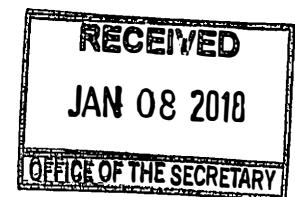


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16318

**In the Matter of**

**MICHAEL W. CROW,  
ALEXANDRE S. CLUG,  
AURUM MINING, LLC,  
PANAM TERRA, INC., and  
THE CORSAIR GROUP, INC.,**

**Respondents.**

**BRIEF OF DIVISION OF  
ENFORCEMENT IN SUPPORT OF ITS  
SUBMISSION OF NEW EVIDENCE**

Pursuant to the Court’s Notice to the Parties and Order Following Remand dated December 6, 2017, the Division of Enforcement respectfully submits this Brief in Support of its Submission of New Evidence.

**Summary of New Evidence**

During the July 2015 hearing and in post-hearing briefing, which concluded in October 2015, Respondent Alexandre Clug (“Clug”) argued that he was essentially destitute and had no ability to pay any disgorgement or penalty. Over the Division’s objections, the Court accepted Clug’s arguments and found in the Initial Decision dated February 8, 2016 (“ID”) that Clug had “convincingly demonstrated his inability to pay.” Accordingly, the Court reduced Clug’s disgorgement from \$406,591.51 to \$50,000, and imposed no civil penalty.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Declaration of Ibrahim Bah

dated January 5, 2018 (“Bah Decl.”) [REDACTED]

[REDACTED] Declaration of David Stoelting dated January 5, 2018

(“Stoelting Decl.”).

Although Clug had a duty to update his financial disclosures, [REDACTED]  
[REDACTED], he failed to do so. As a result, the Court’s findings as to Clug’s inability to pay  
were based on incomplete information [REDACTED]

#### The Ratification Process

With the exception of its findings relating to the disgorgement owed by Clug, the Division respectfully requests that the Court ratify and affirm most of the prior rulings and decisions in this case. The Division reserves its right to seek further review before the Commission of any ratified decision or issue in any aspect of a decision that is adverse to the Division.

On November 30, 2017, the Commission issued an order ratifying the prior appointment of its administrative law judges to preside over administrative proceedings. *See In re: Pending Administrative Proceedings*, Securities Act Release No. 10440 (Nov. 30, 2017). As applied to this proceeding, the order directs the administrative law judge to determine, based on a *de novo* reconsideration of the full administrative record, whether to ratify or revise in any respect all prior actions taken by any administrative law judge during the course of this proceeding. *Id.* at 1-2.

---

<sup>1</sup> Ex. A to the Bah Decl. is [REDACTED]

Ex. B is [REDACTED]

Ex. C to the Bah Decl. is [REDACTED]

It is well established that subsequent ratification of an earlier decision rendered by an unconstitutionally appointed officer remedies any alleged harm or prejudice caused by the violation. *See Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 213-14 (D.C. Cir. 1998); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 707-09 (D.C. Cir. 1996). That principle applies whether or not the ratifying authority is the same person who made the initial decision, so long as “the ratifier has the authority to take the action to be ratified,” and, “with full knowledge of the decision to be ratified,” makes a “detached and considered affirmation of th[at] earlier decision.” *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 602-03 (3d Cir. 2016).

Accordingly, to implement this remedy, the administrative law judge should conduct a *de novo* review of the administrative record, engage in an independent evaluation of the merits through the exercise of detached and considered judgment, and then determine whether prior actions should be ratified and thereby affirmed. This process ensures “that the ratifier does not blindly affirm the earlier decision without due consideration.” *Advanced Disposal Services East*, 820 F.3d at 602-03.

**Clug’s Representations Regarding His  
Supposed Inability to Pay and the Court’s Findings**



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On October 2, 2015, Clug filed a brief asserting that he had “clearly established his inability to pay disgorgement,” and that [REDACTED]

■ Respondents’ Post-Hearing Brief (Oct. 2, 2015), at 20-21.

