

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75818 / September 2, 2015

Admin. Proc. File No. 3-16502

In the Matter of

LUMINARY ACQUISITION CORP.

ORDER DISMISSING UNTIMELY
PETITION FOR REVIEW

The Division of Enforcement requests that we dismiss as untimely the appeal filed by Luminary Acquisition Corp. ("Luminary") challenging the revocation of the registration of its registered securities. Luminary opposes the Division's request. For the reasons explained below, we grant the Division's request and dismiss Luminary's appeal as untimely.

I. Background

Before June 24, 2015, Luminary was a company with securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934.¹ Between April 1, 2008 and March 18, 2015, Luminary did not make any periodic filings with the Commission with respect to those securities.² On March 19 and 20, 2015, Luminary filed 28 quarterly and annual reports on Forms 10-Q and 10-K addressing the seven-year period from 2008 to 2014. On April 14, 2015, Luminary's former auditor advised the Office of the Chief Accountant that the filings attributed audit reports to it that the auditor had not issued. Luminary acknowledged these deficiencies in an April 15, 2015 letter to Commission staff.³

On April 21, 2015, the Commission issued an order instituting proceedings, which asserted that Luminary and two other issuers with securities registered with the Commission had failed to file timely periodic reports as required by Exchange Act Section 13(a).⁴ The OIP also

¹ 15 U.S.C. § 78l.

² On March 28, 2008, Luminary filed a Form 10KSB for the year ended December 31, 2007.

³ In its petition for review, Luminary contended that a third party service provider had made "erroneous filings," which Luminary has "now corrected through a new auditor." But the EDGAR system shows that Luminary never made any corrected filings and never withdrew its March 2015 filings.

⁴ *Hi-Q Wason, Inc*, Exchange Act Release No. 74772, 2015 WL 1800396 (Apr. 21, 2015); 15 U.S.C. § 78m(a).

gave notice that the Commission would consider whether to revoke the registration of the respondents' registered securities in light of these violations. Consistent with Rule 141(a)(2)(ii) of the Commission's Rules of Practice, the OIP was served by express mail on Luminary on April 21, 2015 at "the most recent address shown on [its] most recent filing with the Commission."⁵ The OIP was delivered to that address the following day, as reflected by tracking information obtained from the United States Postal Service website.⁶

Luminary did not respond to the OIP, and on May 12, 2015, the law judge issued an Initial Decision Making Findings and Revoking Registrations by Default with respect to Luminary's registered securities (the "Initial Decision").⁷ The Initial Decision stated, among other things, that "a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision." On May 14, 2015, the Commission sent the Initial Decision to Luminary via certified mail to the same addresses to which the OIP was sent.⁸ The USPS website shows that unsuccessful delivery attempts were made at each address.

On June 24, 2015, a Notice that Initial Decision Has Become Final ("Finality Notice") was issued.⁹ The Finality Notice explained that "[t]he time for filing a petition for review of the initial decision in this proceeding ha[d] expired," and that no respondent had filed a petition. The Finality Notice also stated that the Initial Decision had become the final decision of the Commission with respect to Luminary and the other respondents.

On July 1, 2015, Luminary filed a notice of appeal pursuant to Rule of Practice 410(a) requesting that the Commission "set aside or reverse the decision granted on June 24th 2015." The Commission then issued a briefing order requesting the views of the parties as to whether Luminary's appeal should be dismissed as untimely pursuant to Rule 410(b), which provides that a petition for review of an initial decision must be submitted within the time period identified in the initial decision.¹⁰ In its initial brief, the Division of Enforcement requested that we dismiss Luminary's appeal as untimely. Luminary acknowledged that, "in contravention of" the Rules of

⁵ 17 C.F.R. § 201.141(a)(2)(ii).

⁶ The OIP also was sent by express mail to the address listed on Luminary's April 15 letter to the Commission. The USPS website reflects that the OIP was returned to the Commission from that address.

⁷ *Hi-Q Wason, Inc*, Initial Decision Release No. 791, 2015 WL 2196504 (May 12, 2015). The decision also revoked the registration of the registered securities of the other respondents.

⁸ See Rule of Practice 141(b), 17 C.F.R. § 201.141(b) (authorizing service of subsequent orders and decisions by the same means that the OIP is served).

⁹ *Hi-Q Wason, Inc*, Exchange Act Release No. 75275, 2015 WL 3878333 (June 24, 2015).

