

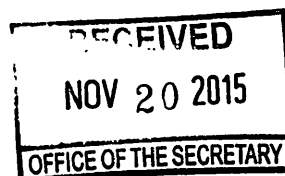
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16525

In the Matter of

RKO Resources, Inc. (a/k/a Shamika 2
Gold, Inc.),

Respondent.



**DIVISION OF ENFORCEMENT'S BRIEF
IN REPLY ON ITS MOTION FOR SUMMARY DISPOSITION**

RKO Resources, Inc. (a/k/a Shamika 2 Gold, Inc.) (“RKO Resources”) failed to file a brief addressing the *Gateway* factors¹ governing the appropriate sanction under Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”). Instead, RKO Resources filed an affidavit of its President, David Bercusson, asserting that “there are issues of fact which preclude summary disposition,” Bercusson Affidavit, ¶ 3, but then fails to identify any such issues of fact. Thus, the Bercusson Affidavit has failed to raise a genuine issue of material fact to defeat the Division’s motion. *See Lorsin, Inc.*, Initial Decision Rel. No. 250, 2004 SEC LEXIS 961, at *4 (May 11, 2004) quoting *SEC v. Lybrand*, 200 F. Supp. 2d 384, 391 (S.D.N.Y. 2002) (quoting *Ying Jing Gan v. City of New York*, 996 F.2d 522, 532 (2d Cir. 1993)) (“A non-moving party must produce evidence in the record and ‘may not rely simply on conclusory statements or on contentions that the affidavits supporting the motion are not credible.’”); *see also Johnson v. Southwestern Bell Tel. Co.*, 819 F. Supp. 578, 582 (E.D. Tex. 1993), *aff’d*, 22

¹ *Gateway International Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 at *26 (May 31, 2006)

F.3d 1094 (5th Cir. 1993) (“The evidence produced to defeat a properly supported motion for summary judgment must adduce affirmative evidence. Naked assertions of an actual dispute unsupported by facts will not suffice, . . . the nonmovant cannot rely upon argument alone to defeat a properly supported motion for summary judgment.”).

The Bercusson Affidavit also challenges the Declaration of Neil J. Welch, Jr., ¶ 9, which recounts Division counsel’s communications with Michael McCarthy, Managing Partner of RKO Resources’ former auditor, Hancock, Askew & Co., LLP. Mr. Bercusson states in the affidavit that “in or about May 2015 I contacted Marlene Hutcheson, De Joya Griffith, [sic] of Hancock, Askew & Co., RKO’s last public accounting firm and discussed the costs and timing of auditing RKO’s financial statements in order to resolve the company’s deficient filings...” Bercusson Affidavit, ¶ 9. However, Ms. Hutcheson does not work for Hancock, Askew & Co., RKO’s last auditor. Supplemental Declaration of Neil J. Welch, Jr., ¶ 2. It appears that Ms. Hutcheson may have worked for another auditing firm called De Joya Griffith in Henderson, Nevada. Supplemental Declaration of Neil J. Welch, Jr., Exhibit 9.²

Moreover, even if RKO Resources did telephone an auditor to inquire about engaging their services, Mr. Bercusson states in his affidavit that the company is prepared to cure all deficient filing obligations only if the company’s registration is ultimately not revoked. In the meantime, the company has not remedied its past violations and is not willing to expend the resources to become current “given the prospects of facing deregistration even if all deficient filings are made.” Bercusson Affidavit, ¶ 11. Thus, the Bercusson Affidavit clearly establishes that *Gateway* factor (4), the extent of the

² The Bercusson Affidavit, ¶ 9, also states that Mr. McCarthy’s statement is inadmissible hearsay, but hearsay is not per se inadmissible in administrative proceedings. 5 U.S.C. § 556(d); Rule of Practice 320.

issuer's efforts to remedy its past violations and ensure future compliance, and *Gateway* factor (5), the credibility of the issuer's assurances against future violations, clearly favor sanctioning RKO Resources under Exchange Act Section 12(j).

For the reasons set forth above, and in its initial papers, the Division respectfully requests that the Administrative Law Judge grant the Division's Motion for Summary Disposition and revoke the registration of each class of RKO Resources' securities registered under Exchange Act Section 12.

Dated: November 20, 2015

Respectfully submitted,



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COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Brief in Reply on its Motion for Summary Disposition and Supplemental Declaration of Neil J. Welch, Jr. in support thereof, were served on the following on this 20th day of November, 2015, in the manner indicated below:

By Hand:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

By First Class Mail, postage prepaid:

Peter Campitiello, Esq.
Kane Kessler, P.C.
1350 Avenue of the Americas
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Neil J. Welch, Jr.