

SECURITIES ACT OF 1933

Release No. 7770 / November 10, 1999

SECURITIES EXCHANGE ACT OF 1934

Release No. 42125 / November 10, 1999

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 1207 / November 10, 1999

ADMINISTRATIVE PROCEEDING

File No. 3-10095

In the Matter of	:	
	:	ORDER INSTITUTING A PUBLIC
	:	PROCEEDING PURSUANT TO SECTION
JOSEPH SALAMON,	:	8A OF THE SECURITIES ACT OF
	:	1933 AND SECTION 21C OF THE
	:	SECURITIES EXCHANGE ACT OF 1934,
Respondent.	:	MAKING FINDINGS AND IMPOSING A
	:	CEASE-AND-DESIST ORDER
	:	
	:	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that a public administrative proceeding be, and hereby is, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Joseph Salamon ("Salamon").

II.

In anticipation of the institution of this proceeding, Salamon has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purposes of this proceeding and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, Salamon, without admitting or denying the findings set forth in this Order Instituting a Public Proceeding Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings and Imposing a Cease-and-Desist Order ("the "Order"), except that Salamon admits that the Commission has jurisdiction over him and over the subject matter of this proceeding, consents to the entry of this Order.

The Commission has determined that it is appropriate to accept the Offer and accordingly is issuing this Order.

III.

FACTS

The Commission finds that:¹

A. Summary

The senior management of Power Phone, Inc. orchestrated a fraudulent scheme to falsify and inflate the company's financial condition in filings with the Commission. Power Phone accomplished the fraudulent scheme by claiming in filings with the Commission to own two assets, consisting of software and artwork, even though Power Phone did not own either asset. These two assets, which comprised ninety-five percent of Power Phone's total assets, were falsely valued at \$4 million in Power Phone's audited financial statements for the fiscal year ended June 30, 1995. Power Phone included those false financial statements in an Annual Report on Form 10-K that was filed with the Commission in 1995, and a Form 10 registration statement that was filed with the Commission in 1996. As an officer and director of Power Phone, Salamon failed to take any action to determine the accuracy of the filings with the Commission. Instead, Salamon reviewed and signed the Form 10-K and the Form 10 registration statement.

¹ The findings herein are made pursuant to Salamon's Offer of Settlement and are not binding on any other person or entity in this or in any other proceeding.

B. Respondent

Salamon, 46 years old, resides in Brooklyn, New York. Salamon was the secretary, treasurer and a director of Power Phone.

C. The Issuer

Power Phone, Inc., during all relevant times, was a New York corporation headquartered in Brooklyn, New York. From June 1995 through February 1998, Power Phone's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934, and traded in the over-the-counter market. On October 8, 1996, the company changed its name to TMC Agroworld Corporation, and on August 14, 1997, the company changed its name to the Dominican Cigar Corporation.

D. Power Phone Filed Fraudulent Financial Statements with the Commission

Power Phone's audited financial statements for its fiscal year ended June 30, 1995, improperly included two assets: (i) certain artwork held for resale, with a purported value of \$2 million and (ii) a software program known as "ASAP," also with a purported value of \$2 million.² Collectively, these assets accounted for ninety-five percent of Power Phone's total assets. Power Phone's financial statements for the year ended June 30, 1995, were included in a Form 10-K filed with the Commission on October 26, 1995 and in a registration statement on Form 10, which was filed with the Commission on June 4, 1996. The Form 10, seeking to register 7,421,818 shares of Power Phone's common stock, went effective through lapse of time on September 9, 1996.³

Significantly, Power Phone did not own either the artwork or the ASAP software as of June 30, 1995. Power Phone never owned the ASAP software because the entity that purportedly sold the software to Power Phone did not own it and thus was in no position to transfer title of the

² On April 14, 1999, the Commission instituted and simultaneously settled public administrative proceedings, pursuant to Rule 102(e) of the Commission's Rules of Practice, against Michael, Adest & Blumenkrantz, P.C., David Michael and Paul Adest in connection with their deficient audit of Power Phone's financial statements for the fiscal year ended June 30, 1995. Without admitting or denying the Commission's findings, the three respondents consented to the entry of an Order denying them the privilege of appearing or practicing before the Commission as accountants. Exch. Act Rel. No. 41284; AAER Rel. No. 1125 (April 14, 1999).

