

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 52959 / December 15, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2354 / December 15, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-12126

In the Matter of

GILBERT BERGSMAN, CPA,
and
LEE LEVINSON, CPA,

Respondents.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO 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 Gilbert Bergsman, CPA, and Lee Levinson, CPA, (“Respondents” or “Bergsman and Levinson”) pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(1) provides, in pertinent part, that:

The Commission may ... deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found ... to have engaged in ... improper professional conduct ... [W]ith respect to persons licensed to practice as accountants, “improper professional conduct” ... means:

.....

(B) Either of the following two types of negligent conduct:

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Public Administrative Proceedings Pursuant to 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 Respondents’ Offers, the Commission finds² that:

A. RESPONDENTS

Gilbert Bergsman was a partner at the accounting firm of Eichler Bergsman & Co., LLP, and a successor firm, Weinick Sanders Leventhal & Co., LLP (“Weinick Sanders”), in New York, New York, since 1991. Since July 2005, he has been a partner at Raich Ende Malter & Co. LLP in New York, New York. Bergsman is a certified public accountant licensed in New York and Louisiana. Bergsman was the engagement partner who supervised the quarterly reviews and annual audit of the financial statements of eSafetyworld, Inc. (“eSafety”) during its fiscal year 2001 (ended June 30, 2001).

Lee Levinson worked as an audit manager at Eichler Bergsman & Co., LLP, and a successor firm, Weinick Sanders, since 1998. Since July 2005, Levinson has been a manager at Raich Ende Malter & Co. LLP in New York, NY. Levinson has been primarily responsible for audit and review engagements, and for reviewing the work of other accountants at the firm. Levinson is a certified public accountant in New York. He was the auditor responsible for conducting the quarterly reviews and annual audit of eSafety’s fiscal 2001 financial statements.

B. OTHER RELEVANT ENTITIES

eSafetyworld, Inc. is a Nevada corporation with its principal place of business in Bohemia, New York. eSafety’s common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act.

* * * *

(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.

² The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Eichler Bergsman & Co., LLP (“Eichler Bergsman”) was an accounting firm in New York, New York during the relevant time period. On January 1, 2004, it merged with Weinick Sanders, another accounting firm in New York, New York. Eichler Bergsman offered accounting services including auditing, reviews, compilations, tax services, tax advice, tax preparation, and general business advice. Eichler Bergsman had four partners and twelve employees.

C. FACTS

1. Improper Professional Conduct

a. During fiscal 2001, eSafety started a new line of business, involving business consulting services. In exchange for services, eSafety was to receive cash or stock from its clients – generally start-up companies with no income or established business. eSafety’s management believed it would receive stock from its clients and valued all shares it was to receive arbitrarily at \$0.25 per share. eSafety’s valuation of the shares it was supposedly to receive as compensation was speculative for revenue recognition purposes, since most of the companies did not have the ability to pay in cash, and there was no established market for the shares of the consulting clients, none of which were publicly traded, and many of which were start-up companies or entities not yet in existence. eSafety claimed to recognize revenue for these services on a percentage-of-completion basis, but there was no basis to determine the percentage of completion, given the vagueness of the consulting arrangements. These consulting revenues were material in that they comprised approximately 60% of eSafety’s total revenues for the first through third quarters of fiscal 2001, 84% of fourth quarter revenues, and approximately 69% of fiscal 2001 revenues. In its financial statements, eSafety did not report the consulting revenues as a separate business segment, except in footnotes which did not disclose the dollar amounts.

b. Bergsman and Levinson performed quarterly reviews and issued quarterly review reports for eSafety’s financial statements for the quarters ended September 30, 2000, December 31, 2000, and March 31, 2001, which were included in filings eSafety made with the Commission on Forms 10-QSB. During those quarterly reviews, Bergsman and Levinson failed to make adequate inquiries into eSafety’s recognition of its consulting revenues. They did not adequately assess whether eSafety had implemented internal controls for a newly adopted accounting policy concerning a new, material revenue stream, and they conducted no communications with eSafety’s audit committee during the quarterly reviews concerning the newly adopted revenue recognition policy. Nonetheless, Eichler Bergsman issued quarterly review reports stating it was not aware of any material modifications to be made to the financial statements in order to conform with generally accepted accounting principles (“GAAP”).

c. Eichler Bergsman audited eSafety’s financial statements to be included in eSafety’s Form 10-KSB for eSafety’s fiscal year ended June 30, 2001. During the audit, Bergsman and Levinson concluded that revenue recognition for consulting did not comply with GAAP, and therefore all consulting revenues recognized in the three prior quarters should be reversed and deferred, because the stock that eSafety was to receive as compensation from its consulting clients had no determinable value and eSafety should not have recognized the revenues. During the course of a dispute with eSafety concerning the recognition of the revenue, Eichler Bergsman

resigned, but withdrew the resignation after eSafety agreed to adjust its financial statements, and reverse the previously recognized \$880,000 in consulting revenues. Eichler Bergsman ultimately resigned its engagement in 2002 for the reasons set forth in eSafety's February 20, 2002 Form 8-K.

