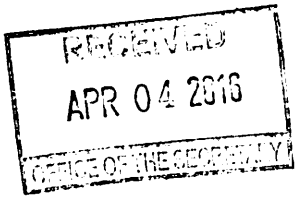
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16318

In the Matter of

MICHAEL W. CROW,
ALEXANDRE S. CLUG,
AURUM MINING, LLC,
PANAM TERRA, INC., and
THE CORSAIR GROUP, INC.,

Respondents.



THE DIVISION OF ENFORCEMENT'S CROSS-PETITION FOR REVIEW OF INITIAL DECISION

David Stoelting
DIVISION OF ENFORCEMENT
Securities and Exchange Commission
200 Vesey Street, Suite 400
Brookfield Place
New York, NY 10281-1022
(212) 336-0174
stoeltingd@sec.gov

April 1, 2016

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Pursuant to Commission Rules of Practice 410(b) and 411(b)(2), the Division of Enforcement respectfully cross-petitions the Commission for review of the Initial Decision in this matter dated February 8, 2016 ("ID"), as corrected by the Order Granting the Division's Motion to Correct a Manifest Error of Fact dated March 15, 2016.[1]

OVERVIEW OF THE INITIAL DECISION

The five Respondents are Michael Crow, Alexandre Clug and three companies Crow and Clug created and controlled: Aurum Mining LLC ("Aurum"); The Corsair Group, Inc. ("Corsair"); and PanAm Terra, Inc. ("PanAm"), a public company.

Aurum. From 2011 through 2013, Crow and Clug raised $3,995,775 from Aurum investors. Although Crow and Clug told investors that their investments would be used to produce gold from lucrative mines in Brazil and Peru, the properties were all essentially worthless and investors received nothing.

The law judge found that Crow, Clug and Aurum violated Securities Act § 17(a), Exchange Act § 10(b) and Rule 10b-5 thereunder, and that Crow and Clug aided and abetted and caused Aurum's violations. For the Aurum violations, the law judge imposed cease-and-desist orders, as well as permanent industry and penny stock bars, on Crow and Clug. As for disgorgement, the law judge accepted Clug's estimate of $286,810.01, and added another $100,000 to reflect additional funds received by Clug in 2011. ID at 79-80. Based on Clug's "convincing showing of an inability to pay," however, the law judge reduced Clug's

[1] Under Rule 410(b), the Division has twenty-one days from March 15, 2016, the date of the hearing officer's decision resolving two motions to correct, to file this cross-petition for review. In addition, the Commission, in an Order dated February 29, 2016, set the following schedule with regard to Respondent Alexandre Clug's Petition for Review: brief in support by April 21, opposition by May 23, and reply by June 6.

disgorgement to $50,000. Crow's disgorgement was set at $428,190, and Crow's inability-to-pay argument was rejected. ID at 80.

The law judge found that Crow acted with a "severely reckless mental state [and] should be penalized for seven acts and omissions regarding Aurum," and ordered Crow to pay a $900,000 penalty. Although the evidence showed that Clug was also responsible for these acts and omissions, Clug was not ordered to pay any penalty due to his inability to pay. ID at 83. Aurum was not ordered to pay any penalty or disgorgement

PanAm. Crow and Clug started PanAm in 2010, transforming a shell company owned by Crow into a public company whose Form 10 was filed in April 2011. Crow provided the initial $25,000 funding, and was involved in every operational aspect of PanAm until May 2013, when PanAm withdrew its registration. Investors provided $400,000 to PanAm, but never received any return.

The law judge found that PanAm violated Securities Act § 17(a)(2), based on a single negligent misstatement in a public filing and another misstatement in an "Executive Brief" used to solicit investors. No sanctions were imposed.

The law judge also found that "the facts and circumstances show that Crow did not have sufficient control over PanAm to be deemed a de facto officer." ID at 67. And with regard to the undisclosed series of transactions in which Crow converted PanAm shares and received $75,000 from three investors – who believed they were funding PanAm's business operations rather than buying Crow's shares – the law judge found no wrongdoing by Crow and Clug, in part because "the requirements for an advice of counsel defense were satisfied." ID at 66.

Corsair. The law judge found that Crow, Clug and Corsair violated Exchange Act § 15(a)(1), and that Crow and Clug aided and abetted and caused Corsair's violations. As

Corsair's owners, Crow and Clug were ordered to each disgorge half of the $39,563 in transaction-based compensation Corsair received. ID at 67-69, 80. Crow also was ordered to pay a $7,500 penalty for executing a referral-fee agreement and a $75,000 penalty for violating a prior broker-dealer bar. Although equally responsible for Corsair's violations, Clug was not ordered to pay any penalty due to his inability to pay. Corsair was not ordered to pay any penalty or disgorgement.

SCOPE OF THE REVIEW SOUGHT BY THE DIVISION

I. The Factual Findings and Legal Conclusions as to PanAm Terra, Inc. Should be Reviewed

The Division respectfully submits that the law judge erred in his factual findings and legal conclusions as to PanAm. In addition to the Securities Act § 17(a)(2) violation found by the law judge, the evidence demonstrates that PanAm willfully violated Exchange Act § 10(b) and Rule 10b-5 thereunder, and Securities Act § 17(a)(1) and (a)(3); that Crow's and Clug's conduct as to PanAm violated Exchange Act § 10(b) and Rule 10b-5 thereunder, and Securities Act § 17(a)(1), (2) and (3); that PanAm violated Exchange Act § 13(a) and Rules 12b-20, 13a-1 and 13a-13, and 13a-14 thereunder; that Crow and Clug willfully aided and abetted and caused PanAm's violations; and that Clug willfully violated Exchange Act Rule 13a-14.

