

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF :
 :
ALYN CORP., :
AMERICAN HOLDING INVESTMENTS, INC., : INITIAL DECISION AS TO
AMERICAN MIDLAND CORP., : AMERICAN STELLAR ENERGY,
AMERICAN MILLENNIUM CORP., : INC. (N/K/A TARA GOLD
AMERICAN PALLET LEASING, INC., : RESOURCES CORP.)
AMERICAN STELLAR ENERGY, INC. : September 7, 2010
(N/K/A TARA GOLD RESOURCES CORP.), and :
AMWEST ENVIRONMENTAL GROUP, INC. :

APPEARANCES: Frederick L. Block, David S. Frye, and Neil J. Welch, Jr., for the
Division of Enforcement, Securities and Exchange Commission.

William T. Hart for Tara Gold Resources Corp.

BEFORE: James T. Kelly, Administrative Law Judge.

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on May 6, 2010, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act), against American Stellar Energy, Inc. (n/k/a Tara Gold Resources Corp.) (Tara Gold), and others.¹ In relevant part, the OIP alleges that Tara Gold, a Nevada corporation, has registered a class of securities with the Commission pursuant to Section 12(g) of the Exchange Act. The OIP further alleges that Tara Gold has failed to file its annual and quarterly reports with the Commission for any period after September 30, 2007. As a result, the OIP charges that Tara Gold has failed to comply with Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13.

The Commission instituted this proceeding to determine whether the allegations are true, to afford Tara Gold an opportunity to establish any defenses to the allegations, and to decide

¹ All of the other Respondents named in the OIP have either defaulted or settled.

whether it is necessary and appropriate for the protection of investors to suspend or revoke the registration of Tara Gold's registered securities.

Tara Gold filed its Answer on May 14, 2010. It admitted that it has failed to file its annual and quarterly reports, as alleged in the OIP. Tara Gold also expressed its intent to file all delinquent reports required by the Exchange Act.

The Division of Enforcement (Division) promptly notified Tara Gold of the opportunity to inspect and copy its investigative file. I held a telephonic prehearing conference on June 11, 2010. The Division and Francis Richard Biscan, Jr. (Biscan), Tara Gold's president, participated in the conference, as did a representative from Mendoza Berger & Co., LLP (Mendoza Berger), Tara Gold's independent auditing firm, and Tara Gold's counsel. After discussion, I granted the Division and Tara Gold leave to file cross-motions for summary disposition (Order of June 14, 2010).

During the June 11 prehearing conference, the independent auditor represented that work had begun on preparing Tara Gold's delinquent filings (Prehearing Conference Transcript at 26) (Tr. __). Mendoza Berger stated that it had agreed upon a tentative timeline to complete all of the issuer's delinquent filings by August 31, 2010 (Tr. 18-19). Mendoza Berger acknowledged that Tara Gold owed it an outstanding balance of \$65,000, but had promised to pay this debt shortly (Tr. 25-27). Mendoza Berger estimated that the professional fees it would charge Tara Gold for auditing and reviewing all overdue financial statements would approximate \$126,000 (Tr. 27).

The Division filed its motion for summary disposition, with accompanying exhibits, declarations, and a brief on July 9, 2010. Tara Gold submitted its opposition to the Division's motion and cross-motion for summary disposition on August 6, 2010. The Division filed a reply brief in support of its motion and in opposition to Tara Gold's cross-motion on August 11, 2010. Tara Gold submitted a reply in support of its cross-motion on September 3, 2010.

The Standards for Summary Disposition

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice.

Rule 250(b) of the Commission's Rules of Practice requires the hearing officer promptly to grant or deny the motion, or to defer decision on the motion. The hearing officer may grant 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.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O’Shea v. Yellow Tech. Servs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999).

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 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.

FINDINGS OF FACT

The exhibits accompanying the Division’s motion for summary disposition involve matters that may be officially noticed under Rule 323 of the Commission’s Rules of Practice. Based on those exhibits, on the Division’s declarations, on Tara Gold’s Answer, and on Tara Gold’s opposition to the Division’s motion for summary disposition, the Division has established, and Tara Gold does not contest, the following material facts.

