

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC

SECURITIES EXCHANGE ACT OF 1934
Release No. 53143/January 19, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-11938

In the Matter of	:	
	:	
THOMAS STEINBACH,	:	ORDER MAKING FINDINGS
ASHLEY SOSNER,	:	AND IMPOSING REMEDIAL
TIM RICE,	:	SANCTION BY DEFAULT AS
HOWARD KERBEL,	:	TO BARRY BERMAN
BARRY BERMAN,	:	
VINCENT BARONE,	:	
and BRUCE BIDDICK	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on June 2, 2005. This proceeding has been resolved as to all Respondents except Barry Berman (Berman). See Securities Exchange Act Release Nos. 52528, 52529, 52530, 52531, 52819, 52841. Berman was served with the OIP on November 25, 2005.¹ His Answer was due twenty days thereafter. See 17 C.F.R. § 201.220; OIP at 4. To date, Berman has not filed an Answer to the OIP.

¹ On December 2, 2005, the Division filed a sworn Affidavit of Service from a process server, stating that, on November 25, 2005, the OIP was left with Berman's wife at the residence they shared. Berman's wife subsequently returned the OIP to the Commission's Office of the Secretary, representing that she did not accept it from the process server because it was not addressed to her and her husband was out of town. Instead, she represented that the process server left it outside the door of their condominium.

Berman's wife's response was not in the form of an affidavit nor was it notarized or otherwise sworn to under oath, unlike the Affidavit of Service. Under these circumstances, I find that service of the OIP on Berman was accomplished on November 25, 2005, in the manner set forth in the Affidavit of Service. Even if the OIP was not hand-delivered to Berman's wife, she obviously received the OIP on November 25, 2005, as evidenced by her subsequent return of this document to the Commission. As such, I find that sufficient notice has been given. See 17 C.F.R. § 201.141(a)(2)(iv).

On December 22, 2005, the Division of Enforcement (Division) filed a motion for default against Berman, based on his failure to Answer the OIP. On December 23, 2005, I issued an order requiring Berman to show cause by January 13, 2006, why he should not be held in default and why he should not be barred from participating in an offering of penny stock. To date, Berman has failed to respond to the Division's motion for default and to my order to show cause.

Berman is in default for failing to file an Answer to the OIP within the time permitted and for failing to otherwise defend the proceeding. See 17 C.F.R. §§ 201.155, .220. As authorized by Rule 155(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.155(a), I find the following allegations in the OIP to be true as to Berman.

Berman, a stock promoter, is a seventy-year-old resident of Toronto, Ontario, Canada. He was the founder of ThermoElastic Technologies, Inc. (TMRO), and controlled a significant amount of TMRO stock.

On March 14, 2003, Berman pleaded guilty to one count of conspiracy to commit wire fraud, mail fraud, and securities fraud in violation of 18 U.S.C. § 371 before the United States District Court for the Southern District of Florida. United States v. Kerbel, Criminal Indictment No. 02-20547-CR-HUCK. On June 25, 2003, a judgment in the criminal case was entered against Berman. Berman was sentenced to a prison term of eighteen months followed by three years of supervised release, including community service.

The count of the criminal indictment to which Berman pleaded guilty alleged, among other things, that Berman and his co-defendants conspired to unjustly enrich themselves by defrauding the mutual fund, by artificially affecting the supply and demand for TMRO stock and by inflating the price of TMRO stock through illegal means. It further alleged that the purpose and object of the conspiracy for Berman and his co-defendants was to unjustly enrich themselves by defrauding the public shareholders of TMRO.

Based on the foregoing, I find it appropriate in the public interest to bar Berman from participating in an offering of penny stock.

ORDER

IT IS ORDERED, pursuant to Section 15(b) of the Securities Exchange Act of 1934, that Respondent Barry Berman is hereby BARRED from participating in an offering of penny stock.

Lillian A. McEwen
Administrative Law Judge