

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81172 / July 19, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18070

In the Matter of

David Lubin,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against David Lubin (“Respondent” or “Lubin”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the federal securities laws or the rules and regulations thereunder.

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds³ that

SUMMARY

David Lubin, a lawyer licensed in New York, fraudulently misrepresented and concealed material information regarding the ownership of shares of a publicly-traded company.

From 2007 to mid-2011, Lubin was an officer and director of a public company named Entertainment Art, Inc. ("EERT") and drafted and signed the company's public filings. Lubin and his two fellow officers received a total of 1.2 million restricted shares (the "control block") and EERT also issued 610,000 shares to investors in private placement transactions. In 2009, Lubin facilitated the sale of all of EERT's 1.81 million outstanding shares to an entity controlled by an acquaintance.⁴

After the sale was completed, Lubin masked that his acquaintance owned all of EERT's shares. Lubin lied in ten EERT filings with the Commission that he drafted and signed, and engaged in other deceptive conduct, to create the false impression that the entity controlled by Lubin's acquaintance had purchased only the restricted control block instead of all of EERT's shares. Lubin's deception allowed the fiction to continue that all of EERT's shares were not under common ownership. Accordingly, through his deceptive conduct, Lubin willfully violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.

RESPONDENT

1. Lubin, 52, is a resident of West Hempstead, New York. He is licensed to practice law in New York. Lubin served as EERT's Corporate Secretary and a board member from 2007 through 2011.

³ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ In July 2009, EERT conducted a 33:1 forward stock split, resulting in a total float of 59.73 million shares.

OTHER RELEVANT ENTITY

2. EERT was incorporated in Nevada and quoted on the Over-the-Counter Bulletin Board (“OTCBB”). Its common stock was registered with the Commission pursuant to Exchange Act Section 12(g) on May 22, 2009. In 2013, EERT became Biozoom, Inc. Biozoom deregistered its common stock under Section 12(g) in a Form 15 filed with the Commission on October 22, 2015.

FACTS

A. EERT Background

3. In 2007, Lubin and two of his friends (collectively, the “founders”) formed EERT. EERT purportedly imported and sold leather zip bags. Lubin served as an EERT officer and director from 2007 through August 2011.

4. Each of the three founders was issued 400,000 restricted EERT shares, for a total of 1.2 million restricted shares.

5. In 2007 and 2008, EERT sold a total of 610,000 shares to 34 investors (“private placement investors”) in a private placement offering; these shares were restricted at that time. In July 2008, EERT registered the resale of these shares pursuant to a Form S-1 filed with the Commission (hereinafter “the Form S-1 shares”). These Form S-1 shares did not bear a restrictive legend and their registered resale would have allowed a purchaser to receive unrestricted shares.

6. Thus, as of July 2008, EERT had 1.81 million shares outstanding in two categories: (i) 1.2 million restricted shares (the control block) and (ii) 610,000 Form S-1 shares.

B. Lubin Facilitates the Sale of All of EERT’s Shares

7. In approximately December 2008, the founders decided to sell EERT. Lubin contacted an acquaintance whom he knew as an investor in shell companies (“Shell Investor”). Shell Investor expressed an interest in purchasing all of EERT’s outstanding shares, specifically, both the control block and the Form S-1 shares.

8. Shell Investor, however, wanted to make it appear as if he did not own the Form S-1 shares, as common ownership of all of EERT’s shares would cause all of the Form S-1 shares to become control shares⁵ and require the resale of such securities to either be registered or comply with an applicable exemption. Not disclosing that all of the Form S-1 shares would be

⁵ Control shares are securities that are held by those with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

owned by Shell Investor, an affiliate of EERT, would give the false impression that the Form S-1 shares were available for public resale without restrictions, despite Shell Investor's planned ownership of all EERT shares.

9. Lubin accommodated Shell Investor by drafting a false share purchase agreement stating that Shell Investor – through an entity he controlled, Medford Financial Group, Ltd. (“Medford”) – would purchase only the EERT control block shares, rather than all of the shares.

10. Since Medford was in fact purchasing all of the EERT shares, Lubin also drafted separate share purchase agreements to effect the transfer of the Form S-1 shares to Medford. The share purchase agreements should have listed Medford as the purchaser of the shares. Instead, Lubin hid this information and left the purchaser, purchase price, and date of sale blank on the share purchase agreements.

