

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT of 1934
Rel. No. 50030 / July 16, 2004

Admin. Proc. File No. 3-10977

In the Matter of

E-SMART TECHNOLOGIES, INC
f/k/a PLAINVIEW LABORATORIES, INC

ORDER ON MOTIONS FOR
SUMMARY AFFIRMANCE
AND LEAVE TO FILE
BRIEF OPPOSING PETITION
FOR REVIEW

On March 4, 2004, an administrative law judge issued an initial decision revoking the registration of the common stock of e-Smart Technologies, Inc., f/k/a Plainview Laboratories, Inc. ("e-Smart" or the "Company"). 1/ On March 23, 2004, e-Smart filed a petition for review of the law judge's decision. E-Smart's petition was granted on March 26, 2004. On March 30, 2004, the Division of Enforcement asked that the law judge's decision be summarily affirmed pursuant to Rule of Practice 411(e). 2/ The Division also moved for leave, under Commission Rule of Practice 410(d), 3/ to file a brief in opposition to e-Smart's petition for review.

I.

The Division alleged that e-Smart, 4/ which had registered its common stock pursuant to Section 12(g) of the Securities Exchange Act of 1934, 5/ failed to comply with the reporting requirements of Exchange Act Section 13(a) and Exchange Act Rules

1/ See E-Smart Technologies, Inc., Init. Dec. Rel. No. 247 (Mar. 4, 2004), 82 SEC Docket 1194.

2/ 17 C.F.R. § 201.411(e).

3/ 17 C.F.R. § 201.410(d). This provision has been deleted from the recently revised Rules of Practice, which took effect April 19, 2004. See Adoption of Amendments to Rules of Practice, 69 Fed. Reg. 13166, 13171 (Mar. 19, 2004).

4/ E-Smart is involved in the development of "biometric verification security systems," including a "smart card," which are intended to protect against identity theft and payment fraud.

5/ 15 U.S.C. § 781(g).

12b-20, 13a-1, and 13a-13 6/ by filing materially false and misleading reports with the Commission and by failing to file several annual and quarterly reports. E-Smart registered its common stock pursuant to Section 12(g) on May 30, 2000. Thereafter, e-Smart failed to file annual reports on Form 10-KSB for fiscal years ending on December 31, 2000, 2001, and 2002. The Company also failed to file quarterly reports on Form 10-QSB between September 30, 2000 and June 30, 2003. From May 30, 2000 through the hearing date of December 8, 2003, E-Smart filed three unaudited quarterly reports for June 30, 2000, September 30, 2000, and June 30, 2003, the last of which was filed late, on November 14, 2003, after these proceedings had begun. The Company also subsequently filed a Form 10-QSB for the period ending September 30, 2003.

The law judge found that e-Smart failed to make the required filings, as alleged, and therefore violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. 7/ In assessing sanctions, the law judge found that e-Smart's violations "were not only recurrent but also egregious, lasting over three years and continuing to the present." 8/ The law judge added that, "although e-Smart represents that it intends to bring itself into full compliance with the periodic reporting requirements no later than March 31, 2004, this endeavor seems doomed." 9/ Because the law judge was "convince[d]" that e-Smart could not "readily remedy its periodic reporting violations, [she] conclude[d] that a suspension [would] not sufficiently protect the investing public." 10/ The law judge, therefore, revoked the Company's registration. On March 30, 2004, e-Smart filed a Form 10-KSB covering fiscal years ending on December 31, 2002 and 2003.

6/ 15 U.S.C. § 78m(a), 17 C.F.R. §§ 240.12b-20, 13a-1, 13a-13.

7/ The law judge, however, dismissed the allegation that e-Smart violated Rule 12b-20 by failing to disclose in its quarterly report for June 30, 2003 that a "vital" Company official had been convicted of wire fraud. The report at issue was filed after issuance of the order instituting proceedings ("OIP"). The law judge dismissed the Rule 12b-20 allegation because the "quarterly report upon which the Division does rely (for the period ending June 30, 2003) did not exist at the time the instant case was instituted [and] is beyond the scope of the OIP." E-Smart, 82 SEC Docket at 1199. This aspect of the law judge's decision has not been appealed.

8/ E-Smart, 82 SEC Docket at 1199.

9/ E-Smart, 82 SEC Docket at 1200.

10/ E-Smart, 82 SEC Docket at 1200.

II.

E-Smart argues that the Division is seeking affirmance of a penalty imposed on e-Smart based on its failure to file (and the presumption that it would be unable to file) quarterly and annual reports which have now been filed. As a result, according to e-Smart, "the investing public possesses comprehensive audited financial statements covering all relevant time periods." E-Smart further claims that the Division's motion "ignore[s] the reality of the Company's filings" and seeks a sanction "based on circumstances which no longer exist." 11/

As we have held, "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters." 12/ We have further held that summary affirmance is appropriate when it is clear that we will not benefit from the submission of briefs by the parties. 13/ That is not the case here, particularly because one of the premises underlying the law judge's sanctioning determination, i.e., that the Company could not readily remedy its reporting problems, no longer appears valid. Under the circumstances, it appears appropriate to consider the record and the parties' arguments as part of the normal appellate process rather than the abbreviated process involved with a summary affirmance.

We also deny the Division's motion for leave to file a brief in opposition to e-Smart's petition for review, which we previously granted. Under Rule of Practice 410(d), as in effect

11/ While conceding that e-Smart "has filed a combined, audited annual report on Form 10-KSB for the periods ending on December 31, 2002 and December 2003," the Division asserts that e-Smart "still has not filed annual reports for the periods ending December 31, 2000, and 2001 or quarterly reports for at least the first three periods of 2001."

12/ Richard Cannistraro, Exchange Act Rel. No. 39521 (Jan. 7, 1998), 66 SEC Docket 790, 791 n.3. See also Terry T. Steen, Exchange Act Rel. No. 38675 (May 27, 1997), 64 SEC Docket 1785, 1786 (denying summary affirmance and noting that such action is appropriate only where there are "compelling reasons").

13/ See, e.g., Christopher A. Lowry, Exchange Act Rel. No. 45131 (Dec. 5, 2001), 76 SEC Docket 1134, 1137 (denying motion for summary affirmance where the Commission sought the "parties' views on, among other matters, the appropriate sanctions in the public interest").

at the time of the Division's motion, 14/ the Commission grants such leave "only if it determines that briefing will significantly aid the decisional process." In light of our determination to deny the Division's motion for summary affirmance, we do not believe that a Division brief opposing e-Smart's petition would significantly aid the decisional process.

Accordingly, it is ORDERED that the Division of Enforcement's motions for summary affirmance and for leave to file a brief in opposition to e-Smart Technologies, Inc.'s petition for review be, and they hereby are, denied.

By the Commission.

Jonathan G. Katz
Secretary

14/ See n.3, supra.