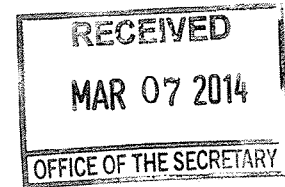


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15619



In the Matter of

JOSEPH P. DOXEY and
WILLIAM J. DANIELS,

Respondents.

DIVISION OF ENFORCEMENT'S
REPLY IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”) hereby submits its Reply in Further Support of its Motion for Summary Disposition against Respondents Joseph P. Doxey (“Doxey”) and William J. Daniels (“Daniels”).

PRELIMINARY STATEMENT

Respondent Doxey filed an Opposition to the Division’s Motion for Summary Disposition that is difficult to decipher. Instead of stating his argument and supporting it with a separate collection of authenticated exhibits, Doxey has combined his argument and numerous unauthenticated exhibits into one enormous document¹, freely commingling his exhibits with his own added notations and jumping back and forth between the exhibits and prepared text. It is difficult to tell where certain exhibits stop and his editorializing begins. Moreover, Doxey appears to have modified the text of certain exhibits, such as bolding and underlining portions of

¹ Doxey’s Opposition, which Doxey did not serve on the Division, did not contain page numbers. For purposes of this Reply, the Division has numbered the pages in sequential order. Therefore, citations to the Opposition cite to either the Exhibit number or the page number designated in the .pdf version of the Opposition forwarded to the Division by the Office of the Secretary, which contains 236 pages.

emails and removing email headers that could clarify when a particular email was actually sent and who the author and recipients were.² The Division also has concerns about the authenticity of a purportedly fully executed contract with NSF (Doxey Opp. Exhibit NSF-19, pp. 65-67) (see parts II and III, below).

In this Reply, the Division has attempted to discern Doxey's arguments and has responded to what it believes those arguments to be. If the Court requires further clarification, the Division respectfully requests that Doxey be required to re-submit his Opposition, with exhibits collected separately from the text of his arguments and presented in their original state without alteration or editorializing.

Respondent Daniels has not filed an opposition to the Division's Motion for Summary Disposition, and therefore summary disposition is appropriate as to him.

ARGUMENT

Doxey has failed to establish a dispute as to any material fact. His Opposition does not contest, and in some cases actually admits, the following critical facts: that the IHPWDS needed further testing before being sent to NSF International ("NSF") for certification; that Pure H2O never sent the necessary product information to NSF so that the certification process could begin; that Pure H2O's financial condition was so dire that the Company couldn't pay for pre-certification testing or an NSF-mandated manufacturing facility, let alone pay for NSF certification itself; that Doxey drafted or participated in drafting, and had final authority over the dissemination of, each of the six press releases at issue; that the misrepresentations and omissions in the press releases regarding NSF certification were material; that Doxey falsely

² For example, Exhibit F-8 on p. 9 of Doxey's Opposition ("Doxey Opp.") is an email sent in 2008 from Tom Hargy at Clancy Environmental Consultants, Inc. ("Clancy") to Dr. Ira Felkner. Doxey claims that he never received this email from either Hargy or Dr. Felkner, but nonetheless appears to have somehow forwarded it to himself four years after the email was originally sent, in an email with a different subject line.

represented to Daniels that an inventory of the IHPWDS had been amassed and that the system was then undergoing NSF certification; or that Pure H2O effected unregistered offers and sales of its shares to Observation Capital, LLC. A party opposing summary disposition “must present specific facts showing that there is a genuine issue for trial.” *In the Matter of Ran H. Furman*, Admin. Proc. File No. 3-14532, 2012 WL 2339281, at *2 (June 20, 2012). Doxey has not met this burden.

Doxey appears to claim that in connection with the six press releases at issue, he relied on statements made by Pure H2O’s microbiology consultant Dr. Ira Felkner (“Dr. Felkner”) in 2008 that pre-certification testing on the Company’s water purification system (the “IHPWDS”) was complete and that the system was ready to be sent to NSF for final certification. This argument ignores the weight of evidence, including numerous statements made by Doxey himself under oath in investigative testimony, that pre-certification testing was never actually finished. In fact, the record shows that Pure H2O was never close to obtaining NSF certification (in large part due to the Company’s deteriorating financial condition in 2008 and 2009), and that Doxey’s materially false and misleading press releases about imminent NSF certification had no basis in reality. Summary disposition on the Division’s motion is appropriate.