³ On September 28, 1999, the Commission filed a separate action against Noah Steinberg, Enrique Reyes Carrion, Gershon Tannenbaum, Jay M. Vermonty and Carmen Vermonty (as a relief defendant) in the United States District Court for the Eastern District of New York. See *S.E.C. v. Noah Steinberg et al.*, Civ. Action No. 99-6050 (E.D.N.Y.)(RJ). The Commission's complaint alleges that the defendants engaged in a fraudulent scheme to falsify and inflate Power Phone's and TMC Agroworld's financial statements in filings with the Commission and in press releases, in violation of the anti-fraud provisions of the federal securities laws.

software to Power Phone. Indeed, Power Phone never acquired the "source code" or underlying master key to the operation of the software program. Moreover, the evidence indicates that Power Phone simply acquired a license to use the software rather than outright ownership.

Similarly, Power Phone could not claim that it owned the artwork as of June 30, 1995, because as of that date, Power Phone's contract with the purported vendor of the artwork reflected a consignment of the artwork to Power Phone rather than an outright sale to Power Phone. After Power Phone's fiscal year end, Power Phone executed a contract with the vendor of the artwork which reflected a sale rather than a consignment. Notably, Power Phone backdated that contract to June 21, 1995, in a blatant effort to make it appear that Power Phone owned the artwork prior to the end of the company's 1995 fiscal year.

Irrespective of whether Power Phone actually owned the artwork and the software, Power Phone materially overstated the value of these assets. Power Phone issued 80,000 shares of preferred stock to the purported vendor of the artwork and 80,000 shares of preferred stock to the purported vendor of the software. In each instance, the preferred stock was stated to be redeemable by Power Phone at any time at a redemption price of \$25 per share and was convertible into ten common shares for each preferred share. Power Phone recorded the artwork on its balance sheet at \$2 million based on the stated redemption value of the preferred shares (i.e., 80,000 shares x \$25). Power Phone used the exact same calculation to arrive at a \$2 million value for the software. No other independent or credible evidence supported the \$2 million valuations of the artwork or the software. Moreover, there was no evidence to support the \$25 per share value for the preferred stock, which apparently was established arbitrarily by Power Phone's management. At the time of these transactions, no market existed for the preferred stock, and Power Phone did not have other assets available which could have been used to redeem the preferred shares.

As an officer and director of Power Phone, Salamon signed and reviewed Power Phone's annual report and registration statement with knowledge that these documents would be filed with the Commission. Although Salamon, one of only three officers of Power Phone, had never seen the ASAP software or the artwork, he failed to take any steps either to verify the existence of the assets or assure himself of the value of the assets which comprised ninety-five percent of Power Phone's balance sheet.

IV.

LEGAL DISCUSSION

Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to enter a cease-and-desist order against an individual that the Commission finds caused a violation of the federal securities laws because of an act or omission that the person knew or should have known would contribute to such violation. Power Phone violated Section 17(a) of

the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by filing with the Commission an annual report on Form 10-K and a registration statement on Form 10 that contained materially false and misleading financial statements for the fiscal year ended June 30, 1995. For the reasons discussed above, Salomon caused such violations by signing the Form 10 registration statement and the annual report on Form 10-K that were filed with the Commission.

V.

FINDINGS


Based on the above, the Commission finds that Salomon caused violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED**, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, that Salomon CEASE AND DESIST from committing or causing any violation and any future violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.


Jonathan G. Katz
Secretary