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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11858

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 12, 2005

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

APR 16 2005

RECEIVED

In the Matter of :
: **ORDER ON MOTIONS**
:
CMKM DIAMONDS, INC. :
:
:

On March 16, 2005, the Securities and Exchange Commission (Commission) initiated this proceeding with an Order Instituting Proceedings (OIP). The OIP alleges that CMKM Diamonds, Inc. (CMKM Diamonds), violated Section 13(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 13a-1 and 13a-13 thereunder by failing to file periodic reports, which the Commission requires contain current and accurate information for the protection of investors. The OIP alleges that CMKM Diamonds has not filed an annual report since May 9, 2002, and has not filed a quarterly report since November 18, 2002.

On April 4, 2005, the Division of Enforcement (Division) filed a motion requesting either: (1) a telephonic prehearing conference in the afternoon of April 13, 2005; or (2) postponing the public hearing scheduled for Monday, April 25, 2005, and holding a prehearing conference on that date. The Division further requests permission to file a motion for summary disposition. 17 C.F.R. § 201.250(a).

According to the Division, the parties conferred by telephone on March 31, 2005, and, among other things, CMKM Diamonds stipulated that it received the OIP on March 17, 2005. Also, according to the Division, during the March 31, 2005, call: (1) the parties agreed to request a telephonic prehearing conference for April 13, 2005; (2) CMKM Diamonds conceded that it has not filed the required reports; (3) the parties could not agree on how to settle the allegations; and (4) CMKM Diamonds will oppose any motion for summary disposition.

The Commission's Rules of Practice allow five days from service for replies to a motion. 17 C.F.R. § 201.154(b). Because the Initial Decision must be issued no later than July 15, 2005, my Office called Donald J. Stoecklein, who is on the service list and who has communicated with the Division on behalf of CMKM Diamonds. Mr. Stoecklein indicated that he represents CMKM Diamonds and the company will not oppose the Division's motion.

On April 5, 2005, I received a Notice of Appearance and Motion for Third-Party Participation on a Limited Basis from John Martin and others (Owners Group), filed pursuant to Rule 210 of the Commission's Rules of Practice. 17 C.F.R. § 210.210. The Owners Group states that it represents more than 400 shareholders who have invested millions of dollars to acquire more than 50 billion shares of CMKM Diamonds's common stock. The Owners Group believes that these individuals and other shareholders will suffer significant financial harm if the Commission revokes or suspends the registration of CMKM Diamonds's securities. The Owners Group requests that the Commission adopt an equitable interpretation of Rule 210 and allow briefs on the issue of intervention.

On April 8, 2005, I received a pleading from Mr. Stoecklein giving notice that he is counsel for CMKM Diamonds and that he does not object to the motion from the Owners Group.

On April 11, 2005, I received the Division's response urging denial of the intervention motion from the Owners Group.¹ The Division notes that paragraph (b) of Rule 210, which allows intervention as a party, and paragraph (c), which allows participation on a limited basis, specifically exclude these types of participation by non-parties in an enforcement proceeding. The Division notes that comments to Rule 210 in 1995 and the adopting release to amendments to Rule 210 in 1998 make clear that prohibiting intervention prevents extraneous issues and promotes timely and efficient resolution of the issues.

On April 11, 2005, I received a pleading from Janet Douglas requesting that I dismiss the Owners Group's motion. Ms. Douglas attached two exhibits to her pleading. Exhibit 1 is a statement that shows as of March 25, 2005, Ms. Douglas owned 15,179,779 shares of CMKM Diamonds acquired at a cost of \$4,553.93, with a market value of \$1,517.98. Exhibit 2 is a Limited Attorney Consultation and Representation Agreement, which solicits persons for a twenty-five dollar fee to join a group of shareholders led by John Martin that has retained the Frizzell Law Firm to represent them in the proceeding. In support of her position, Ms. Douglas cites Rule 210(a) and (c) of the Commission's Rules of Practice which do not allow participation in an enforcement proceeding. Ms. Douglas declares she is not represented by the Owners Group and she concludes that, in view of the Commission's Rules of Practice, the motion for limited intervention was entered for pure profiteering.

I received CMKM Diamonds's answer on April 11, 2005.

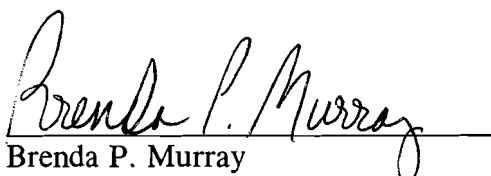
Ruling

I GRANT the Division's motion and ORDER a telephonic prehearing conference on Wednesday, April 13, 2005, at 2 p.m. Eastern time. At the prehearing conference, we will consider: (1) whether there are facts in dispute that require a hearing on April 25, 2005, the hearing location, and the other prehearing matters covered by Rule 221 of the Commission's

¹ Exhibit 1 to the Division's response is a letter from the Owners Group seeking the Division's acquiescence in its participation on terms that include full participation in the hearing.

Rules of Practice, 17 C.F.R. § 201.221; and (2) whether CMKM Diamonds admits the violations and, if so, what action the Division considers appropriate pursuant to Section 12(j) of the Exchange Act. See E-Smart Technologies, Inc., Exchange Act Release No. 50514 (Oct. 12, 2004).

As noted, one of the purposes for limiting intervention is to promote timely and efficient resolution of the issues. That issue is not present here. This proceeding will proceed expeditiously because the Commission has ordered that an Initial Decision be issued by July 15, 2005.² The Division and Ms. Douglas have correctly stated the provisions of Rule 210 (a), (b), and (c). Rule 210(f), however, permits an Administrative Law Judge to modify the participation provisions of Rule 210 and impose terms and conditions on the participation of any person as she may deem necessary or appropriate in the public interest. To provide as much transparency as possible to the Commission's actions given the high level of investor concern, I GRANT, pursuant to Rule 210(f), the Owners Group limited participation on the following terms. Bill Frizzell, Frizzell Law Firm, 305 South Broadway, Suite 302, Tyler, Texas, 75702, shall be placed on the service list as attorney for the Owners Group and shall receive copies of all filings. The Owners Group will not be allowed to present witnesses or exhibits or to object to any stipulations or offers of settlement agreed to by the parties. As a limited participant, the Owners Group will be allowed to: participate in prehearing conferences; request leave to cross-examine witnesses at any public hearing; and file prehearing and posthearing pleadings, if those are ordered. See 17 C.F.R. § 201.210(c), (f).


Brenda P. Murray
Chief Administrative Law Judge

² CMKM Diamonds stipulated it received the OIP on March 17, 2005, and the OIP requires an Initial Decision within 120 days of service. (Division's motion at 1.)