¹⁰ *Luminary Acquisition Corp.*, Exchange Act Release No. 75502, 2015 WL 4465322, at *1 (July 22, 2015); Rule 410(b), 17 C.F.R. § 201.410(b) (generally providing that "[t]he petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to Rule 360(b)").

Practice, it had filed its appeal after the 21-day period during which it could appeal the initial decision had expired. But Luminary requested that we set aside the Finality Order, continue "its status as a fully reporting company," and allow it to work with the Commission "to ensure all filings are correct and in accordance with [the] Rules of Practice."

II. We dismiss Luminary's appeal as untimely.

We find that it is appropriate to dismiss Luminary's appeal as untimely under Rule of Practice 410. Under Rule 410, Luminary was required to file any petition for review by June 8, 2015, i.e., 21 days after service of the Initial Decision, plus three days for mailing.¹¹ Instead, Luminary did not file its petition until July 1, 2015, i.e., 23 days after the appeal deadline and one week after the Finality Order was entered. Indeed, Luminary concedes that its appeal was untimely. Accordingly, we dismiss Luminary's petition.

Luminary argues that we should entertain its petition for three reasons. We find none of them persuasive.

First, Luminary contends that its periodic filings "were brought up to date on March 20[,] 2015, therefore negating the revoking [of] the registration of the securities." But this argument does not bear on or excuse Luminary's failure to timely file an appeal.¹² In any event, Luminary's argument appears to rest on a false premise. Although Luminary contends that it is current in its reporting obligations, it concedes that its recent filings are deficient.¹³

Second, Luminary asserts that the Initial Decision served in mid-May 2015 did not reach it because it changed its "lawyers, auditors, and registered office on April 27, 2015." It also

¹¹ Rule of Practice 160(b), 17 C.F.R. § 201.160(b) ("If service is made by mail, three days shall be added to the prescribed period for response unless an order of the Commission or the hearing officer specifies a date certain for filing."); *see also* Rule 160(a), 17 C.F.R. § 201.160(a) (providing that where a response date falls on a "Saturday, Sunday, or Federal legal holiday" the period for response "runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday"); *see also* *BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72753, 2014 WL 3827605, at *1 n.2 (Aug. 4, 2014) (clarifying application of Rule of Practice 160).

¹² *See* *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 n.19 (May 8, 2014) ("Unmet deadlines may cut off substantive rights to review, but this is their function.") (*citing* *Carter v. Wash. Metro Area Transit Auth.*, 764 F.2d 854, 857 (D.C. Cir. 1985) ("[F]inality of outcome, regardless of the merits of the claim, is exactly the purpose of the statute of limitations that the legislature has enacted."), and *Kavanagh v. Noble*, 332 U.S. 535, 539 (1947) (explaining that limitations "periods are established to cut off rights, justifiable or not, that might otherwise be asserted" (citations omitted))).

¹³ Moreover, we have observed that "even if an issuer has filed all delinquent periodic reports, revocation can be appropriate, particularly when . . . the delinquencies continued for an extended period without adequate explanation." *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *13 (Nov. 4, 2013).

suggests that the Initial Decision could have been served on it by email. But the Rules of Practice unambiguously authorized service on Luminary at the address listed in its most recent securities filing, as was done here.¹⁴ And although it was not required, service also was attempted (unsuccessfully) at the address listed on Luminary's April 15, 2015 letter. As Luminary conceded in its initial brief, it was "its failure to correctly update" its address with the Commission that led to any delay in its receipt of the Initial Decision.

Finally, Luminary asserts that it has acted in good faith to cure its violations since it became aware of the OIP. But Luminary's state of mind is not at issue. Rule 410 provides a bright-line rule for determining the timeliness of an appeal.¹⁵ Because Luminary did not comply with that Rule, despite proper service of the Initial Decision, its appeal accordingly is dismissed.

Accordingly, IT IS ORDERED that the petition for review of Luminary Acquisition Corp. is dismissed as untimely.

By the Commission.

Brent J. Fields
Secretary

¹⁴ Rule 141(a)(2)(ii) authorizes service on an "issuer of a class of securities registered with the Commission, by sending a copy of the order addressed to the most recent address shown on the entity's most recent filing with the Commission by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery." USPS records confirm the attempted delivery of the Initial Decision.

¹⁵ See *Gerasimowicz*, 2014 WL 1826641, at *2 & nn.18-19 ("[S]trict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.") (quotation marks omitted).