

INITIAL DECISION RELEASE NO. 444  
ADMINISTRATIVE PROCEEDING  
FILE NO. 3-14496

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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In the Matter of	:	
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VLADIMIR BORIS BUGARSKI,	:	INITIAL DECISION
VLADISLAV WALTER BUGARSKI, and	:	December 8, 2011
ALEKSANDER NEGOVAN BUGARSKI	:	

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APPEARANCES: John M. McCoy III and Jason P. Lee for the Division of Enforcement,  
Securities and Exchange Commission<sup>1</sup>

Darryl C. Sheetz for Vladimir Boris Bugarski, Vladislav Walter Bugarski,  
and Aleksander Negovan Bugarski

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

### Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on August 1, 2011, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that Vladimir Boris Bugarski (Boris Bugarski), Vladislav Walter Bugarski (Walter Bugarski), and Aleksander Negovan Bugarski (Aleks Bugarski) (collectively, Respondents), were enjoined from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5 in SEC v. mUrgent Corp., No. 11-CV-00626-DOC (C.D. Ca. June 27, 2011) (mUrgent). Respondents were also prohibited from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act. See 15 U.S.C. § 78u(d)(2). Respondents filed their Answer to the OIP on September 21, 2011.

At a prehearing conference on August 30, 2011, Respondents argued that this proceeding was unexpected following resolution of the underlying civil allegations.<sup>2</sup> Tr. 8-9. The Division of Enforcement's (Division) response noted that Respondents' consents in the civil action specify that entry of an injunction may have collateral consequences. Tr. 9-11.

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<sup>1</sup> Gregory C. Glynn withdrew as counsel upon his retirement.

<sup>2</sup> I will cite to the transcript of the prehearing conference as Tr. \_\_\_\_.

I determined at the prehearing conference that no issues of material fact exist and granted the Division leave to file a Motion for Summary Disposition (Motion) and a Memorandum of Law in Support of the Motion (Memorandum in Support), which it did on September 22, 2011. Tr. 12, 17-18; 17 C.F.R. § 201.250(a). The Motion includes the Declaration of Gregory C. Glynn in Support (Decl.) and seven exhibits. I take official notice of the following exhibits: (1) the Commission's Complaint (Complaint) in mUrgent, filed on April 21, 2011; (2) the Docket Sheet in mUrgent; (3) the Consent of Walter Bugarski to Judgment of Permanent Injunction and Other Relief in mUrgent; (4) the Consent of Boris Bugarski to Judgment of Permanent Injunction and Other Relief in mUrgent; (5) the Consent of Aleks Bugarski to Judgment of Permanent Injunction and Other Relief in mUrgent; (6) the Consent of mUrgent Corporation (mUrgent) to Judgment of Permanent Injunction and Other Relief; and (7) the Judgment as to Respondents and mUrgent, dated June 27, 2011 (Judgment of Permanent Injunction).<sup>3</sup> See 17 C.F.R. § 201.323.

Respondents filed their Opposition to the Division's Motion (Opposition) on October 21, 2011. The Division filed its Reply to Respondents' Opposition (Reply) on October 26, 2011.

### **Motion for Summary Disposition**

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the maker of the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250. The Division maintains that its Motion should be granted based upon the Judgment of Permanent Injunction. Memorandum in Support at 7; Reply at 1.

Respondents' Consents entered into in the underlying civil action require that each Respondent adhere to the Commission's policy "'not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint.'" 17 C.F.R. § 202.5." Decl. Exs. 3, 4, 5 at 4. Respondents do not contend that any material facts are in dispute. Answer at 4-5. They concede that the Consent each entered into "prevents Respondents from contesting the factual allegations" in this administrative proceeding, and that they are "barred from establishing any defenses" to the allegations set forth in the OIP. Answer at 5. Respondents assert, however, that the Complaint states allegations, and "the truth of those statements has not been found by a finder of fact." Answer at 5.