d. Despite its agreement to reverse the \$880,000 in consulting revenues, eSafety did not restate its quarterly financial statements to reverse the consulting revenues recognized for the quarters ended September 30, 2000, December 31, 2000, and March 31, 2001. Statement on Auditing Standards ("SAS") 71 and SAS 1 required Bergsman and Levinson to investigate whether facts requiring the reversal of revenue existed at the time of the auditor's quarterly review reports and the effect of the facts on those reports. The primary facts leading to the conclusion that the revenues did not comply with GAAP existed at the time. The recognition of that revenue therefore represented an accounting error as defined by Accounting Principles Board Opinion No. 20, Accounting Changes. Accordingly, eSafety was required to restate its September 30, 2000, December 31, 2000, and March 31, 2001 financial statements. Nonetheless, eSafety failed to restate its quarterly financial statements, and Bergsman and Levinson allowed their quarterly review reports, which were included in eSafety's quarterly filings with the Commission, on eSafety's quarterly financial statements, to remain outstanding.

e. Bergsman and Levinson failed to carry out the fundamental audit procedure of confirming accounts receivable from the consulting clients. AU §330. The consulting revenues recognized were highly speculative and unsupported. The auditors did not assess the purported consulting clients' existence or their purported willingness and ability to pay for consulting services. Bergsman and Levinson also unreasonably failed to perform confirmations of the deferred revenue and related accounts receivable during the year-end audit of eSafety. In addition, Bergsman and Levinson failed to note in their audit report or to require disclosure in eSafety's financial statements of all related party relationships of eSafety officers and directors with the consulting clients, as required by GAAP. Statement of Financial Accounting Standards ("SFAS") No. 57, "Related Party Disclosures."

f. Bergsman and Levinson also failed to note in their review reports, or to require eSafety's recognition of consulting revenues to be reported as, a separate segment in eSafety's quarterly financial statements as required by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information."

g. In addition, during the fiscal 2001 audit, Eichler Bergsman did not appropriately audit eSafety's reversal and deferment of consulting costs associated with compensation of eSafety officers for general management of the company. When eSafety reversed and deferred the consulting revenues described above, eSafety also reversed and deferred costs for the compensation of its officers supposedly associated with those revenues. General management costs are administrative expenses, which cannot be deferred. Of the total deferred costs approximating \$373,000, general and administrative expenses constituted at least \$152,000 (or 41%). Therefore, eSafety should not have deferred these costs, but rather should have continued to treat them as period costs and expensed them as incurred, as originally recorded. Based on their earlier audit testing of eSafety's compensation costs, Levinson and Bergsman should have realized that the deferred costs included administrative expenses incurred in the management of eSafety.

Nevertheless, as part of their audit of these adjustments, Bergsman and Levinson failed to question the deferral of the administrative costs. As a result, eSafety understated its losses for fiscal year 2001 by at least 43% (assuming a 32% tax rate).

h. During the audit for eSafety's fiscal year ended June 30, 2001, Harbor Ridge Communications, Inc. ("Harbor Ridge") provided Eichler Bergsman with an audit confirmation indicating, among other things, that eSafety had made a loan of approximately \$473,288 to Harbor Ridge and that the loan was convertible to a 50% equity stake in Harbor Ridge. eSafety made a comparable representation. Except for these representations, Bergsman and Levinson's work papers contain no documentation to support the Harbor Ridge transaction, nor do they evidence any testing of the transaction or its substance, an understanding of the purposes of the payments, Harbor Ridge's status and relation to eSafety, or eSafety's ability to collect the purported loan. Accordingly, Bergsman and Levinson did not have a sufficient basis for concluding that the cash advances were loans to Harbor Ridge or that the cash advances were properly recorded. The payments to Harbor Ridge did not in fact constitute a loan, and those payments should have been expensed as incurred. As a result, eSafety understated its net loss for fiscal 2001 by 132% (assuming a 32% tax rate).

i. The conduct described above represents repeated instances of unreasonable conduct and failures to exercise due professional care by Bergsman and Levinson resulting in violations of applicable professional standards in the performance of their reviews and audit of eSafety's financial statements. AU §§ 230, 326, 9326.

2. Violations

a. Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before it to any person who is found to have engaged in improper professional conduct. With respect to persons licensed to practice as accountants, "improper professional conduct" may include negligent conduct evidenced by "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)(ii).

b. Respondents Bergsman and Levinson engaged in improper professional conduct by repeatedly engaging in unreasonable conduct, resulting in a violation of applicable professional standards that indicate a lack of competence to practice before the Commission. As discussed above, Respondents Bergsman and Levinson (i) failed to make adequate inquiries into eSafety's new revenue stream and the valuation thereof during the first three quarters of 2001; (ii) allowed their reports on eSafety's quarterly financial statements to remain outstanding despite eSafety's failure to reverse the consulting revenues recognized during the first three quarters of 2001; (iii) did not confirm accounts receivable from eSafety's consulting clients, and did not note or require disclosure of eSafety's related party relationships with eSafety's consulting clients; (iv) did not appropriately audit or require correction of eSafety's deferral of certain administrative costs; and (v) did not obtain sufficient competent evidence to conclude

that cash advances to Harbor Ridge were loans or investments, which eSafety improperly recorded as assets rather than expenses.

3. Findings

a. Based on the foregoing, the Commission finds that Respondents Bergsman and Levinson engaged in improper professional conduct pursuant to 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 Respondents Bergsman and Levinson's Offers.

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

- A. Bergsman is denied the privilege of appearing or practicing before the Commission as an accountant.
- B. Levinson is denied the privilege of appearing or practicing before the Commission as an accountant.
- C. After one (1) year from the date of this order, Respondent Bergsman and/or Respondent Levinson may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:
 - 1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
 - 2. an independent accountant. Such an application must satisfy the Commission that:
 - (a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision or, if the Board has not

conducted an inspection, has received an unqualified report relating to his, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent Bergsman and/or Respondent Levinson to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependant on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jonathan G. Katz
Secretary