Tara Gold is a Nevada corporation with an office in Wheaton, Illinois (Answer). It has a class of securities registered with the Commission pursuant to Section 12(g) of the Exchange Act (CIK No. 1100747) (Answer). Biscan has been president of Tara Gold and its corporate predecessor from 2003 to the present (Declaration of Neil J. Welch, Jr., dated July 8, 2010, Ex. 21) (Welch Decl.).

As of April 30, 2010, Tara Gold’s common stock (symbol TRGD) was quoted on the Pink Sheets, operated by Pink OTC Markets Inc. (Pink Sheets) (Answer). The stock had fifteen market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3) (Answer).

As of May 6, 2010, Tara Gold had not filed any periodic reports with the Commission since it filed an untimely Form 10-QSB for the period ended September 30, 2007 (Answer). The Commission’s Division of Corporation Finance (Corporation Finance) is the staff office responsible for monitoring Tara Gold’s periodic filings. On October 24, 2005, Corporation Finance sent a letter to Biscan, stating that the issuer appeared to be delinquent in its periodic reporting obligations (Welch Decl., Ex. 9). The letter warned that the issuer could be subject to revocation proceedings if it did not file its required reports within fifteen days. Biscan received Corporation Finance’s letter on October 28, 2005.

Over the next year, Corporation Finance received a series of letters from an attorney representing the issuer. These letters proposed, and then repeatedly revised, a schedule for filing the issuer's delinquent periodic reports (Declaration of Patti J. Dennis, dated July 7, 2010, Exs. 1-4). Since Biscan assumed leadership of the issuer in 2003, Tara Gold and its corporate predecessor have failed to file a single periodic report on time (Welch Decl., Ex. 11). Until recently, the issuer stopped filing any periodic reports after July 9, 2008, when it filed the September 30, 2007, Form 10-QSB.

Tara Gold's opposition shows, and the Division does not contest, the following facts.² On May 6, 2010, the same day it issued the OIP, the Commission suspended trading in Tara Gold's securities pursuant to Section 12(k) of the Exchange Act (official notice). The trading suspension remained in effect from May 6 through May 19, 2010 (official notice). After the trading suspension expired, Tara Gold's common stock can be bought and sold only on an unsolicited basis.

On July 1, 2010, Tara Gold filed its Form 10-K for the year ended December 31, 2007 (official notice). Corporation Finance then reviewed Tara Gold's 2007 Form 10-K and found no material deficiencies (Welch Decl., ¶ 29). At present, Tara Gold is delinquent in filing two annual reports (for the calendar years ended 2008 and 2009) and eight quarterly reports (for the periods ended March 31, June 30, and September 30, 2008; March 31, June 30, and September 30, 2009; and March 31 and June 30, 2010). Tara Gold has not met its commitment to become current by August 31, 2010, and, in contrast, remains vague about when it will become current in its periodic filing obligations.

DISCUSSION AND CONCLUSIONS

Under Section 12(j) of the Exchange Act, the Commission is authorized, "as it deems necessary or appropriate for the protection of investors," to revoke the registration of a security or to suspend the registration of a security for a period not exceeding twelve months if it finds that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

Section 13(a) of the Exchange Act and the regulations thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Implicit in these rules is the requirement that the reports accurately reflect the financial condition and operating results of the issuer. See SEC v. Kalvex, Inc., 425 F. Supp. 310, 316 (S.D.N.Y. 1975). No showing of scienter is necessary to establish a violation of Section 13(a) or the regulations thereunder. See SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978) (citations omitted).

² The Division objects to any consideration of the factual representations in Tara Gold's opposition and cross-motion. I agree with the Division that Tara Gold may not use its attorney to make unsworn factual representations on its behalf. Tara Gold's abbreviated pleadings have not established material facts that defeat the Division's motion for summary disposition or support its own cross-motion for summary disposition.

