

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934

Admin. Proc. File No. 3-20297

In the Matter of

MJ BIOTECH, INC. (F/K/A MICHAEL
JAMES ENTERPRISES, INC.)

CROSS-MOTION FOR SUMMARY DISPOSITION

PROCEDURAL STATEMENT

1. On September 3, 2021 the Securities and Exchange Commission (“Commission”) issued an Opinion in support of an order revoking the registration of the securities issued by the Respondent MJ BIOTECH, INC. (F/K/A MICHAEL JAMES ENTERPRISES, INC.) (CIK No. 1543272; ticker: MJTV) (hereinafter “Respondent”).
2. The Commission’s Order held that the Respondent had defaulted because the Respondent had failed to timely respond to prior Commission Order Instituting Proceedings (“OIP”) dated May 11, 2021, and a subsequent order to show cause issued June 16, 2021. See, In re MJ Biotech, Inc., Admin. Proc. File No. 3-20297, “Opinion of the Commission,” at 2 (September 3, 2021).
3. On January 28, 2022, the Respondent filed a motion to set aside the Commission’s order. With that motion Respondent also filed reports that would cure the alleged delinquency in its prior filings, as were alleged in the May 11, 2021 OIP. See, In re MJ Biotech, Inc., Admin. Proc. File No. 3-20297, “Brief in Support of [Respondent’s] Motion to Set Aside Default.” (January 28, 2022), and “Affidavit of Maxine Pierson,” Attachment C. Enforcement Staff filed opposition to the Respondent’s motion on February 4, 2022.

4. While awaiting a decision by the Commission regarding the Respondent's motion, on April 5, 2022, the Commission issued a "Statement Relating to Certain Administrative Adjudications" noting what it described as a "control deficiency" whereby the Commission determined that certain adjudication files of the Commission had been uploaded to Commission enforcement databases in apparent violation of the Commission's internal rules regarding such files. See, [SEC.gov | Commission Statement Relating to Certain Administrative Adjudications](#).

5. On June 2, 2023 the Commission issued a "Second Statement Relating to Certain Administrative Adjudications" that specifically referenced two unrelated matters, SEC v. Cochran, Admin. Proc. File No. 3-17228 and SEC v. Jarquesy, Admin. Proc. File No. 3-15255. See, [SEC.gov | Second Commission Statement Relating to Certain Administrative Adjudications](#). The Second Statement also referenced 89 additional matters in which SEC enforcement staff had access to, or uploaded, adjudicatory files to the enforcement database. See also, In re Pending Administrative Proceedings, Order Dismissing Proceedings, June 2, 2023. The Commission's action against the Respondent was among the matters referenced.

6. Also on June 2, 2023 the Commission issued a separate "Corrected Order Granting Motion to Set Aside Default and Ordering Briefs" in the instant matter. MJ Biotech, Inc. (f/k/a Michael James Enter., Inc), Exchange Act Release No 97644 (June 2, 2023). That order referenced the Commission's April 5, 2022 "Statement Relating to Certain Administrative Adjudications" and further noted that because the Respondent sought to reopen the final order issued against it on September 3, 2021, "[the] application therefore falls outside the class of cases the Commission has determined to dismiss on a discretionary basis." Id.

7. The Commission then discussed the Respondent's motion on its merits, and held that the Respondent had demonstrated good cause to set aside the default. The Commission "ORDERED that the

entry of default is set aside and that the Commission’s opinion and order revoking the registration of all classes of MJ Biotech’s registered securities is vacated.” Id. The order directed the parties to submit simultaneous briefs by June 30, 2023 addressing the affect of the order. Id. A joint brief was filed by the parties on June 30, 2023, setting a schedule for further filings. See, In re MJ Biotech, Inc., Admin. File No. 3-20297, “Joint Memorandum in Response to Commission’s June 2, 2023 Order.” (June 30, 2023).

8. On August 15, 2023 the Respondent filed an Answer to the May 11, 2021 Order Instituting Proceedings.

STANDARD OF REVIEW

Motion for Summary Disposition per 17 C.F.R. § 201.250

9. The Commission’s rules at 17 C.F.R. § 201.250(a) allow a Respondent to make a motion for summary disposition “of any or all allegations of the order instituting proceedings with respect to that Respondent.” The rules also provide that the hearing officer “may grant or deny the 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.”

10. The standard for consideration of a motion for summary disposition by the Commission reflects the standard for a motion for summary judgment articulated in Federal Rule of Civil Procedure 56(a), which provides: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) (the inquiry is whether “there are genuine factual issues that properly can be resolved only by a finder of fact because they may be reasonably be resolved in favor of either party.”) and see, Seghers v. S.E.C., 548 F.3d 129, 133 (D.C. Cir. 2008) (a party opposing summary disposition must “set forth specific facts establishing a genuine issue of material fact.”).

