

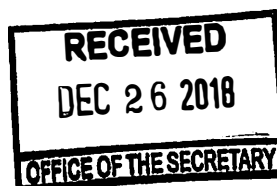
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17558

In the Matter of

Bluforest, Inc.,

Respondent.



DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT

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MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), by counsel, pursuant to the Securities and Exchange Commission’s Rules of Practice (“Rules of Practice”) 154 and 250, respectfully moves for an order of summary disposition against respondent Bluforest, Inc. (“Bluforest”) on the grounds that there is no genuine issue with regard to any material fact, and that pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”), the Division is entitled, as a matter of law, to an order revoking each class of securities of Bluforest registered with the Commission pursuant to Exchange Act Section 12.

BRIEF IN SUPPORT

I. Statement of Undisputed Facts

Bluforest is a Nevada corporation located in Quito, Ecuador with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OIP, ¶ II.A.1. The website for the Nevada Secretary of State lists Bluforest as a domestic corporation with a “revoked” business entity status and with its registered agent as “resigned.”¹ See Exhibit A to the Division of Enforcement’s Status Report on Renewed Attempt to Serve the Order Instituting Proceedings on Bluforest, Inc. (“Status Report”). Bluforest has failed to file its periodic reports for over five years, *i.e.*, any of its periodic reports after its Form 10-Q for the period ended September 30, 2013. OIP, § II.B.3; EDGAR filings. Bluforest further admits that it is delinquent in its filings. See Answer.² Its stock trades on the Grey Market under the ticker symbol “BLUF.”

¹ The Division requests that pursuant to Rule of Practice 323, the Court take official notice of entity details available on the Nevada Secretary of State Website along with all other information and filings on EDGAR referred to in this brief.

² This Court’s November 30, 2018 Order deemed a November 26, 2018 email reflecting a single paragraph from Mr. Charlie Miller, Bluforest’s President and CEO, as Answer to the OIP. Mr. Miller’s email stated, in part, the need to “catch up on the all (sic) filings” and “bring the company up to date.”

II. Argument

This administrative proceeding was instituted pursuant to Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities if the respondent has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

A. Standards Applicable to the Division's Summary Disposition Motion

Rule 250(b) of the Rules of Practice provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see Michael Puorro*, Initial Dec. Rel. No. 253, 2004 SEC LEXIS 1348, at *3 (June 28, 2004) citing 17 C.F.R. § 201.250; *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495 (Apr. 10, 1997) (granting motion for summary disposition).

As one Administrative Law Judge explained,

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, 'its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.' *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249.

Edward Becker, Initial Dec. Rel. No. 252, 2004 SEC LEXIS 1135, at *5 (June 3, 2004).

Here, Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities "if the

Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.” It is appropriate to grant summary disposition and revoke a registrant’s registration in a Section 12(j) proceeding where, as here, there is no dispute that the registrant has failed to comply with Section 13(a) of the Exchange Act. See *California Service Stations, Inc.*, Initial Dec. Rel. No. 368, 2009 SEC LEXIS 85 (Jan. 16, 2009); *Ocean Resources, Inc.*, Initial Dec. Rel. No. 365, 2008 SEC LEXIS 2851 (Dec. 18, 2008); *Wall Street Deli, Inc.*, Initial Dec. Rel. No. 361, 2008 SEC LEXIS 3153 (Nov. 14, 2008); *AIC Int’l, Inc.*, Initial Dec. Rel. No. 324, 2006 SEC LEXIS 2996 (Dec. 27, 2006); *Biologic, Inc.*, Initial Dec. Rel. No. 322, 2006 SEC LEXIS 2596, at *12 (Nov. 9, 2006).

B. The Division is Entitled to Summary Disposition Against Bluforest for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities.

The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway International Holdings, Inc., Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *26 (May 31, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

As explained in the initial decision in the *St. George Metals, Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

St. George Metals, Inc., Initial Dec. Rel. No. 298, 2005 SEC LEXIS 2465, at *26 (Sept. 29, 2005); accord *Gateway*, 2006 SEC LEXIS 1288, at *18, *22 n.28; *Stansbury Holdings Corp.*, Initial Dec. Rel. No. 232, 2003 SEC LEXIS 1639, at *15 (July 14, 2003); and *WSF Corp.*, Initial Dec. Rel. No. 204, 2002 SEC LEXIS 1242, at *14 (May 8, 2002).

