

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 56685 / October 22, 2007

Admin. Proc. File No. 3-12658

In the Matter of

Laminaire Corp. (n/k/a Cavico Corp.),
TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.),
and
Upside Development, Inc. (n/k/a Amorocorp)

ORDER DENYING
MOTION TO AMEND
ORDER INSTITUTING
PROCEEDINGS

On June 13, 2007, the Commission instituted administrative proceedings against three Delaware corporations, including "TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.)" ("AMI"), pursuant to Section 12(j) of the Securities Exchange Act of 1934 1/ to determine whether to revoke or suspend the registration of these corporations. The order instituting proceedings ("OIP") alleged that that the three issuers were delinquent in their required Exchange Act periodic filings with the Commission. By motion dated August 3, 2007, the Division of Enforcement moves pursuant to Rule of Practice 200(d) 2/ to amend the OIP to strike AMI as a party and to substitute "TAM Restaurants, Inc." ("TAMRI") in its place. 3/

1/ 15 U.S.C. § 78l(j).

2/ 17 C.F.R. § 201.200(d).

3/ On August 30, 2007, the law judge issued an order purporting to grant the Division's motion pursuant to Rule of Practice 200(d)(2). That Rule provides the law judge with authority to amend an order instituting proceedings only to "include new matters of fact or law that are within the scope of the original order instituting proceedings." The effect of granting the Division's motion would be to dismiss AMI as a party, and dismissal of a party from a case is not inclusion of a new matter within the scope of the original order instituting proceedings. See Hunter Adams, Securities Exchange Act Rel. No. 51117 (Feb. 1, 2005), 84 SEC Docket 2928, 2929 (holding that a motion to dismiss charges as to a respondent should not have been directed to the law judge as it was not within the scope of the original order instituting proceedings and thus could only be granted by the

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The Division states that, after the OIP was instituted, AMI advised the Division that "it was the victim of mistaken identity and that it had acquired a different and unrelated TAM Restaurants, Inc.," a Delaware corporation incorporated in March 2006 ("Second TAM"). ^{4/} The Division now wishes to amend the OIP to delete references to AMI. AMI has stated that it does not oppose the Division's motion and that it has no objection to being dismissed as a party to the proceeding.

TAMRI opposes the Division's motion arguing that the Division's motion is "premature and may result in prejudice" to it, as the Division's motion "is based on incomplete facts." TAMRI requests that we stay this proceeding "pending a resolution of the actual corporate issue." According to TAMRI:

The Division is acting imprudently by moving ahead in the case at hand, which may result in prejudice to Respondent. The precise relationship between the Respondent and Aerofoam Metals is not yet known. Notwithstanding the fact that Second TAM may have a valid corporate existence separate from the Respondent, Aerofoam Metals may have assumed part of the corporate entity of Respondent by changing Respondent's securities registered name, taking over Respondent's CIK [Central Index Key] number ^{5/} and changing the number, linking its ticker symbol to the Respondent's symbol "TAMR" and using the Respondent's Chief Executive Officer's identity as an officer of Aerofoam Metals. By taking over parts of Respondent's identity and registration rights, Aerofoam may be successor, at least in part, to Respondent. Therefore, until a further investigation is made and the facts at hand become public, the Respondent request [sic] that the Court [sic] deny the Division's request[.]. ^{6/}

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- ^{3/} (...continued)
Commission). Therefore, the law judge did not have the authority pursuant to Rule 200(d)(2) to grant the Division's motion. We hereby vacate that order.
- ^{4/} According to TAMRI's incorporation documents and Exchange Act reports filed on EDGAR, TAMRI was incorporated under the laws of the State of Delaware in July 1996.
- ^{5/} The CIK number is a unique identifier assigned to an issuer for use in the Commission's computer systems.
- ^{6/} TAMRI urges that we "consider and address the circumstances surrounding the cessation of the operations when addressing [TAMRI's] purported filing failure" and has included a
(continued...)

In response, the Division notes that TAMRI does not dispute the statement in a sworn declaration filed with the Division's brief that, on July 10, 2007, Commission staff had "telephoned Anthony Golio, who signed the last filing made by [TAMRI] with the Commission . . . on October 26, 2001, as President of [TAMRI]" and that "Mr. Golio stated that he was still associated with TAMRI, that he had never heard of John Sparrow [the president of Second TAM according to that corporation's Delaware incorporation documents], that [TAMRI] had made no effort to keep its corporate registration with the State of Delaware current, and that [TAMRI] had never authorized a name change or merger with [AMI]." Further, the Division points out that TAMRI had confirmed at the prehearing conference held on July 17, 2007 that it never effected a name change or merger with AMI and that it never authorized AMI to take over its corporate identity. Finally, the Division notes that John Sparrow was never identified as an officer of TAMRI in any of its filings with the Commission.

Rule of Practice 200(d)(1) authorizes the Commission, at any time upon motion of a party, to amend an order instituting proceedings to include new matters of fact or law. We have stated that amendments to orders instituting proceedings "should be freely granted, subject only to the consideration that other parties should not be surprised nor their rights prejudiced." ^{7/} The assertion that AMI is not the successor to TAMRI would be a new fact if proven.

However, it is unclear to us after reviewing the pleadings and exhibits furnished by the parties what AMI's relationship is to TAMRI. We note that TAMRI's CIK number, as disclosed in its Exchange Act reports filed in 1998 and 2001, is the same as AMI's CIK, as reported in the Pink Sheets website on July 17, 2007 and confirmed by the Division's declaration.

A NASDAQ Transfer Agent Verification Form, dated June 5, 2006, states that, effective at the open of business on June 15, 2006, "TAM Restaurants, Inc." with a "[c]urrent CUSIP # 874835-10-1" would be changing its name to "Aerofoam Metals, Inc." with a "[n]ew CUSIP # 007772-10-6." The Corporate Action Calendar section of the Bloomberg market information service, attached as an exhibit to the declaration, confirms this transaction. The Corporate Action Calendar further shows that the ticker symbol for "Tam Restaurants Inc." was changed on that date from "TAMR" to AMI's symbol of "AFML." This ticker symbol, "TAMR," is the same

^{6/} (...continued)
transcript of a November 2003 statement made by Anthony Golio, TAMRI's Chief Executive Officer, Chief Financial Officer, Chairman of the Board and the president of its subsidiary, to the New York City Franchise and Concession Review Committee concerning a temporary cessation of business that it endured as a result of the September 11, 2001 terrorist attack in New York. TAMRI's explanations for its filing failures is not relevant to our consideration of the Division's motion. Accordingly, we do not address it here.

^{7/} IFG Network Sec., Inc., Exchange Act Rel. No. 50008 (July 13, 2004), 83 SEC Docket 1103, 1104 (internal citations omitted).

one TAMRI had disclosed in its 2001 Exchange Act reports. In light of these facts showing a connection or a corporate identity between TAMRI and the second TAM Restaurants, Inc. acquired by AMI, we believe that the record with respect to AMI's relationship to TAMRI requires further development.

Accordingly, IT IS ORDERED that the motion of the Division of Enforcement to amend the Order Instituting Proceedings, issued June 13, 2007, in the Matter of Laminaire Corp. (n/k/a Cavico Corp.), TAM Restaurants, Inc. (n/k/a Aerofoam Metals, Inc.), and Upside Development, Inc. (n/k/a Amorocorp (Administrative Proceeding File No. 3-12658) be, and it hereby is, DENIED.

By the Commission.

Nancy M. Morris
Secretary