There is no dispute that Respondents were enjoined from future violations of Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a)(1) of the Exchange Act, and Exchange Act Rule 10b-5 in mUrgent. Accordingly, I GRANT the Division's Motion. Decl. Ex. 7. See 17 C.F.R. § 201.250.

### **Sanctions in the Public Interest**

Section 15(b)(6) of the Exchange Act, states that the Commission shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding twelve months, or bar any such person from being associated with a broker, dealer, investment

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<sup>3</sup> The exhibits will be cited as "Decl. Ex. \_ at \_".

adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock (penny stock bar), if it is in the public interest to do so, when the person is associated, seeking to become associated, or at the time of the alleged misconduct was associated or was seeking to become associated with a broker or dealer or was participating in an offering of penny stock, has been enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. 15 U.S.C. § 78o(b)(6).

The Commission has held that where there is a consent, it “will rely on the factual allegations of the injunctive complaint in determining the appropriate remedial action in the public interest, taking into account what those allegations reflect about the seriousness of the underlying misconduct and the relative culpability of the respondent.” Marshall E. Melton, 56 S.E.C. 695, 711 (2003). Earlier it held that the “allegations in an injunctive complaint in an action settled by consent are entitled, in a subsequent proceeding before [the Commission] to considerable weight for purposes of assessing the public interest.” David M. Haber, 52 S.E.C. 201, 202 (1995) citing Charles Phillip Elliott, 50 S.E.C. 1273, 1277 (1992) aff’d 36 F.3d 86 (11th Cir. 1994). The Complaint in mUrgent alleged as follows:

Beginning in 2008, Boris Bugarski, Walter Bugarski, and Aleks Bugarski were principals of mUrgent, a private California corporation headquartered in Santa Ana, California, that provided internet-related marketing services, including e-mail advertising, primarily to restaurant franchises.<sup>4</sup> Decl. Ex. 1 at 2, 4. Respondents are mUrgent’s top management, majority shareholders, and board members. Decl. Ex. 1 at 4.

Walter Bugarski and Aleks Bugarski supervised, and participated in, a “boiler room” operation in which more than a dozen employees called “fronters” made thousands of cold calls each month using high-pressure sales tactics attempting to sell mUrgent securities. Decl. Ex. 1 at 4-5. Employing these tactics, mUrgent raised approximately \$9.6 million from two \$5 million offerings of unregistered securities, in the form of common stock with detachable warrants, from at least 130 investors. Decl. Ex. 1 at 4. Many investors bought mUrgent shares solely in reliance on false promises that mUrgent had an upcoming public offering and favorable business prospects. Decl. Ex. 1 at 3, 6-7. Respondents used the mails and the means of interstate commerce in their selling activities. Decl. Ex. 1 at 3, 6. Respondents directly or indirectly mailed to prospective investors mUrgent’s offering and promotional materials in the form of an Investor Packet that included a Subscription Agreement, an Investor Questionnaire, and a Confidential Memorandum. Decl. Ex. 1 at 6. mUrgent arranged for Federal Express to pick up and deliver checks from investors. Id.

mUrgent’s primary sales pitch to investors focused on the company’s purportedly imminent IPO. Decl. Ex. 1 at 7. In the boiler room, fronters identified likely investors and

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<sup>4</sup> Walter Bugarski is the father of Boris Bugarski and Aleks Bugarski. Boris Bugarski, Walter Bugarski, and Aleks Bugarski were, respectively, Chief Executive Officer and President, Chief Financial Officer, and Chief Operating Officer and Executive Vice President of mUrgent. Decl. Ex. 1 at 1-4.

passed them on to “closers” to finish the sale. Decl. Ex. 1 at 5. In addition to cold calls, Walter Bugarski, Aleks Bugarski, and the closers also called mUrgent shareholders and offered to sell them additional mUrgent shares. Id. Boiler room employees received commissions on securities sold; closers were paid commission ranging from twelve to fifteen percent; Walter Bugarski earned at least \$75,000 in commissions; and Aleks Bugarski received approximately \$107,961, in addition to his salary, part of which was commissions from stock sales. Id.

