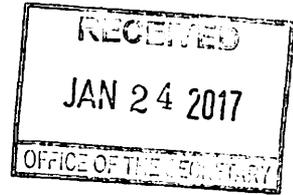


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17405

In the Matter of

**BAY CITY TRANSFER AGENCY
AND REGISTRAR, INC. and
NITIN M. AMERSEY**

Respondents.

**DIVISION OF ENFORCEMENT'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

The Division of Enforcement (the "Division") respectfully submits this Reply in Support of its Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. ("BCTA") and Nitin M. Amersey ("Amersey") (collectively "Respondents") pursuant to Amended Rule 250 of the Rules of Practice.

I. INTRODUCTION

Amersey's admissions at the prehearing conference in this matter, and the Court's subsequent order, establish a set of undisputed facts as detailed in the OIP and resolve all issues as to the liability of Respondents. Further, the fact that Respondents only oppose the Division's penalty recommendation – citing an inability to pay – resolves all remedial sanctions except for civil penalties.

Respondents' opposition brief ("Opposition") fails to establish an inability to pay civil penalties. Respondents' Opposition includes only a vague and unsubstantiated paragraph regarding their "serious financial issues." But they fail to provide a financial disclosure statement and other supporting documents as required by this Court and Commission Rule of Practice 630.

In fact, they failed to provide **any** documents to support their claim of an inability to pay, despite the Division providing Amersey with extensive personal financial information obtained during the investigation.

As such, the facts set forth in the Division's Motion for Summary Disposition ("Motion") establish that the Court should impose against Respondents (1) a cease-and-desist order; (2) revoke BCTA's transfer agency registration; (3) bar Amersey from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization; and (4) impose tier-two civil penalties jointly and severally.

II. ARGUMENT

A. AMERSEY'S ADMISSIONS LEAVE NO MATERIAL FACTS IN DISPUTE

At the prehearing conference Amersey stated that he does not contest the allegations contained in the OIP. While Respondents' Opposition emphasizes that no clients lost funds and that the other "allegations of impropriety refer to keeping improper logs, errors (clerical and otherwise) in TA filings and similar," Respondents still do not challenge the allegations of wrongdoing in the OIP. As such, Amersey's previous admissions establish a set of undisputed facts as detailed in the OIP and resolve all issues as to liability. The Court should find the Respondents liable for willfully violating Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder, as alleged in the OIP.

B. THE COURT SHOULD IMPOSE APPROPRIATE REMEDIES

Amersey's prior admissions also resolve all remedial sanctions to be imposed under Section 17A and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), except for civil

penalties pursuant to Section 21B of the Exchange Act. Respondents' Opposition fails to establish an inability to pay a civil penalty. Therefore the Court should impose tier-two penalties.

1. Cease-and-Desist Orders Against Respondents

Respondents do not oppose a cease and desist order under Section 21C(a) of the Exchange Act. This Court should issue an order that Respondents cease and desist from committing or causing the violations alleged in the OIP, including violations of Sections 17(a)(3) and 17A(d)(1) of the Exchange Act, and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder.

2. Revocation of BCTA's Transfer Agent Registration

Respondents also do not oppose revocation of BCTA's transfer agent registration. In fact, Amersey indicated at the prehearing conference, and further details in the Opposition, that he is in the process of shutting down BCTA and will voluntarily file a Form TA-W withdrawing BCTA's transfer agent registration. However, the appropriate Form TA-W has yet to be filed. In their Opposition, Respondents indicate that they will withdraw BCTA's transfer agent registration once it "terminates" all services.

It has been over three and a half months since the prehearing conference, and almost five months since the filing of the OIP. The significant delay in voluntarily filing a Form TA-W, coupled with the extensive violations alleged in the OIP (including delinquent filings), indicates it is highly unlikely Respondents will withdraw BCTA's transfer agent registration in a timely matter. As such, the Court should order that BCTA's transfer agent registration be revoked pursuant to Section 17A(c)(3)(A).

3. Bar Against Amersey

At the prehearing conference, Amersey indicated that he did not oppose a bar as set forth in Section 17A(c)(4)(C) of the Exchange Act. However, in the Opposition, Amersey complains that

a bar which prevents him from having an account with a broker, investment adviser, or NRSRO, or dealing with a transfer agent for stock that he may own in the future, is “troubling.”

