

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 651/May 25, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13584

In the Matter of	:	
	:	ORDER DISMISSING
JAYCEE JAMES	:	PROCEEDING IN PART
	:	

The Order Instituting Proceedings (OIP) alleges that Respondent JayCee James (James) violated Sections 13(d) and 16(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rules 13d-1, 13d-2, and 16a-3 because he filed numerous false reports relating to beneficial ownership of the securities of twenty-nine issuers. James filed the reports with the Securities and Exchange Commission (Commission) on Forms 3 and 4 and Schedule 13D.

Registration of a class of securities under Section 12 of the Exchange Act is an essential element of a cause of action alleging that beneficial ownership reports violated Sections 13(d) and 16(a) of the Exchange Act (April 2, 2010, Order at 14) (collecting cases). In other words, false reports filed on Forms 3 and 4 and Schedule 13D may be reprehensible, abusive, and a general nuisance, but they do not violate Sections 13(d) or 16(a) of the Exchange Act unless they are shown to involve the securities of Section 12 registrants.¹ The burden of proof rests with the Division of Enforcement (Division).

The Division elected to file its first Motion for Summary Disposition (First Motion) without a supporting declaration from a knowledgeable individual, attesting to the fact that the twenty-nine issuers identified in the OIP were Section 12 registrants at the relevant times. Accordingly, I reviewed EDGAR on my own motion and took official notice of its contents as to the Section 12 registration status of the twenty-nine companies. As it turns out, approximately two-thirds of the issuers identified in the OIP were not Section 12 registrants.

I previously afforded the Division an opportunity to address the Section 12 registration status of fourteen of these issuers and to show cause why the allegations of the OIP should not be

¹ Of course, a person who files false reports with the Commission could also be subject to a cause of action under Sections 10(b) or 18(a) of the Exchange Act, whether or not the securities that were the subject of the false reports were registered under Section 12 of the Exchange Act. However, the present proceeding does not involve any alleged violations of Sections 10(b) or 18(a).

dismissed as to James's filings with respect to them (January 13, 2010, Order Proposing to Take Official Notice). In response, the Division conceded that Section 12 registration was imperative and that several entities listed in the OIP were not Section 12 registrants when James made his filings (Division's Supplemental Memorandum, dated Jan. 26, 2010, at 2) (Div. Supp. Mem.). On April 2, 2010, I denied the Division's First Motion, with leave to refile. I also dismissed all allegations in the OIP as to filings James made with respect to the securities issued by those fourteen non-registrants (April 2, 2010, Order at 14-20, 26, 28).

Based on my review of the Commission's EDGAR files, I preliminarily determined that three other issuers identified in the OIP did not have a class of securities registered pursuant to Section 12 of the Exchange Act at the relevant times (April 2, 2010, Order at 16-18) (discussing VOIP Talk, Inc., Fashion House Holdings, Inc., and Sports Media, Inc.). Because the January 13, 2010, Order Proposing to Take Official Notice had not discussed these three issuers, I afforded the Division an opportunity "to establish the contrary" pursuant to Rule 323 of the Commission's Rules of Practice (April 2, 2010, Order at 26, 28). I again required the Division to show cause why I should not dismiss the allegations in the OIP relating to filings James made with respect to the securities of these three issuers (April 2, 2010, Order at 28). At the Division's request, I later enlarged the time for responding (April 13, 2010, Order).

The Division has been unable to demonstrate that these three issuers had a class of securities registered pursuant to Section 12 of the Exchange Act at the relevant times (Mem. of P. & A. in support of the Division's Second Motion for Summary Disposition, dated May 5, 2010, at 7 n.3). Moreover, the Division's pleadings were silent on the question of whether I should dismiss the allegations in the OIP relating to filings James made with respect to the securities of these three issuers.

The only possible sanction in this proceeding is a cease-and-desist order. While the Division must show some risk of future violations to obtain a cease-and-desist order, the Commission has held that, "absent evidence to the contrary," a single past violation ordinarily suffices to establish that the violator will engage in the same type of misconduct in the future. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001), recon. denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

After a violation has been established in an administrative proceeding, the inquiry turns to the question of sanctions. The Commission occasionally considers other misconduct (*i.e.*, misconduct not charged in the OIP or misconduct that does not necessarily violate the federal securities laws) as grounds for imposing enhanced sanctions. Such misconduct may lead to a larger civil monetary penalty and/or an unconditional registration bar (as opposed to a registration suspension or a bar for a fixed period) in certain circumstances. See, *e.g.*, Stonegate Secs., Inc., 55 S.E.C. 346, 359-60 (2001); J. Stephen Stout, 54 S.E.C. 888, 915 n.64 (2000); Joseph J. Barbato, 53 S.E.C. 1259, 1282 (1999).

The Division asserts that James's filings with respect to issuers that are not Section 12 registrants "demonstrate the indiscriminate nature of his conduct and underscore the risk that it will continue unless enjoined" (Div. Supp. Mem. at 3). There is no need for such ballast here, because the only sanction involved is a cease-and-desist order and a single proven violation of

Sections 13(d) and 16(a) would be sufficient to impose it.² In any event, an order to cease-and-desist from committing or causing violations of Sections 13(d) and 16(a) would do nothing to halt future false filings of Forms 3 and 4 and Schedule 13D as to Section 15(d) issuers or issuers that have voluntarily withdrawn from Section 12 registration.

IT IS ORDERED THAT all allegations in the Order Instituting Proceedings are dismissed as to filings James made with respect to the securities of VOIP Talk, Inc., Fashion House Holdings, Inc., and Sports Media, Inc.³

James T. Kelly
Administrative Law Judge

² Cf. Steele v. Polymer Research Corp. of Am., No. 85 Civ. 5563, 1987 U.S. Dist. LEXIS 5270, at *3-6 (S.D.N.Y. June 18, 1987) (dismissing a counterclaim alleging violations of Section 13(d) of the Exchange Act because the security in question was not registered pursuant to Section 12; imposing sanctions under Fed. R. Civ. Pro. 11 against the attorney who filed the counterclaim).

³ As a separate matter, page 13 of the April 2, 2010, Order characterized James's filings as an attempt to assert "adverse possession" over defunct companies. In fact, James claimed "constructive possession" over the subject companies, as discussed on page 2 of the same Order. Page 13 of the April 2, 2010, Order is modified to comport with page 2.