

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
May 2, 2005

In the Matter of

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ORDER ON MOTIONS

CMKM DIAMONDS, INC.

A hearing will be held in this proceeding beginning on May 10, 2005, at 9:30 a.m. in the Edward R. Roybal Federal Building and Courthouse, 255 East Temple Street, Los Angeles, California 90012.

Issue

Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act) authorizes the Securities and Exchange Commission (Commission), as it deems necessary and appropriate for the protection of investors, to suspend for up to twelve months or to revoke the registration of a security where the security is registered with the Commission under Section 12(g) of the Exchange Act and the issuer has not filed reports required by Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13. CMKM Diamonds, Inc. (CMKM Diamonds), acknowledges that its common stock is registered with the Commission and that it has not filed the required annual and quarterly reports. (Answer at 6-7.) Therefore, the only issue is what action is necessary and appropriate for the protection of investors.

Pending Motions

1. On April 28, 2005, CMKM Diamonds requested a subpoena to the Depository Trust & Clearing Corporation (DTCC) requiring it to produce for the period April 1, 2003, to April 5, 2005: all National Securities Clearing Corporation (NSCC) automated customer account service reports for receipt and delivery of CMKM Diamonds; all reconciliation clearing sheets for CMKM Diamonds; all documents that show the daily closing position for each "Participant"; stock borrow activity reports and all records related to borrowing of CMKM Diamond shares under the NSCC Automated Stock Borrow Procedures; reports monitoring "Participant's" unsettled positions in CMKM Diamonds; reports monitoring "Participant's" short selling activity in CMKM Diamonds; and reports "that compare monthly short interest in securities to the actual number of shares at the DTCC, The Depository Trust Company, NSCC and/or elsewhere."

On May 2, 2005, I received a request by CMKM Diamonds for a subpoena to Annette L. Nazareth (Nazareth), Director of the Commission's Division of Market Regulation, requesting production of materials similar to those being requested of DTCC.

2. On April 27, 2005, CMKM Diamonds filed two motions. The Motion for Inspection and Copying of Documents and Witness Statements Pursuant to Rule 230 and Rule 231 asserts that the Division of Enforcement (Division) has gathered extensive materials in U.S. Canadian Minerals, Inc., LA-2937, a separate, ongoing investigation, and these materials were not made available to CMKM Diamonds. CMKM Diamonds claims it is being treated unfairly because the Division has subpoenaed witnesses it has already deposed in the U.S. Canadian Minerals, Inc., LA-2937, investigation and that the materials that these people will bring to the hearing will be new to CMKM Diamonds but not new to the Division. CMKM Diamonds requests that I order the Division to make available: (1) copies of all documents and witness statements that it will tender into evidence; and (2) any documents it has in its files that it intends to use in this proceeding.

In the Motion for Discovery of Exculpatory Evidence (Motion), CMKM Diamonds requests that I order the Division to produce any evidence the Commission has that is favorable to CMKM Diamonds. Specifically, CMKM Diamonds seeks documents filed with the Commission that show the daily list of failed deliveries in CMKM Diamonds stock since January 5, 2005, and "any other evidence in the [Commission's] files which indicate there have been sales of CMKM Diamonds Inc. stock that exceed the known authorized and issued common stock." (Motion at 2.) CMKM Diamonds wants the Commission to review all its files and provide it with any evidence that is exculpatory or favorable.

3. On April 28, 2005, the Securities Law Institute (Institute) moved to quash the subpoenas I issued to the Institute's Custodian of Records and Kristen M. Buck (Buck). The Institute argues that the subpoenas are not related to the issues in the proceeding and are burdensome.

4. The Owners Group, a non-party allowed limited participation, has moved to transfer the hearing to a courtroom that seats more than forty people because it expects a large number of people to attend the hearing. (Order on Motions, April 12, 2005.)

5. On May 2, I received a motion to quash the subpoena I issued to Robert A. Maheu (Maheu) to attend and testify and produce documents on grounds that it is overly broad and burdensome. According to the Division, Maheu is a consultant to CMKM Diamonds and co-chair of the board who could address why CMKM Diamonds failed to file the required reports in the past and the status of its efforts to prepare and file reports in the future.

Ruling

The hearing begins in six business days and I will be absent from the office on one of these days and traveling to the hearing on another. I am therefore exercising my authority to

regulate the course of the hearing and deciding the pending motions based on the material I now have before me. 17 C.F.R. § 201.111. Anyone who wants to request that I reconsider my rulings may do so at the outset of the hearing on May 10, 2005.

1. Subpoena to DTCC and Nazareth

I DENY the subpoenas to DTCC and to Nazareth because they concern matters that are not at issue in this proceeding and, therefore, they are unreasonable and excessive in scope. See 17 C.F.R. § 201.232(b).

2. Motion for Inspection and Copying of Documents and Witness Statements Pursuant to Rule 230 and Rule 231 and Motion for Discovery of Exculpatory Evidence

The Division has complied with Rule 230 with respect to the contents of the investigative file that led to the initiation of this proceeding. Rule 230 mandates that the Division “make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division’s recommendation to institute proceedings.” In addition, the Division has given CMKM Diamonds eleven transcripts of testimony and exhibits from the ongoing investigation in the U.S. Canadian Minerals, Inc., LA-2937, investigation. CMKM Diamonds has also received a list of the Division’s proposed witnesses and exhibits.

Rule 231 requires that the Division provide a respondent with any statement by a witness that is within the scope of the Jencks Act, 18 U.S.C. § 3500. I expect that the Division has complied with Rule 231. To make certain that we are in agreement on what is required, I ORDER the Division to give CMKM Diamonds from the investigative file that is the basis of this proceeding: (1) copies of all non-privileged documents that CMKM Diamonds does not already have and any statements by witnesses that the Division will call; and (2) any documents that the Division intends to introduce into evidence. I DENY CMKM Diamonds’s request for materials from a file being compiled in a separate, ongoing investigation unless the Division intends to introduce that material in this record.

It is clear from Rule 230(b)(2) that the Division must provide CMKM Diamonds with any exculpatory documents within the scope of Brady v. Maryland, 373 U.S. 83, 87 (1963), that are in the investigative file for this proceeding. The Division acknowledges this obligation. CMKM Diamonds has stated nothing that causes me to doubt the Division’s representation that it is unaware of any material exculpatory or mitigating evidence in its investigative file. (Division of Enforcement’s Response to Motion for Discovery of Exculpatory Evidence). I DENY CMKM Diamonds’s request that I require the Division to search through all the Commission’s files for exculpatory evidence because it is excessive and impractical.

3. Motion to Quash Subpoena to Institute and Buck

On May 2, 2005, the Division submitted a Notice of Stipulation informing me that it had reached an agreement with the Institute and Buck.

4. Motion to Move the Hearing Location

The Owners Group has given no reason why I should doubt the Division's representation that the current hearing location is the largest courtroom it could find and reserve in the Los Angeles area that is available for the hearing. Therefore, I DENY the Owners Group's motion to move the site of the hearing.

5. Motion to Quash Subpoena to Maheu

I DENY the motion to quash the subpoena, however, I modify the terms of the subpoena so that Maheu need not produce any requested material already provided by another person or that CMKM Diamonds has produced in any Division investigation. Production must be accomplished by the close of business on May 6, 2005.

Brenda P. Murray
Chief Administrative Law Judge