and (ii) that because other broker-dealers have been granted exemptions from the requirement, the Hearing Panel should grant an exemption to GII. Tr. 130-32, 135-36. As for the first argument, the Hearing Panel has no authority to address a denial of registration by the PCAOB. As for the second, GII provided no rationale upon which to base an exemption for GII from complying with the requirements of the Act.

²² FINRA Rule 9552.

²³ The fine consists of an assessment of \$100 for each day the required audit was not filed timely, not to exceed 10 business days, pursuant to Section 4(g), Schedule A of FINRA’s By-Laws.

²⁴ Tr. 131, 136.

IV. Conclusion

GII is suspended from FINRA membership for failing to file its 2009 fiscal year annual audit report prepared by a public accounting firm registered with the PCAOB, in violation of Conduct Rule 2010. The suspension will be effective upon the issuance of this Decision and will remain effective until GII files a report complying with the requirements of SEC Exchange Act Rule 17a-5 and Exchange Act Section 17(e). Pursuant to Section 4(g) of Schedule A to FINRA's By-Laws, GII is also assessed a fine of \$100 for each day its 2009 fiscal year annual audit was not filed timely, not to exceed 10 business days, for a total fine of \$1,000. Furthermore, pursuant to Procedural Rule 9559(n)(2), GII is ordered to pay costs in the amount of \$1,605, which includes an administrative fee of \$750 and the cost of the hearing transcript. The costs shall be due as of a date established by FINRA.²⁵

If GII files an acceptable annual audit report prepared by a PCAOB-registered accounting firm, pursuant to Procedural Rule 9552(f), it may apply to Member Regulation for termination of the suspension.

HEARING PANEL.

By: Matthew Campbell
Hearing Officer

Copies to:

Edward J. Gremo, Jr. (*via FedEx, electronic and first-class mail*)
Mario T. Price, Esq. (*via electronic and first-class mail*)
William Jannace, Esq. (*via electronic mail*)
Daniel M. Sibears, Esq. (*via electronic mail*)

²⁵ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.