The purpose of the periodic reporting requirement is to supply the investing public with current, accurate financial information about an issuer so that the investing public may make informed decisions. As stated in SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history):

The reporting requirements of the [Exchange Act are] the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities. Congress has extended the reporting requirements even to companies which are “relatively unknown and insubstantial.”

It is uncontested that Tara Gold has failed to file any annual or quarterly reports for any period after December 31, 2007. Thus, Tara Gold has violated, and continues to violate, Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13.

The determination of an appropriate sanction under Section 12(j) of the Exchange Act should be guided by the public interest factors identified in Gateway Int’l Holdings, Inc., 88 SEC Docket 430, 439 (May 31, 2006). Under Gateway, several issues should be considered, including the seriousness of the issuer’s violations; the isolated or recurrent nature of the violations; the degree of culpability involved; the extent of the issuer’s efforts to remedy its past violations and ensure future compliance; and the credibility of its assurances, if any, against further violations.

Tara Gold’s violations are serious, numerous, ongoing, and extend over a long period of time. It is plain that Tara Gold did not take its periodic reporting responsibilities seriously, even after receiving a delinquency letter from Corporation Finance in October 2005. Nor has it come into full compliance, even after the Commission commenced this enforcement action. Tara Gold’s inaction prior to the initiation of this proceeding, coupled with its ongoing delinquency, raises serious doubts as to its future compliance with the periodic reporting requirements.

In its recent opinions, the Commission has recognized that Section 12(j) of the Exchange Act authorizes revocation as a means of protecting investors and that, in evaluating what is necessary or appropriate to protect investors, regard must be had not only for an issuer’s existing stockholders, but also for potential investors. The Commission has also held that both existing and prospective shareholders are harmed by a continuing lack of current, reliable, and audited financial information because such shareholders cannot make an informed investment decision. See Impax Labs., Inc., 93 SEC Docket 6241, 6255-56 (May 23, 2008).

I am unpersuaded by Tara Gold’s claims that: (1) there is current information in its recently filed Form 10-K for the year ended December 31, 2007; and (2) its current financial statements would likely provide little information which would be useful to prospective investors. Current and prospective investors are entitled to have access to all of Tara Gold’s periodic reports.

Tara Gold’s counsel asserts that the issuer did not deliberately and repeatedly disregard the Commission’s reporting requirements. Rather, counsel asserts, Tara Gold failed to fail

certain periodic reports solely as a result of its financial position. Current and prospective shareholders are entitled to know of Tara Gold's precarious financial condition.

I am also unpersuaded by Tara Gold's contention that it is virtually impossible for a member of the public to buy Tara Gold's stock at the present time. The Commission's obligation to enforce the reporting requirements of the Exchange Act is not diminished by any action the Pink Sheets may have taken against Tara Gold. Moreover, the fact that Tara Gold's stock is still able to be traded on an unsolicited basis while the company is delinquent in its periodic filings supports, rather than weakens, the Division's request for revocation.

I reject Tara Gold's request that the registration of its securities be suspended, rather than revoked, under Section 12(j) until such time as the company has filed all its delinquent reports. Under the terms of the statute, a registration suspension is limited to a maximum period of twelve months. If Tara Gold failed to complete its periodic filings during the period of suspension, the suspension order could not be converted into a revocation. The need for finality in Commission administrative proceedings militates against offering a suspension as an additional grace period for coming into compliance. See Impax, 93 SEC Docket at 6256 n.34.

I agree with the Division that Tara Gold has proven incapable of meeting its obligations as a Section 12 registrant. Accordingly, I conclude that it is necessary and appropriate in the public interest to revoke the registration of Tara Gold's registered securities.

ORDER

Based on the findings and conclusions set forth above, IT IS ORDERED THAT:

1. The Division of Enforcement's motion for summary disposition is granted;
2. The cross-motion for summary disposition of American Stellar Energy, Inc. (n/k/a Tara Gold Resources Corp.), is denied; and
3. The registration of all classes of the registered securities of American Stellar Energy, Inc. (n/k/a Tara Gold Resources Corp.), is revoked pursuant to Section 12(j) of the Securities Exchange Act of 1934.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own

initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

James T. Kelly
Administrative Law Judge