Closers pressured investors into buying mUrgent securities by falsely representing that purchases by other investors were depleting the shares available, and that if they purchased a certain number of shares at the \$2.50 per share offering price, they would become eligible to purchase additional shares at steeply discounted prices ranging from \$1.00 to \$1.50 per share. Id. When soliciting investors to purchase mUrgent securities, Respondents personally or through frontiers and closers, made the following material misrepresentations using sales scripts and similar documents:

- a. mUrgent had just filed “registration papers,” “it won’t be long” before the IPO occurs, and “we are closer than ever to going public.” Closers told some prospective investors that the IPO was scheduled for a certain date and that the initial share price would be well above the present offering price of the shares. In fact, mUrgent never took any concrete steps to conduct an IPO. Decl. Ex. 1 at 6-8.
- b. To facilitate its IPO, mUrgent retained a reputable financial consulting company that had taken hundreds of companies public. Aleks Bugarski told investors of the financial company’s involvement and that mUrgent was on the brink of an IPO. In fact, mUrgent had not retained a financial company to provide services relating to an IPO. Id.

Sales scripts and other documents used in offering mUrgent shares quoted a financial company president experienced in taking companies public as opining that the mUrgent IPO could easily raise \$50 million. Decl. at Ex. 1 at 7. The written materials touting mUrgent contained assorted and contradictory false assertions: the per share price in the mUrgent IPO could be between \$5.00 and \$7.00, or it could be \$12.50, or that it would be from \$16.00 to \$19.00, or that they were targeting a \$16.00 to \$17.00 per share opening price; that Boris Bugarski confirmed there was interest to buy mUrgent, or that the IPO was imminent, that it would occur in the second or third quarter, this year, next year, or within the next 18 to 24 months. Decl. Ex. 1 at 3, 6-8.

- c. mUrgent had recently signed, or already had many major, well-known customers. The Investor Packet contained “reference letters” from well-known companies and falsely suggested that all these companies presently had an on-going business relationship with mUrgent. T-Mobile was a former mUrgent customer. Boris Bugarski did not honor T-Mobile’s request that its reference letter be removed from mUrgent’s Investor Packet, and mUrgent continued to misrepresent its business relationship with T-Mobile in its offering materials. Decl. Ex. 1 at 8-9.

- d. mUrgent shares would surge in value following the IPO. Decl. Ex. 1 at 6.
- e. The offering proceeds would be used for company operations, and mUrgent's executive officers would not receive any cash compensation. Decl. Ex. 1 at 8-9. This representation was false. Since at least 2008, Walter Bugarski, Aleks Bugarski, and Boris Bugarski received cash salaries from mUrgent of \$398,511, \$470,077, and \$457,750, respectively. Decl. Ex. 1 at 9. In addition, Respondents used mUrgent funds for their personal expenses. In July 2008, Walter Bugarski withdrew \$530,000 from mUrgent's bank account and wrote a \$55,000 check to himself and \$50,000 checks to both Boris Bugarski and Aleks Bugarski. Walter Bugarski bought luxury automobiles for himself and his wife, and he used mUrgent funds to partially finance the purchase of a second home. Decl. Ex. 1 at 10.
- f. mUrgent's closers touted its growth and success and represented that the company's business was prospering. Decl. Ex. 1 at 9. In fact, the offering materials did not contain any financial information, mUrgent had never made a profit, and internal company documents forecasted increasing losses. Id.

Respondents reiterate that no findings have been made as to the allegations in the Complaint. They claim that at present, Aleks Bugarski and Boris Bugarski manage and operate mUrgent and that Walter Bugarski only acts as a consultant and has very little to do with mUrgent's management and operations. Respondents also claim they are staying with mUrgent to maximize the value of the company on behalf of its shareholders, and, by doing so, they have demonstrated sincerity and provided assurances against future violations. Opposition at 6. Respondents claim that mUrgent is doing better than when most investors became shareholders, and that shareholders have not suffered harm or damages, except by the Commission's actions. Opposition at 6-7. Respondents claim further that they have provided the Commission with financial information that shows they did not receive "a windfall of monies in connection with" the sale of mUrgent securities. Opposition at 7.

