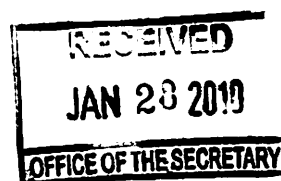


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



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.

SUPPLEMENTAL BRIEF OF THE DIVISION OF ENFORCEMENT

The Division of Enforcement (the “Division”) respectfully submits this brief pursuant to the Commission’s Supplemental Briefing Order dated December 10, 2018.

Preliminary Statement

The Division and Respondent Alexandre S. Clug (“Clug”) respectfully seek Commission review of their longstanding appeals following the Commission’s Order dated August 22, 2018. In this Order, issued after the Supreme Court’s decision in *Lucia v. SEC*, 138 S.Ct. 2044 (2018), the Commission required that Respondents in pending administrative proceedings, including this one, “be provided with the opportunity for a new hearing before an ALJ who did not participate in the matter.” Alternatively, the Commission stated that parties were free to propose “alternative procedures.”

On September 10, 2018, the Division and Clug proposed such “alternative procedures” by filing a *Joint Agreement of the Division of Enforcement and Alexandre S. Clug on Alternative*

Procedures (the “Joint Agreement”). In the Joint Agreement, the Division and Clug agreed that the Commission should decide the pending 2016 and 2018 petitions and cross-petitions for review on the basis of “the existing record.” Clug also agreed that the alternative procedures “will not include taking new evidence,” and waived any challenges “based upon any alleged or actual defect in the appointment of ALJ Patil.”

On September 12, 2018, as directed by the Commission’s 8/22/18 Order, Chief ALJ Murray assigned numerous pending administrative proceedings to different ALJs; however, the Chief ALJ did not reassign this proceeding because the “the parties waived their right to a new hearing and requested that the Commission decide their petitions for review on the present record.”

The Commission’s 12/10/18 Order “[gave] effect to the Chief ALJ’s order and the parties’ joint agreement,” stated that the 2016 and 2018 petitions for review filed by the Division and Clug are “operative,” and set a briefing schedule.

Procedural History

The Commission issued the Order Instituting Proceedings (OIP) in this matter on December 16, 2014. The hearing was held in Miami, Florida, from July 13-21, 2015, and telephonically on July 30, 2015. Following post-hearing briefing, the ALJ issued an Initial Decision on February 8, 2016, and an Order Granting the Division’s Motion to Correct a Manifest Error of Fact on March 15, 2016.

In February 2016, Clug filed a Petition for Review of the Initial Decision and, in April 2016, the Division filed a Cross-Petition for Review of Initial Decision. The Commission granted Clug’s Petition and the Division’s Cross-Petition and set a briefing schedule. The Division and Clug both filed opening briefs and reply briefs.

On December 6, 2017, the Commission issued an Order Following Remand which, in connection with its ratification of the appointment of its ALJs, “allow[ed] the parties to file any new evidence that the parties deem relevant to the reexamination of the record.” Accordingly, on January 5, 2018, the Division filed a brief and new exhibits that disputed Clug’s claim of an inability to pay.

On January 12, 2018, the ALJ issued an order directing Clug, as part of his response, to provide “an updated disclosure of assets on Form D-A.” Clug (on 1/29/18 and 3/6/18) and the Division (on 2/26/18) filed submissions regarding Clug’s updated financial asset disclosure and ability-to-pay issues.

On April 20, 2018, the ALJ issued the Order Ratifying in Part and Revising in Part Prior Actions (“Ratification Order”).

On October 3, 2018, Clug filed an *Update on Financial Situation and Request for Oral Argument before the Commission*.

On December 21, 2018, based on an Offer of Settlement submitted by Respondent Michael W. Crow, the Commission issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order, which resolved the allegations in the OIP as to Respondent Crow.

Argument

The Commission's 12/10/18 Order provides that "[i]t is unnecessary to restate arguments asserted in previous briefing before the Commission." Accordingly, the Division will rely on the factual and legal arguments set forth in its 2016 briefs filed with the Commission. *See also* Division of Enforcement's Proposed Findings of Fact and Conclusions of Law dated September 3, 2015 ("Div. FoF-CoL") (correcting the Aug. 31, 2015 FoF-CoL).

In view of the Commission's 12/21/18 Order Making Findings, the Division in this appeal does not seek any relief as to Respondent Crow. The Division, however, does seek in this appeal certain relief as to the other Respondents in addition to Clug: Aurum Mining LLC, PanAm Terra, Inc. and The Corsair Group, Inc. Although the three entity Respondents have not submitted any evidence or participated in the hearing since the Initial Decision, the ALJ recognized in the Ratification Order (at 1 n.1) that these Respondents "remain subject to the Division of Enforcement's cross petition for review."

The Ratification Order also increased Clug's disgorgement from the \$50,000 ordered in the Initial Decision to \$67,000, but otherwise concluded (at 6) that, based on Clug's "precarious" finances, "he lacks the ability to pay a civil penalty and the full amount of disgorgement." The Ratification Order (at 5) largely based this conclusion on the ALJ's earlier finding in the Initial Decision that Clug was "a hardworking, generally good person." This finding – contradicted by the numerous findings in the Initial Decision of a multitude of egregious securities law violations by Clug – gives short shrift to the public interest factors.

The steep investor losses and Clug's intentional role in deceiving investors, along with Clug's admitted failure to disclose his all-cash purchase of a home, should compel disgorgement and a penalty irrespective of Clug's "precarious" financial circumstances. *See Russell C. Schalk,*

Jr., Rel. No. 10219, 2016 WL 5219501, *5 (Comm'n Op. Sept. 21, 2016) (“We have also held that ‘when conduct is ‘sufficiently egregious,’ the Commission may impose a sanction despite a demonstrated inability to pay.’”).

Finally, the \$67,000 in disgorgement stands in stark contrast to the \$3,995,775 raised from Aurum Mining investors and received by Clug. These fraud proceeds were deposited into a bank account controlled by Clug and Crow (Div. FoF-Col ¶¶ 546-553); as a result, these funds are subject to disgorgement. The Initial Decision (at 79), however, incorrectly found that any funds spent on “startup and operational costs of Aurum” should not be disgorged. Moreover, the Initial Decision (at 79) improperly required “a more specific analysis from the Division” as to which funds “unjustly enriched Crow or Clug” and which funds were used by Clug or Crow to pay “startup and operational costs.” The Initial Decision thereby created an improper framework in which fraudsters are permitted to keep investor funds that go to “startup and operational costs.” *See Division of Enforcement’s Brief in Support of its Cross-Petition for Review and in Opposition to Alexandre S. Clug’s Petition for review of Initial Decision* dated June 3, 2016, at 44-45; *Division of Enforcement’s Reply Brief in Further Support of its Cross-Petition for Review of Initial Decision* dated July 19, 2016, at 8-10. The expenses of Aurum Mining, a fraudulent enterprise, should not be exempt from disgorgement.

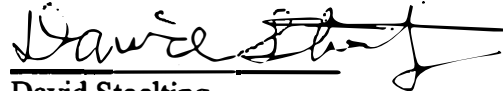
Conclusion

Based on the foregoing, and on all prior filings and proceedings herein, the Division respectfully requests that the Commission grant the relief sought in its 2016 cross-petition for review and 2018 petition for review.

Dated: New York, NY
 January 9, 2019

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