On February 8, 2016, this Court issued its Initial Decision, which, among other things, found that the “appropriate amount of disgorgement” as to Clug was \$286,810.01, which should be “adjusted upward by \$100,000 to include proceeds from the Aurum convertible sales note he received in 2011.” ID at 79-80. In addition, the Court found that, as a co-owner of Corsair, Clug was “responsible for half of the \$39,563 received from ABS.” ID at 80. As a result, Clug’s total disgorgement was \$406,591.51. *Id.*

Based on Clug’s supposed inability to pay, however, the Court reduced disgorgement to \$50,000 plus prejudgment interest. ID at 83. The Court declined to impose a civil penalty based on its finding that Clug “convincingly demonstrated his inability to pay”:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For the foregoing reasons, with the exception of \$50,000, I find that Clug has convincingly demonstrated his inability to pay.

*Id.* at 76-77.

**Clug's Failure to Disclose His All-Cash Purchase of the Property Was a Material Omission**

Rule of Practice 630(b) provides, in relevant part, that “[a]ny respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and *to keep the statement current.*” 17 C.F.R. § 201.630(b) (Emphasis added). Unless otherwise ordered, an individual respondent asserting an inability to pay files a “Form D-A: Disclosure of assets and financial information.” See 17 C.F.R. § 209.1(a). Form D-A states that “The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form.” 17 C.F.R. § 209.1(b).

Following the submission, Clug was required to keep his Statement current pursuant to Rule 630(b), but he failed to do so. The Initial Decision was not issued until nearly two months after Clug acquired the Property, and the cash purchase would have been highly material to the Court’s ability-to-pay determination.

During the post-hearing briefing, Clug was [REDACTED]

[REDACTED] Bah Decl. Ex A, at 3. [REDACTED]

[REDACTED] Bah Decl. Ex. A. Four weeks later, on February 8, 2016, the Initial Decision was issued.

[REDACTED]  
[REDACTED]  
[REDACTED] in determining his ability to pay. *See In the Matter of Terry T. Steen*, Rel. No. 34-40055, 67 S.E.C. Docket 569, 1998 WL 278994, at \*7 (June 2, 1998) (Commission, noting the possible existence of other assets that may have become available after the conclusion of the hearing, remanded proceeding for further consideration regarding respondent's financial ability to pay disgorgement).

Clug was well aware of the fact that the Court was evaluating his financial condition to determine whether he had the ability to pay any monetary judgment to be imposed on him based on the Court's findings. Clug nevertheless concealed this material information.

### Conclusion

The Division of Enforcement respectfully requests that the Court, based on the new evidence submitted by the Division, withdraw its finding that Clug had established an inability to pay and order that Clug is liable for disgorgement of \$406,591.51, plus prejudgment interest, and impose a civil penalty.

Dated:           New York, NY  
                 January 5, 2018

Respectfully submitted,

DIVISION OF ENFORCEMENT

*/s David Stoelting*  
David Stoelting  
Ibrahim Bah  
Securities and Exchange Commission  
200 Vesey Street, Suite 400  
Brookfield Place  
New York, NY 10281-1022  
(212) 336-0174 (Stoelting)  
(212) 336-0418 (Bah)

## **DECLARATION OF IBRAHIM BAH**

I, Ibrahim Bah, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to the bar of the States of New York and New Jersey, and am co-counsel to the Division of Enforcement in the *Matter of Michael Crow et al.*, File No. 3-16318.

2. I make this declaration in support of the Division's submission of new evidence pursuant to the Court's Notice to the Parties and Order Following Remand dated December 6, 2017.

3. [REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
6. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
7. [REDACTED]
- [REDACTED]
8. [REDACTED]
- [REDACTED]

9. Below is the list of exhibits attached to this declaration, each of which is a true and correct copy of the document described:

Exhibit No.	Description
A	[REDACTED]
B	[REDACTED]
C	[REDACTED]

Upon information and belief, I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York  
January 5, 2018

s/ Ibrahim Bah  
Ibrahim Bah

# EXHIBIT A

**REDACTED**

# **EXHIBIT B**

**REDACTED**

# EXHIBIT C

**REDACTED**

**DECLARATION OF DAVID STOELTING**

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to the bar of the States of New York and New Jersey, and am co-counsel to the Division of Enforcement in *Matter of Michael Crow, et al.*, File No. 3-16318.

2. I make this declaration in support of the Division's submission of new evidence pursuant to the Court's Notice to the Parties and Order Following Remand dated December 6, 2017.

3. [REDACTED]

[REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

Upon information and belief, I declare under penalty of perjury that the foregoing is true and correct.