I. Doxey Knew That Pre-Certification Testing of the IHPWDS Was Never Completed

Doxey claims that Dr. Felkner assured him in the spring of 2008 that all pre-certification tests on the IHPWDS by Clancy Environmental Consultants, Inc. (“Clancy”) were “finalized” (Doxey Opp. p. 5; 46) and that the system was ready to go to NSF for final certification. Doxey’s principal evidence of this, beyond bald assertion, appears to consist of a pair of emails in which Dr. Felkner 1) opined but did not declaratively say that the Company “should be able to proceed to NSF, soon” (Doxey Opp. Exhibit F-10, p. 11) and 2) offered a draft of a press release

which claimed that Clancy's tests for the reduction of cryptosporidium (and, notably, no tests for any other pathogens critical for P231 certification) were "successful" (Email dated June 2, 2008, Doxey Opp. Exhibit F-1, p. 2).

Doxey's apparent attempt to claim reliance on these two emails from the spring of 2008 as the basis for a series of false and misleading press releases that stretched into May of 2009 is disingenuous. As demonstrated in the Division's Motion for Summary Disposition, Doxey himself knew by the spring of 2008 that Clancy's initial testing revealed that the IHPWDS did not reduce cryptosporidium to levels required by P231. (See Doxey Tr., Farney Dec. Ex. 7 at 67:24-68:5; 74:20-75:4). Indeed, Doxey concedes in his Opposition that Clancy's tests revealed an insufficient cryptosporidium reduction and that even if the IHPWDS achieved P231 cryptosporidium reduction benchmarks, further toxicology testing of the IHPWDS needed to be done to assure that the silver TTO (tetraoxide) was removed and that the water was potable (Doxey Opp. p. 46). As Doxey stated in his investigative testimony, his plan at this point in time was to tweak the IHPWDS and send it back to Clancy for more testing before ever going ahead to NSF (which never happened due to the Company's lack of funds).³ (Doxey Tr., Farney Dec. Ex. at 68:8-70:3; 95:16-96:18). Dr. Felkner's own email at the top of Doxey's Exhibit F-1 confirms this. (Doxey Opp. Exhibit F-1, p. 2: as of August 1, 2008, "the system [IHPWDS] is being 'twiked [sic] by Dennis' and will be chemically monitored for actual delivery of TTO"). At all relevant times, Doxey was fully aware that the IHPWDS was not ready to go to NSF. He cannot credibly claim that he was deceived or misled by Dr. Felkner.

³ As Doxey stated in testimony, "So October 15 [2008] rolls around and the market drops out. I didn't even have the money to pay Dennis [Boudreaux, Pure H2O's structural engineer] to replace whatever we needed to replace [on the IHPWDS to get it ready for additional testing]." (Doxey Tr., Farney Dec. Ex. 7 at 69:25-70:3). One week later, on October 22, 2008, Doxey issued a press release falsely claiming that the Company "successfully completed Pre-Certification Testing" of the IHPWDS. (Farney Dec. Ex. 18)

In any event, Dr. Felkner himself apprised Doxey on several occasions of additional work that needed to be performed on the IHPWDS. For example, in an email discussing a draft of a press release that was eventually issued on January 29, 2009 (Farney Dec. Ex. 19), Dr. Felkner took issue with Doxey's proposed language concerning the completion of pre-certification testing on the IHPWDS and noted that testing had been done on some, but not all areas covered by P231 (Email from Dr. Felkner to Doxey January 27, 2009, Farney Dec. Ex. 13). More directly, in a letter to Doxey on April 21, 2009 in which he withdrew his services from Pure H20, Dr. Felkner advised that "there still remain significant issues to be solved before the [IHPWDS] goes to [NSF] for certification" and that "I have also cautioned you (by e-mail) not to include certain statements in news releases that I could not substantiate with scientific and technical fact." (Farney Dec. Ex. 14) Doxey ignored these warnings. Doxey's drumbeat of misleading press releases continued in spite of Dr. Felkner's warnings, not because of any purported assurances by Dr. Felkner that the IHPWDS was finalized.