A bar pursuant to Section 17A(c)(4)(C) would prevent Amersey from “being associated with” any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal adviser, or NRSRO. The Division assumes Amersey is interpreting the “being associated with” language as being so broad that it would bar him from owning his own stock or brokerage account. The Division is unaware of any legal authority interpreting this language as being so broad. Regardless, as previously noted by the Division in its opening brief, Amersey has admitted that he aided and abetted and caused BCTA’s numerous violations of the Exchange Act. Therefore as Amersey’s concerns are unfounded and given the undisputed facts of repeated and numerous violations of the Exchange Act, this Court should order that Amersey be permanently barred pursuant to Section 17A(c)(4)(C) of the Exchange Act. See, e.g., In the Matter of Tzemach David Netzer Korem, SEC Release No. 70044, 2013 WL 3864511 (July 26, 2013) (upholding initial decision barring unregistered transfer agent from associating with any transfer agent, and expanding the bar to include associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or NRSRO); In the Matter of Executive Registrar & Transfer, Inc. and John J. Donnelly, Release No. 366, 2008 WL 5262371, at *32 (Initial Decision, Dec. 18, 2008) (pre-Dodd-Frank decision granting summary disposition and barring respondent from associating with any transfer agent).

4. Civil Penalties Against Respondents

As detailed in the Division’s Motion, a two-tier penalty against Respondents is in the public interest and appropriate given Respondents’ deliberate and reckless disregard for the transfer agent requirements. Nothing in Respondents’ opposition changes this conclusion.

In opposition Respondents claim a purported inability to pay civil penalties. Rule of Procedure 630(a) makes the consideration of inability to pay discretionary. See Rule of Practice 630(a) (“The... hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether... a penalty is in the public interest.”). Under Rule 630(b), the submission of a sworn financial statement or other information may be a prerequisite for such consideration. In this case the Court required such information, stating at the prehearing conference that to prove an inability to pay, Respondents must produce “hard factual bank accounts” and “statements.” Motion, Exh. 1 at 28. In other words, Respondents must **prove** an inability to pay; “[y]ou just can’t say, I can’t afford this.” Motion, Exh. 1 at 28.

However, Respondents’ only support for such inability to pay is just that – a vague, self-serving, and unsubstantiated paragraph merely stating that Respondents cannot afford to pay. Instead of providing a full financial disclosure statement and other supporting evidence, as required by this Court and Rule of Practice 630, Amersey claims his poor health requires him to hire a lawyer or accountant to prepare such a detailed response. Of course, Amersey then claims he cannot hire a lawyer or accountant because he does not have the ability to pay them. The Court should reject this self-serving and circular argument.

Given Respondents’ failure to prove an inability to pay through a sworn financial statement or other documentary evidence, the Court should reject their claim of an inability to pay civil penalties. See Collins v. SEC, 736 F.3d 521, 526 (D.C. Cir. 2013) (since respondents did not provide a sworn financial statement, the Commission properly did not consider a claim of inability to pay). Moreover, inability to pay a judgment is not a legal reason for not imposing liability. SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008); SEC v. Andrescu, 117 Fed. Appx. 160, 161-62 (2d Cir. 2004); SEC v. Mortenson, 2013 WL 991334 at *5 (E.D.N.Y. Mar. 11, 2013).

The Division requests that the Court impose against Respondents tier-two civil penalties that it deems appropriate.

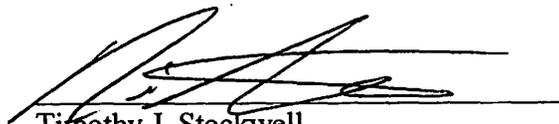
III. CONCLUSION

The Division respectfully requests that the Court find the Respondents liable for willfully violating Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder, as alleged in the OIP.

Further, the Court should impose the following sanctions: (1) enter a cease-and-desist order against Respondents pursuant to Sections 17A(c)(3) and 21C(a) of the Exchange Act; (2) revoke BCTA's transfer agency registration pursuant to Section 17A(c)(3)(A) of the Exchange Act; (3) bar Amersey from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, pursuant to Section 17A(c)(4)(C) of the Exchange Act; and (4) impose tier-two civil penalties against Respondents pursuant to Section 21B(a)(2) of the Exchange Act.

Dated: January 23, 2017

Respectfully submitted:



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CERTIFICATE OF SERVICE

Timothy J. Stockwell, an attorney, certifies that on January 23, 2017, he caused a true and correct copy of the foregoing Reply in Support of Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. and Nitin M. Amersey to be served on the following by overnight delivery and email:

Honorable Brenda P. Murray
Chief Administrative Law Judge

Nitin M. Amersey
(Individually and on behalf of BCTA)

Dated: January 23, 2017



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