ARGUMENT

By Vacating its September 3, 2021 Opinion and Order, Respondent is Free to Trade its Securities, and the Commission's Findings Regarding Noncompliance are Void.

11. There is no factual dispute that the Commission, by its June 2, 2023 Corrected Order, set aside its entry of default and vacated the September 3, 2021 order revoking the registration of all classes of the Respondent's registered securities. Vacate means "to annul; to set aside; to cancel or rescind. To render an act void." Blacks Law Dictionary, 5th Ed. (1979). It follows that as a result of the Commission's action "setting aside" its prior order of September 3, 2021, the Respondent may, without restriction, market and sell its securities. Summary disposition for the Respondent on this issue should therefore be granted.

12. The Commission's June 2, 2023 Order also vacated "the Commission's opinion and order revoking the registration of all classes of MJ Biotech's registered securities." Id. (emphasis added). This distinction is important, because in vacating the opinion and order entirely, the Commission "drain[ed] the [Commission's] underlying findings of fact of whatever vitality they might otherwise have had for res judicata purposes." See, Aviation Enterprises, Inc., v. Orr, 716 F.2d 1403, 1408 (D.C. Cir. 1983). In other words, whatever factual findings the commission may have made in its September 3, 2021 order about the Respondent's compliance (or lack thereof) with the Securities Exchange Act of 1934 have no further basis or relevance, and enforcement staff may not rely on the September 3, 2021 order or any of its facts and conclusions regarding possible liability of MJ Biotech. See, also, Kelso v. U.S. Dept. of State, 13 F. Supp. 2d 12, 17 (D.D.C. 1998) ("basic understandings of vacatur dramatize that, by definition, that which is vacated loses the ability to spawn any legal consequences," citing United States v. Munsingwear, 340 U.S. 36, 41 (1950) (internal quotations omitted)).

13. Because the underlying basis of the September 3, 2021 order - and the OIP that initiated the proceedings - was that the Respondent failed to file periodic reports in violation of Section 13 of the Exchange Act of 1934, it would follow that the Commission's findings regarding the alleged failure to

report are also legally void and of no legal consequence because the opinion and order itself was vacated. Thus, summary disposition should be granted to the Respondent as to liability as well.

14. Sine the date of the Commission's June 2, 2023, the Commission has not issued a further Order Instituting Proceedings for any alleged failures on the part of the Respondent to file periodic reports in violation of Section 13 of the Exchange Act of 1934. Had the Commission done so, the Respondent would have responded accordingly.

15. Summary disposition is appropriate here, because as noted above, the Respondent submitted reports that would cure the alleged delinquencies in its 1934 Exchange Act filings as part of its January 28, 2023 "Brief in Support of [Respondent's] Motion to Set Aside Default" – a motion that was granted by the Commission in its June 2, 2023 Order. Enforcement staff asserted in their opposition brief that there were deficiencies in the Respondent's updated filings, but those technical deficiencies - if they even exist - are not material facts that should preclude summary disposition for the Respondent, but are, instead, administrative matters that can be addressed outside of the enforcement process.

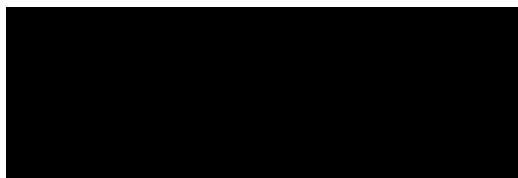
16. Since the time of the issuance of the September 3, 2021 Order the Respondent's EDGAR filing access has been restricted and has yet to be restored, making the filing of any periodic reports which may be deficient, an impossibility. To further complicate matters, Maxine Pierson, the sole officer and director of Respondent passed away on or about March 24, 2023. It was not until October 3, 2023 that a new officer and director was appointed by majority vote of the shareholders of Respondent.

CONCLUSION

17. For the reasons stated above, summary disposition in favor of the Respondent should be granted because: 1) the Commission's June 2, 2023 order vacated the order revoking the Respondent's class of securities, thus permitting the Respondent to fully trade those securities; and 2) by vacating the opinion and order, any finding that the Respondent failed to comply with the Exchange Act of 1934 has no legal

consequence. The Commission seeks revocation of the registration of all classes of Respondent's stock on the grounds such revocation is necessary to protect the investing public. However, such draconian action only serves to punish the current shareholders of the Respondent. If the Commission were to prevail on its Motion for Summary Disposition, the more appropriate remedy would be suspension of Respondent's registration for a period of three (3) months (*but not to exceed twelve months*) as provided in Section 12(j) of the Exchange Act. Such suspension would allow new management of Respondent to come current on Respondent's public disclosure requirements while still protecting the investing public.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2024 I served the within Cross-Motion For Summary Disposition on the Securities and Exchange Commission counsel listed below:

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Respectfully submitted,



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