Notably, Dr. Felkner wasn't the only one at Pure H20 advising Doxey about the need for further testing. Dennis Boudreaux, the structural engineer, also had discussions with Doxey about the IHPWDS's shortfalls throughout 2008 and 2009. (See, e.g., Boudreaux Tr., Farney Dec. Ex. 8 at 43:22-44:6; 92:11-93:20) Simply stated, Doxey knew at all relevant times that pre-certification testing was not complete.

II. NSF Never Began Testing the IHPWDS

As outlined and documented extensively in the Division's Motion for Summary Disposition (Sections I.B and I.C) and incorporated here by reference, NSF never commenced the certification process for the IHPWDS. Pure H20 never submitted the required product information necessary for NSF to prepare a test plan and cost quote; indeed, Pure H20 lacked the

funds to pay for NSF testing even if it had met the submission requirements, which Doxey knew better than anyone else as Pure H20's president and CEO. (*See also* Doxey Opp. pp. 47-48: "This financial crisis [in the fall of 2008] was the end for the Company... We need help. We were looking for money to pay NSF.") In addition, until at least March of 2009, the Company lacked the funds to construct a manufacturing facility, which was required for NSF inspection. (*See also* Doxey Opp. p. 50 and statements regarding financing in 2009 for a manufacturing facility.)

Despite the weight of evidence to the contrary, Doxey appears to argue that Pure H20 did, in fact, have a contract with NSF for certification testing of the IHPWDS. He bases this on 1) an email from Maren Roush, a project manager at NSF (Doxey Opp. at pp. 70-71), and 2) an executed Contract for Certification Services (Doxey Opp. Exhibit NSF-19, at pp. 65-67). This argument is unpersuasive. Notably, Ellen Van Buren, who was copied on Maren Roush's email, testified under oath that Pure H20 never advanced past the application stage. (Van Buren Tr., Farney Dec. Ex. 6 at 47:19-20, 68:5-9) Roush herself notes in the email—dated December 9, 2008, after the first two of Doxey's press releases regarding imminent NSF certification had been issued—that NSF was still waiting on product information from Pure H20.

Additionally, until Doxey filed his Opposition, the Division had never seen the fully executed contract at pages 65-67 of the Opposition despite serving investigative subpoenas on NSF, Doxey and Pure H20 for documents related to NSF certification of the IHPWDS. As discussed in the Division's Motion for Summary Disposition, Pure H20 submitted a signed Application for Certification to NSF (Farney Dec. Ex. 34; also found at Doxey Opp. p. 67), but never submitted a signed Contract for Certification Services. Counsel for NSF has confirmed that NSF never received a signed Contract for Certification Services. (Farney Dec. Ex. 12)

Notably, the Contract is purportedly signed by Doxey on April 8, 2008, but an email sent by Doxey on May 5 indicates that he still had not submitted anything to NSF at least as of a month later (Doxey Opp. Exhibit D-010, p. 84: “Now with NSF sending their contracts, we need to contact Van Buren and explain our delay regarding the Clancy do-overs. I want to send Ellen Van Buren the contracts so we can make an announcement.”) Doxey did previously produce to the Division a Contract that was not signed by any representative of Pure H20, but it is troubling that Doxey has not produced a fully executed version of the purported contract until now.

Regardless, even if a signed and executed contract existed, that does not change the fact that NSF never performed any work for Pure H20 and that the IHPWDS was never close to being certified, despite Doxey’s repeated fraudulent press releases claiming that it was.⁴ As Maren Roush’s email suggests and Doxey admits in his Answer to the OIP, Pure H20 never even submitted to NSF the information necessary to perform a certification. (Doxey Answer to OIP at p. 16, ¶ 6).

III. Pure H20’s Offerings and Sales of Stock Did Not Qualify for an Exemption

Without any citations to authority, Doxey baldly asserts that Pure H20 “never had to file a registration statement” for its unregistered offerings and sales to Observation Capital LLC, and further claims—without any credible supporting evidence—that Pure H20’s attorney relied on Daniels’ representation in a questionnaire that he and Observation Capital were accredited investors. (Doxey Opp. p. 51) Without more, Doxey has not met his burden of proving that an exemption from registration applied to the offerings and sales at issue. *See, e.g., Zacharias v.*

⁴ As he admitted in investigative testimony and in his Opposition, Doxey knew that NSF certification was critical. (Doxey Tr., Farney Dec Ex. 7 at 34:9-10; Doxey Opp. p. 48) His repeated statements in the press releases that NSF certification was imminent demonstrate that he knew that investors would view that development as material as well.