Executed:      New York, New York  
                  January 5, 2018

s/ David Stoelting  
David Stoelting

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

**ADMINISTRATIVE PROCEEDING**

**File No. 3-16318**

**In the Matter of**

**MICHAEL W. CROW,  
ALEXANDRE S. CLUG,  
AURUM MINING, LLC,  
PANAM TERRA, INC., and  
THE CORSAIR GROUP, INC.,**

**Respondents.**

**[PROPOSED] ORDER**

After a *de novo* review and reexamination of the record in these proceedings, and with the sole exception set forth below, I have reached the independent decision to ratify and affirm all prior actions made by an administrative law judge in these proceedings.

The Division has submitted new evidence showing that [REDACTED]

[REDACTED] As a result, I withdraw my finding in the Initial Decision dated February 8, 2016, that Clug had established an inability to pay, and order that Clug shall pay disgorgement of \$406,591.51, plus prejudgment interest, and a civil money penalty of \$\_\_\_\_\_.

This decision is based on my detached and considered judgment after an independent evaluation of the merits.

**IT IS SO ORDERED**

---

\_\_\_\_\_  
Jason S. Patil  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

Pursuant to Rule 151(d) of the Commission's Rules of Practice, I, Ibrahim Bah,  
hereby certify that on January 5, 2018, I caused the following documents:

- Division of Enforcement's Brief in Support of Its Submission of New Evidence;
- Declaration of Ibrahim Bah;
- Declaration of David Stoelting;
- [Proposed] Order; and
- Certificate of Service.

To be sent by UPS Overnight Delivery to:

Office of the Secretary (redacted original plus three copies)  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

And by email to:

The Honorable Jason S. Patil (unredacted and redacted versions) at [ali@sec.gov](mailto:ali@sec.gov);

Alexandre S. Clug, Pro Se (unredacted version), via email at [aclug@thecorsairgroup.com](mailto:aclug@thecorsairgroup.com) and [aclug@thedolphingroupllc.com](mailto:aclug@thedolphingroupllc.com) and via mail at 150 Waters Edge Drive, Jupiter, FL 33477 and 262 Fortuna Drive, Palm Beach Gardens, FL 33410

Michael W. Crow, Pro Se (redacted version) at [mcrow2020@gmail.com](mailto:mcrow2020@gmail.com).

Dated: January 5, 2018  
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

/s Ibrahim Bah  
Ibrahim Bah - (212) 336-0418  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
200 Vesey Street, Suite 400  
New York, NY 10281



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
Brookfield Place, 200 Vesey St., Suite 400  
New York, NY 10281

RECEIVED  
JAN 03 2019  
OFFICE OF THE SECRETARY

DIVISION OF  
ENFORCEMENT

Ibrahim Bah  
Senior Counsel  
(212) 336-0418 (direct)  
(212) 336-1348 (fax)

January 5, 2018

**BY EMAIL/UPS**

Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Mail Stop 1090  
Washington, DC 20549

**Re: Matter of Michael W. Crow, et al., File No. 3-16318**

Dear Sir/Madam:

Enclosed are the original and three copies of the following documents for filing in the above-referenced matter. Per Judge Patil's order, we are submitting redacted versions of the filings for posting on the public docket. Unredacted copies are being served on the Judge Patil and Respondent Alexandre S. Clug.

- Division of Enforcement's Brief in Support of Its Submission of New Evidence;
- Declaration of Ibrahim Bah;
- Declaration of David Stoelting;
- [Proposed] Order; and
- Certificate of Service.

Respectfully submitted,

/s  
Ibrahim Bah

Encl.

cc: The Honorable Jason S. Patil (redacted and unredacted copies), via email at [alj@sec.gov](mailto:alj@sec.gov)

Alexandre S. Clug, pro se, (unredacted copies), via email at [aclug@thecorsairgroup.com](mailto:aclug@thecorsairgroup.com) and [aclug@thedolphingroupllc.com](mailto:aclug@thedolphingroupllc.com) and via mail at 150 Waters Edge Drive, Jupiter, FL 33477 and 262 Fortuna Drive, Palm Beach Gardens, FL 33410

Michael W. Crow, pro se, (redacted copies), via email at [mcrow2020@gmail.com](mailto:mcrow2020@gmail.com).