The Division argues that a full collateral bar and penny stock bar, allowed by Exchange Act Section 15(b)(6), is in the public interest. Memorandum in Support at 10; Reply at 5-10. The Division takes the position that Respondents' illegal conduct began at least in 2008 and continued through the filing of the Complaint in mUrgent on April 21, 2011. Reply at 6-7. It contends that Respondents have had ample notice that the Division would seek all available remedies in this proceeding. Reply at 4-5. The Division maintains that Respondents' positions actually support the need for full collateral and penny stock bars, highlights their collective intransigence, and violates their Consents. Reply at 9. According to the Division, Respondents' claim that "their misconduct caused no harm and they did not receive any windfall speaks volumes to their lack of remorse and refusal to accept responsibility for their conduct." Reply at 9-10.

Acting as an unregistered broker or dealer is sufficient to come within the scope of Exchange Act Section 15(b)(6). See Vladislav Steven Zubkis, 86 SEC Docket 2618, 2627 (Dec. 2, 2005) recon. denied, 87 SEC Docket 2584 (Apr. 13, 2006); Scott B. Hollenbeck, 2008 SEC Lexis 3100 (Oct. 24, 2008). Respondents were acting as brokers by offering to sell securities in

the accounts of others, and as persons participating in an offering of penny stock. mUrgent securities fit the definition of penny stocks as unregistered, unlisted, securities priced at less than five dollars per share. See 15 U.S.C. § 78c(a)(51).

The Commission considers the following Steadman factors in making public interest considerations with respect to sanctions:

[T]he egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities to commit future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

The Commission has stated that antifraud violations merit the severest of sanctions when considering the public interest factors. Melton, 56 S.E.C. at 713 (2003). The uncontested allegations in the Complaint demonstrate that Respondents' actions were egregious in that not only did they engage, but they brought in more than a dozen other people to join them, in an outrageously blatant illegal boiler room activity of selling unregistered securities for more than three years. It is also an uncontested allegation that Respondents derived substantial financial benefit from the almost \$10 million they raised from 130 public investors as a result of the fraud they were responsible for, and that they each received salaries of close to, or over, \$400,000. The District Court has not yet specified the amount of disgorgement, with prejudgment interest, and civil penalties pursuant to Section 20(d) of the Securities Act. Decl. Ex. 7 at 3; Tr. 8.

Respondents have not given any meaningful assurances against future violations or indication that they recognize the wrongful nature of their conduct. Two of the three Respondents are recidivists. Boris Bugarski is subject to a cease-and-desist order issued by the State of Wisconsin securities regulator in 2000. Answer at 9. Walter Bugarski is subject to cease-and-desist orders issued by securities regulators in the State of Pennsylvania in 2001, the State of Kansas in 1996, and the State of Wisconsin in 2000. Id. Respondents' position that mUrgent shareholders who invested almost \$10 million based on false representations did not suffer when Respondents spent a great deal of the funds for their personal use, has no merit.

Finally, there is no evidence that supports Respondents' claim that their continued operation of mUrgent would benefit shareholders; in fact, it provides them with a continued opportunity for further violations. The overwhelming evidence is that the public interest requires that Respondents be barred from participating in the securities industry in the broadest possible way.

### **Order**

I ORDER, pursuant to Section 15(b)(6)(A) of the Securities Exchange Act of 1934, that Vladimir Boris Bugarski, Vladislav Walter Bugarski, and Aleksander Negovan Bugarski be barred from association with a broker, dealer, investment adviser, municipal securities dealer,

municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of penny stock.<sup>5</sup>

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

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Brenda P. Murray  
Chief Administrative Law Judge

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<sup>5</sup> I accept the Division's unrefuted position that Respondents' conduct continued through the filing of the Complaint in mUrgent, on April 21, 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, was signed into law on July 21, 2010.