There is no dispute that as of the date of the OIP, Bluforest had failed to file its periodic reports for nearly three years, *i.e.*, any of its reports periodic reports after its Form 10-Q for the period ended September 30, 2013. OIP, § II.B.3; EDGAR filings. That delinquency continues to the present day. Therefore, there is no genuine issue with regard to any material fact as to Bluforest's violations of Exchange Act 13(a) and the rules thereunder, and the Division is entitled to an order of summary disposition as to Bluforest as a matter of law. See *Chemfix Technologies, Inc.*, Initial Dec. Rel. No. 278, 2009 SEC LEXIS 2056, at *21-*23 (May 15, 2009) (summary disposition granted in Section 12(j) administrative proceeding); *AIC Int'l Inc.*, 2006 SEC LEXIS 2996, at 25 (same); *Bilogic, Inc.*, 2006 SEC LEXIS 2596, at *12 (Nov. 9, 2006) (same); and *Investco, Inc.*, Initial Dec. Rel. No. 240, 2003 SEC LEXIS 2792, at *7 (Nov. 24, 2003) (same).

C. Revocation is the Appropriate Sanction for Bluforest's Serial Violations of the Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway*, 2006 SEC LEXIS 1288, at *19-*20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision). Although no one factor is controlling, *Stansbury*, 2003 SEC LEXIS 1639, at *14-*15; and *WSF Corp.*, 2002 SEC LEXIS 1242, at *5, *18, the Commission has stated that it views the "recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other facts we consider would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197, at *27 (May 23, 2008). An analysis of these factors confirms that revocation of Bluforest's securities is appropriate.

1. Bluforest's violations are serious and egregious.

As established by the undisputed pleadings in this proceeding, Bluforest's conduct is both serious and egregious. Bluforest has not filed any periodic reports since November 18, 2013 – over five years ago – when it filed a Form 10-Q for the period ended September 30, 2013. Given

the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions to be egregious where issuers were delinquent for periods of even less duration. *See e.g., WSF Corp.*, 2002 SEC LEXIS 1242, at *14 (respondent failed to file periodic reports over two-year period); and *Freedom Golf Corp.*, Initial Dec. Rel. No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year).

2. Bluforest's violations of Section 13(a) have been not just recurrent, but continuous.

Bluforest's violations are not singular in nature, but have been and remain continuous. It cannot be overstated that Bluforest has been derelict in flouting the securities regulations requiring it to file periodic reports for over five years – that failing encompasses five Forms 10-K and 19 Forms 10-Q. Bluforest filed a single Form 12b-25 for the period ended December 31, 2013, and thereafter failed to file any Forms 12b-25 for the remaining 23 periodic reports seeking extensions of time to make the required filings. The serial and continuous nature of Bluforest's violations of Exchange Act Section 13(a) and related rules thereunder further supports the sanction of revocation here. *See Investco, Inc.*, 2003 SEC LEXIS 2792, at *6 (delinquent issuer's actions were found to be egregious and recurrent where there was no evidence that any extension to make the filings was sought).

3. Bluforest's degree of culpability supports revocation.

For many of the same reasons that Bluforest's violations were long-standing and serious, they suggest a high degree of culpability. In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." The Commission found that the delinquent issuer in *Gateway* "evidenced a high degree of

culpability,” because it “knew of its reporting obligations, yet failed to file” its required periodic reports. Bluforest’s neglect for its known responsibility is even more evidenced for its failure to file required reports – or even Forms 12b-25 – since the initiation of this proceeding over two years ago. Because Bluforest knew of its reporting obligations and nevertheless failed to file its periodic reports, and failed to file the required Forms 12b-25 informing investors of the reasons for its delinquency and the plan to cure its violations, it has shown more than sufficient culpability to support this motion for revocation.