Among the findings that merit review is the law judge's conclusion that Crow did not act as a de facto officer of PanAm. The evidence, including contemporaneous emails and documents, establishes that Crow was compensated by PanAm, performed numerous policy-making functions, including the selection of the CEO and directors, and that Crow negotiated business deals on behalf of PanAm.

The law judge also found that Crow and Clug were not liable for the undisclosed convertible note scheme, in which Crow converted a note after instructing the CFO to secretly sell to three investors 300,000 of the shares that Crow received upon conversion. Crow and Clug also lied to PanAm's auditor by representing that the note had been extended when they knew it had been converted. The law judge also found the advice-of-counsel defense to be applicable; however, there is no contemporaneous evidence of legal advice being requested or received, and CFO Angel Lana admitted that PanAm's attorney was not provided with complete information.

II. The Factual Findings and Legal Conclusions Regarding the Appropriate Sanctions Should Be Reviewed

A. Disgorgement Calculation

In determining the amount of disgorgement, the law judge declined to apply the typical measure of disgorgement in offering fraud cases, which is the amount raised in the offering minus the amount returned to investors. *E.g., SEC v. Platform Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) ("total proceeds . . . [is] a reasonable approximation of the profits obtained from [defendants'] unlawful sales"); *SEC v. McGinn Smith & Co.*, 98 F. Supp. 3d 506, 520 (N.D.N.Y. 2015) (disgorgement calculated by determining "the total amount raised through the fraudulent offerings ... [minus] the amount returned to investors"); *SEC v. Sahley*, 1994 WL 9682 (S.D.N.Y. 1994) ("The investors who lost their entire investment are entitled to an order of disgorgement of the full amount raised through those fraudulent statements.").

The law judge justified his approach by stating that that "[t]his is not a case where the violations made the entire offering a fraud . . . merely because some violations occurred around the same period that the offering took place." ID at 79. This statement, however, minimizes the scope and egregiousness of the Crow's and Clug's misrepresentations and omissions. The law

judge also appeared to differentiate between "profits" and "proceeds," a distinction that is not supported by the caselaw.

The law judge stated that a "more specific analysis" of the amount raised was needed. ID at 79. The Division, however, tracked every dollar received from Aurum's investors. Div. Exs. 2A, 3A. And while the Division was not able to establish with certainty how the $2.7 million that Crow and Clug transferred to Peru was spent, this should have been a factor against reducing disgorgement. "[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. First City Fin'l Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). *See also SEC v. Sierra Brokerage Servs.*, 608 F. Supp. 2d 923, 968 (S.D. Ohio 2009) ("All doubts concerning the amount of disgorgement must be resolved against the violator.").

The law judge did recognize that "how a respondent choses to spend ill-gotten gains generally does not entitle the respondent to an offset in disgorgement." ID at 79 n.28. The approach taken in the ID, however, effectively reduces disgorgement by the amount of business and personal expenditures claimed by Crow and Clug. The result is that Crow and Clug were not required to disgorge more than $3 million in investor funds that were obtained through fraud.

B. Clug's Nominal Disgorgement and Zero Penalty

The law judge reduced Clug's disgorgement obligation to the nominal figure of $50,000, and imposed no penalty, based on Clug's "convincing showing of an inability to pay." ID at 80. Given the egregiousness of Clug's conduct and the harm to investors, the Division submits that this was not appropriate. In addition, Clug's evidence of inability to pay was insufficient and did not comply with Rule 630(b).

C. Officer-and-Director Bar as to Clug

Clug's conduct as CEO and Chairman of PanAm warrants an officer-and-director bar. The law judge, however, declined to impose an officer-and-director bar based on the conclusion that Clug did not have an adequate opportunity during the hearing to defend against that sanction. ID at 72-74. The Rules of Practice, however, do not provide that a particular form of relief is waived if not disclosed in the Division's pre-hearing brief. Clug's intentional and deceitful conduct in his role as CEO and Chairman at PanAm, which lasted for two years, merits an officer-and-director bar.

D. Sanctions on Aurum, Pan Am and Corsair

The law judge imposed no penalties or disgorgement on Aurum, PanAm and Corsair because they currently do not have assets. These entities, however, should have been held to be jointly and severally liable with Crow and Clug for disgorgement, and also ordered to pay penalties. Among other reasons, these entities could acquire assets in the future.

CONCLUSION

The Division of Enforcement respectfully requests that the Commission grant its petition for review of the Initial Decision.

Dated: New York, NY
April 1, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

David Stoelting
Securities and Exchange Commission
200 Vesey Street, Suite 400
Brookfield Place
New York, NY 10281-1022
(212) 336-0174

CERTIFICATE OF SERVICE

Pursuant to Rule 151(d) of the Commission's Rules of Practice, I, David Stoelting, hereby certify that on April 1, 2016, I caused the following document:

The Division of Enforcement's Cross-Petition for Review of Initial Decision

To be sent by UPS Overnight Delivery to:

Office of the Secretary (original plus three copies)
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Alexandre S. Clug
150 Waters Edge Drive
Jupiter, FL 33477

And by email to:

The Honorable Jason S. Patil (copy) at alj@sec.gov;

Alexandre S. Clug, *pro se* (copy) at aclug@thedolphingroupllc.com;

Michael W. Crow, *pro se* (copy) at mcrow2020@gmail.com.

Dated: April 1, 2016
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

David Stoelting
Securities and Exchange Commission
200 Vesey Street, Suite 400
Brookfield Place
New York, NY 10281-1022
(212) 336-0174