SEC, 569 F.3d 458, 464 (D.C. Cir. 2009) (once a prima facie case of a Section 5 violation has been made, the burden shifts to the defendant to prove that an exemption applies.)

Doxey cannot point to a single exemption from registration that applies and offers no support beyond his blanket statement that a registration statement was not required. Furthermore, Doxey's only evidence to support his claim that the Company's attorney relied on purported representations by Daniels regarding Daniels' purported status as accredited investor is a single-page excerpt of what appears to be a longer document captioned "Investor Questionnaire" (Doxey Opp. Exh. OBC-005, p. 122), which does not identify to whom or what the questions and answers pertain, or even who completed the questionnaire and when it was completed. Doxey's implication that Daniels completed the document conflicts with the sworn testimony of Daniels, who testified that he never sent an investor questionnaire to Pure H20 and that Pure H20 never made inquiries to determine if he and Observation Capital were actually accredited investors. (Daniels Tr., Farney Dec. Ex. 25 at 130:7-22). Doxey admitted as much in his own testimony, in which he said that he assumed that Daniels and Observation Capital were accredited investors but that he did not pursue the issue and simply took Daniels at his word. (Doxey Tr., Farney Dec. Ex. 7 at 144:8-149:13; 150:9-15; 152:21-153:18; 157:9-14).

Rule 506 of Regulation D does allow for an exemption from registration when, in addition to other requirements, an issuer "reasonably believes" that an investor is accredited (Rule 506(b)(2)(ii)). However, the issuer must take "reasonable steps to verify" accredited investor status (Rule 506(c)(2)(ii), including obtaining documents such as bank statements and brokerage statements if the issuer is claiming accredited investor status based on net wealth (*see* Rule 506(c)(2)(B)(1)). By his own admission, Doxey did not seek and Daniels did not provide to the Company any supporting documentation regarding Daniels' or Observation Capital's status

as an accredited investor. No proof would have been forthcoming even if Doxey had sought it, as neither Daniels nor Observation Capital met the income or asset tests of Rule 501 to qualify as accredited investors. (Farney Dec. ¶ 32) Finally, even assuming that Doxey could show that Daniels and Observation Capital were accredited investors at all relevant times, a Rule 506 exemption would still be unavailable, because as detailed in the Division's Motion for Summary Disposition, Pure H20 failed to "exercise reasonable care" to limit resales of the shares (*e.g.*, by placing a restrictive legend on the shares) pursuant to Rule 502(d).

Doxey also cannot claim that he was merely relying on Pure H20's attorney, as the advice of counsel "provides no protection against a violation of a strict liability statute like Section 5." *SEC v. Cavanagh*, 2004 WL 1594818, at *17 (S.D.N.Y. July 16, 2004), *aff'd*, 445 F.3d 105 (2d Cir. 2006); *see also SEC v. Friendly Power Co. LLC*, 49 F.Supp.2d 1363, 1368 (S.D. Fla. 1999).

Curiously, included in the documents Doxey has submitted with respect to the unregistered offerings and sales of Pure H20 stock is an email from Daniels to the Division, dated October 3, 2011, in which Daniels declares that after receiving an investigative subpoena from the Division, he asked Doxey for copies of the subscription agreements between Pure H20 and Observation Capital. According to Daniels' email, Doxey stated in response that he did not have the agreements and instead asked Daniels to backdate new versions of the subscription agreements, which Daniels refused to do (Doxey Opp. Exhibit OBC-018, p. 135). Daniels subsequently confirmed this sequence of events as set forth in his email in investigative testimony (Daniels Tr., Farney Dec. Ex. 25, at 96:11-98:13). Apart from signaling a willingness to falsify documents, this email in no way supports a claim of exemption from registration.

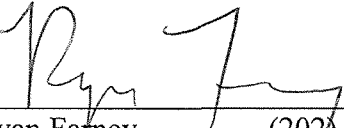
Accordingly, Doxey has not met his burden of showing that Pure H20 was entitled to an exemption from registration requirements of the federal securities laws.

CONCLUSION

For the reasons stated herein, the Division respectfully requests that the Court grant its Motion for Summary Disposition of this action against Respondents Doxey and Daniels; grant the relief requested; and grant such other and further relief as this Court may deem just and proper.

Dated: March 7, 2014

Respectfully submitted,



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