4. **Bluforest has made no efforts to remedy its past violations, nor has it made assurances against future violations.**

Bluforest has made no efforts to remedy its past violations by, for example, filing any of its delinquent reports *for over five years* – including failing to file any periodic report for nearly three years before the instant proceeding was instituted on September 20, 2016, and over two years more thereafter. Since the Commission issued the OIP, Bluforest has endeavored only to delay these proceedings. For example:

- December 27, 2016: Stipulation to extend Answer deadline to February 28, 2017. Order Regarding Service and Answer Date (December 29, 2016, Patil).
- March 2, 2017: Stipulation to extend Answer deadline to March 28, 2017. Extension Order (March 3, 2017, Patil).
- March 28, 2017: Email requesting third extension. Request represents that it has been unable to obtain counsel due to “lack of funds,” and needs another extension to, among other things, raise money from investors and bring its filings up to date. Order Denying Extension and To Show Cause (March 30, 2017, Patil).
- November 26, 2018: Request that the “[C]ommission allow 90 days to bring the company up to date.” Answer.

Bluforest has not provided, and cannot provide, a realistic assurance of future compliance. Bluforest’s own statements (*e.g.*, March 28, 2017 email cited above) establish the lack of credible claim that it will catch-up with its required filings. Moreover, even if Bluforest

were to put forth the efforts necessary to cure its half-decade-long deficiency, revocation would still be an appropriate sanction. The Commission has held that even where a delinquent issuer becomes current in its filings while a Section 12(j) proceeding is ongoing, revocation may be appropriate. *Absolute Potential, Inc.*, Admin. Proc. File No. 3-14587, 2014 WL 1338256, at *6-8 (Apr. 4, 2014) (revoking respondent's registration despite respondent having filed *twenty* past-due reports over nearly five year period and becoming current in its filings while action was pending). In so holding, the Commission stated:

We have stressed the “significant policy objectives” the reporting requirements “are intended to serve,” *i.e.*, providing the public, particularly current and prospective shareholders, with material, timely, and accurate information about an issuer’s business.” “Those requirements are ‘the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.’” It would be contrary to the public interest to allow Absolute to continue to have its securities registered with the Commission when its conduct creates substantial reason to doubt that it will provide investors with timely, accurate, and material information in the future. Revoking Absolute’s registration also will serve the public interest by deterring Absolute and other issuers from refusing to comply with the reporting requirements until they are threatened with imminent revocation by a Commission enforcement action.

Id. at *8 (footnotes omitted).

Here, where Bluforest has not filed any reports since November 18, 2013, and made no credible assurances that it can remedy its current delinquencies and prevent future ones, revocation is appropriate and justified.

III. Revocation is the Appropriate Remedy for Bluforest.

As discussed herein, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for Bluforest’s long-standing and egregious violations of the periodic filings requirements. These recurrent and continuing failures have not been outweighed by “a

strongly compelling showing with respect to the other factors” which “would justify a lesser sanction than revocation.” *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197, at *27.

Revocation will not be overly harmful to whatever business operations, finances, or shareholders Bluforest may have. The remedy requested here – revocation – will not cause Bluforest to cease being whatever kind of company it currently is. Rather, the revocation remedy will ensure that until Bluforest becomes current and compliant on its past and current filings, its shares cannot trade publicly on the open market (but may be traded privately). *See Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at *9 (July 5, 2006) (revocation would lessen, but not eliminate, shareholders’ ability to transfer their securities). Revocation will not only protect current and future investors in Bluforest, who presently lack the necessary information about the issuer because of its failure to make required Exchange Act filings; it will also deter other similar companies from becoming lax in their obligations.

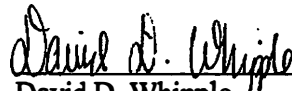
Moreover, if the Division’s motion is granted, and Bluforest later decides to seek registration, a new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in Bluforest that they did before registration, but their shares will no longer be devalued due to the issuer’s delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance.

IV. Conclusion

For the reasons set forth above, the Division respectfully requests that the Court grant this motion for summary disposition and revoke all classes of Bluforest’s securities that are registered with the Commission under Section 12 of the Exchange Act.

Dated: December 21, 2018

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Service List

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing, including Exhibits A and B, was served on the following on December 21, 2018:

Via United Parcel Service, Overnight Mail:

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
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and

Via First-Class Mail International & Email:

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