11. Lubin had the private placement investors sign their respective stock purchase agreements, which he had prepared without identifying Medford as the buyer and without including information regarding the sale price and date. Lubin also had the private placement investors endorse their share certificates with medallion guarantees, and sign the stock powers relinquishing control of their shares.

12. The private placement investors provided all of these documents to Lubin, and Medford, via Lubin, paid each of the private placement investors the principal of their investment plus a small return.

13. By May 2009, Medford completed the purchase of all of EERT's shares. Thus, from that point onward, all of EERT's shares were under common control and should have been treated as control shares.

14. Lubin continued to mask the true ownership of EERT's shares in subsequent filings with the Commission.

15. Lubin remained an EERT officer and director even after Medford's purchase, until October 2011. He continued to draft and sign EERT's public filings through August 2011. More specifically, Lubin drafted and signed EERT's annual and quarterly filings on Forms 10-K and 10-Q, respectively.

C. Lubin Makes Materially False and Misleading Statements in Public Filings

16. As an EERT officer and director who drafted and signed EERT's public filings, and as a practicing attorney, Lubin was obligated to ensure that those filings accurately described the ownership of EERT's shares. He failed to discharge that obligation.

17. Rather, Lubin drafted, signed, and caused to be filed with the Commission documents – including three annual and seven quarterly reports filed between June 2009 and August 2011 – that materially misrepresented the history and status of EERT’s shares.

18. In particular, each of the ten public filings that Lubin drafted, signed, and caused to be filed from June 2009 to August 2011 described EERT’s issuance of the control block and the Form S-1 shares, and then stated, regarding Medford’s purchase of the control block, “On May 1, 2009, the principal shareholders of the Company entered into a Stock Purchase Agreement which provided for the sale of 39,600,000 shares of common stock of the Company (the “Purchased Shares”) owned by the three principals to Medford Financial Ltd.”

19. At the time, Lubin knew these statements were misleading, as he knew Medford had purchased the Form S-1 shares and therefore owned all of EERT’s issued and outstanding shares. Lubin’s deliberate omission painted a materially misleading picture of the status of EERT’s issued and outstanding shares.

20. By omitting material facts related to the status of the Form S-1 shares in the public filings he drafted, signed, and caused to be filed, Lubin purposefully hid the true beneficial ownership of the Form S-1 shares.

21. Ultimately, as previously alleged by the Commission,⁶ more than 14 million of these shares were sold in an illegal unregistered distribution for proceeds of \$34 million.

VIOLATION

22. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit a person, in connection with the purchase or sale of a security, from

- (a) employing devices, schemes, or artifices to defraud;
- (b) making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or
- (c) engaging in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

23. To violate Section 10(b) or Rule 10b-5, a person must act with scienter, *Aaron v. SEC*, 446 U.S. 680, 695, 701-02 (1980), which the Supreme Court has defined as “a mental state embracing intent to deceive, manipulate, or defraud,” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). The “in connection with the purchase or sale” element is viewed expansively.

⁶ See *SEC v. Tavella*, 13-cv-4609 (S.D.N.Y. Jan. 6, 2015) (granting Commission’s motion for default judgment in action claiming that public re-sales of the Form S-1 shares in 2013 violated Section 5).

SEC v. Wolfson, 539 F.3d 1249, 1262 (10th Cir. 2008). It is met if the fraud alleged somehow touches upon or has some nexus with any securities transaction. *SEC v. Clark*, 915 F.2d 439, 449 (9th Cir. 1990). “Where the fraud alleged involves public dissemination in a document such as a press release, annual report, investment prospectus or other such document on which an investor would presumably rely, the ‘in connection with’ requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation or omission.” *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993).

FINDINGS

24. Based on the foregoing, the Commission finds that Lubin willfully violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.

IV.

Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws as described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, pursuant to Sections 4C and 21C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Exchange Act or that is required to file reports pursuant to 15(d) of that Act.

C. Respondent is denied the privilege of appearing or practicing before the Commission as an attorney.

D. IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission’s Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceedings, that a public hearing for the purpose of taking evidence on the questions set forth

in Section IV hereof shall be convened at a time and place to be fixed by, and before, an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110, following the entry of a final judgment against the last remaining defendant(s) in any action(s) arising out of or related to the facts in this Order ("Related Actions").

If Respondent Lubin fails to appear at a hearing after being duly notified, Respondent Lubin may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent Lubin personally or by certified mail.

E. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that the Administrative Law Judge shall issue an initial decision no later than 150 days from the date of the entry of a final judgment in any Related Actions.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary