INITIAL DECISION NO. 271
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11666

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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| In the Matter of | : | |
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| | : | INITIAL DECISION |
| ROBERT CORD BEATTY | : | January 14, 2005 |
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APPEARANCES: Thomas M. Melton and Karen L. Martinez for the Division of Enforcement, Securities and Exchange Commission

Robert Cord Beatty, pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") on September 15, 2004, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The OIP alleged that United States District Judge Paul G. Cassell entered an order enjoining Robert Cord Beatty ("Beatty") from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder, and from aiding and abetting future violations of Section 13(b)(2)(A) of the Exchange Act. SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (PGC) (D. Utah Aug. 4, 2004) (Opinion and Order Granting in Part Summary Judgment Against Robert Cord Beatty).

I denied Beatty's Motion to Continue Administrative Proceedings on November 12, 2004. Beatty filed an Answer to the OIP on November 15, 2004. Beatty denies most of the allegations in the OIP but admits that "Judge Cassell did enter a judgment against Respondent, which judgment has been timely and properly appealed to the United States Tenth Circuit [sic] of Appeals." (Answer at 3.) Beatty's affirmative defenses are that the OIP fails to set forth a claim upon which relief may be granted and that the statute of limitations has expired.

On December 21, 2004, the Division of Enforcement ("Division") filed a Motion for Summary Disposition seeking to have Beatty barred from participating in any future offering of penny stock and a Memorandum in Support of Motion for Summary Disposition ("Memorandum") with the following exhibits:

Exhibit A: SEC v. Autocorp Equities Inc., 292 F. Supp. 2d 1310 (D. Utah Dec. 8, 2003) (Opinion and Order Granting and Denying Summary Judgment in Part);

Exhibit B: SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (PGC) (D. Utah Aug. 4, 2004) (Opinion and Order Granting in Part Summary Judgment Against Robert Cord Beatty);

Exhibit C: SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (PGC) (D. Utah Aug. 23, 2004) (Order);

Exhibit D: SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (TS) (D. Utah), Deposition of Robert Cord Beatty, February 21, 2001;

Exhibit E: Blue Sheet Report by Trade Date;

Exhibit F: Form 10-QSB for Autocorp Equities, Inc. (formerly Chariot Entertainment, Inc.) for the quarter ended September 30, 1994;

Exhibit G: SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (PGC) (D. Utah), (Affidavit of Robert Cord Beatty);

Exhibit H: SEC v. Robert Cord Beatty, No. 2:95-CV-0886S (DS) (D. Utah) (Nov. 1, 1995), (Final Judgment of Permanent Injunction Against Robert Cord Beatty);

Exhibit I: SEC v. Uniprime Capital Acceptance, Inc., No. 1999-CV-0885 (S.D. N.Y.), Deposition of Dean Becker, June 30, 2002;

Exhibit J: SEC v. Autocorp Equities Inc., No. 2:98-CV-00562 (PGC) (D. Utah), (Defendant Robert Cord Beatty's Memorandum in Opposition to Securities and Exchange Commission's Motion for Summary Judgment); and

Exhibit K: Robert Cord Beatty, Admin. Proceeding No. 3-11666, (Declaration of Dr. Todd Cressman).

Beatty did not file an opposition to the Motion for Summary Disposition. However, on January 5, 2005, Beatty filed for reconsideration of his request that this proceeding be continued while his appeal of the injunction is pending with the U.S. Court of Appeals for the Tenth Circuit. The Division filed an opposition to Beatty's request for reconsideration on January 7, 2005. Beatty filed a reply to the Division's opposition to his motion for reconsideration.

## Findings and Conclusions

The Samuel Goldwyn Company ("Goldwyn") shared production rights to American Gladiators, the 1980s' television game show, with Johnny Ferraro ("Ferraro"), the show's creator. In July 1993, Goldwyn agreed to let Ferraro stage live productions of American Gladiators in Las Vegas, Nevada. (Exhibit A at 2.) About this time, Ferraro met Beatty and they began working to raise money to stage the Las Vegas productions. (Exhibit A at 2-3.) Michael Carnicle joined the funding effort and suggested selling shares in a publicly traded company as a way to raise the needed capital. (Exhibit A at 3.)

Chariot Entertainment, Inc. ("Chariot"), resulted from a merger of Diamond Entertainment II, Inc. ("Diamond"), and Eagle Automotive Enterprises, Inc. ("Eagle"), a public company listed on the NASDAQ on March 28, 1994.[1] (Exhibit A at 3, Exhibit F at 7.) The name of the merged entity became Chariot on April 6, 1994, and then AutoCorp Equities, Inc. (AutoCorp), on September 30, 1996. (Exhibit F at 7.) I will use AutoCorp to refer to Eagle, Diamond, and Chariot. At all relevant times, AutoCorp's common stock was registered pursuant to Section 12(g) of the Exchange Act. (OIP and Answer at 2.) "[AutoCorp's] sole purpose [was] to promote and produce live performances of American Gladiators" in Las Vegas. (Exhibit A at 4.) Beatty was AutoCorp's president from the merger until May 1994, and from early September 1994 until sometime in October 1994. (Exhibit A at 7, 27, Exhibit D at 25.) Beatty continued to raise funds for AutoCorp in the period when he was not president. (Exhibit A at 7.)

AutoCorp needed substantial assets, approximately $5 million, to maintain a listing on the NASDAQ Small-Cap Market to facilitate public trading in AutoCorp stock.[2] (Exhibit A at 3-4, 17-18.) To acquire sufficient assets, AutoCorp entered into an agreement on March 23, 1994, to acquire certificates of deposit ("CDs"), purportedly issued by the Commercial Bank of Skinektica in Russia and allegedly worth $5 million at maturity. (Exhibit A at 4-5, Exhibit B at 2.) The CDs were transferred to AutoCorp in a complicated series of transactions that made it difficult to trace their true value. (Exhibit B at 2.) Beatty authorized the issuance of Regulation S shares of AutoCorp in payment for the fake CDs that had been printed at a Kinko's copy center

[1] The seminal company was incorporated on January 2, 1986, under the name Vivatae, Inc., which acquired all the stock of Eagle Entertainment, Inc. Following some divestitures and acquisitions, the company changed its name to Eagle Holdings, Inc., in 1992. Following a sale of one company and an acquisition, it changed its name to Eagle Automotive Enterprises, Inc., in October 1993. In March 1994, Eagle spun off a subsidiary and "acquired Diamond Entertainment II, Inc., a Utah corporation licensed by the Samuel Goldwyn Company to produce live productions of the 'American Gladiators'." On April 6, 1994, the name changed to Chariot Entertainment. On November 16, 1994, the company sold all stock in AM-GLAD Entertainment, Inc., a subsidiary acquired in March 1994, and Diamond Entertainment II, Inc., to Diamond Entertainment, L.C., owned and controlled by Beatty and Lyle Boss. (Exhibit F at 7.)

[2] Beatty estimated that Chariot had about $350,000 in liquid assets at the time of the reverse acquisition with Eagle. (Exhibit D at 13.) Eagle was divesting itself of assets and Diamond lacked substantial assets. (Exhibit A at 3, Exhibit D at 13.)

in Florida, and that ultimately were sold to a company in the West Indies for one dollar.[3] (Exhibit A at 6, 8, Exhibit D at 29.)

AutoCorp filed a Form 10-Q on March 31, 1994, with the Commission while Beatty was president that showed the CDs as an asset "worth $3,753,212, approximately one-third of [AutoCorp's] total assets."[4] (Exhibit A at 7, 16-17, Exhibit B at 2.)

AutoCorp subsequently filed a Registration Form S-8 with the Commission on April 5, 1994, in an attempt to raise money by selling stock to the public and securing loans on the CDs. (Exhibit A at 7.) By June 1994, AutoCorp had no liquid assets. (Exhibit A at 7.)

Judge Cassell found it "undisputed" that by mid-July of 1994, Beatty knew the CDs were worthless. (Exhibit A at 26.) In September 1994, Beatty learned that another company had CDs issued by the Commercial Bank of Skinektica that were identical to AutoCorp's, including the serial numbers. (Exhibit A at 7, 20, Exhibit B at 3.)

AutoCorp was delisted from the NASDAQ Small-Cap Market in June 1994, and was subsequently quoted on the Bulletin Board and then on the National Quotation Bureau's Pink Sheets.[5] (Answer at 2.) AutoCorp's stock was sold to the public until October 1994. (Exhibit B at 9.) AutoCorp's Form 10-QSB for the quarter ended September 30, 1994, contained audited figures as of June 30, 1994, that showed total assets of $1.2 million, including $325 in cash. (Exhibit F at 3-4.)

Beatty's answer states that he "does not have sufficient information to form a belief" whether AutoCorp's common stock was less than five dollars a share and whether it had assets and earnings characteristic of a penny stock, and, therefore, he denies these allegations in the OIP. (Answer at 2.) However, Beatty admitted that AutoCorp had no operating funds in June 1994, and the Imperial Palace in Las Vegas canceled AutoCorp's lease to stage the American Gladiators show on August 26, 1994, because AutoCorp failed to post a required $150,000 performance bond. (Exhibit A at 7, Exhibit D at 43.) Also, transactions in AutoCorp on multiple days in 1994 and 1995, were all for a per share price of $3.75 or less, so it is reasonable

[3] Regulation S exempts offers and sales of securities made outside the United States from the registration requirements of Section 5 of the Securities Act. 17 C.F.R. § 230.901.

[4] It is reasonable to conclude that the filing was on Form 10-QSB for the quarter ended March 31, 1994.

[5] Exhibit A at 27 states that "Chariot stayed public until October 1994, when it was delisted, and shares continued to be traded until then." "Pink sheets [are] a daily publication of the National Quotation Bureau that details the bid and asked prices of over the counter ("OTC") stocks not carried in daily OTC newspaper listings of NASDAQ." Dictionary of Finance and Investment Terms, 419 (4th ed. 1995).

to conclude that AutoCorp's per share stock price was five dollars or less in the relevant period.[6] (Exhibit E.) I find the evidence persuasive that in 1994 AutoCorp did not have net tangible assets in excess of $2 million or average revenue of $6 million for a three-year period, and conclude that during the relevant period, AutoCorp's stock met the definition of a penny stock under Section 3(a)(51)(A)(iv) of the Exchange Act and Rule 3a51-1 thereunder. See 15 U.S.C. 78c(a)(51)(A)(iv)(2004); 17 C.F.R. § 240.3a51-1(2004).

The United States District Court for the District of Utah found that, beginning in September 1994, Beatty acted fraudulently when he did not inform investors that AutoCorp's CDs were worthless, and that he violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2, and that he aided and abetted AutoCorp's violation of Section 13(b)(2)(A) of the Exchange Act.[7] The Court concluded:

> Here, there can be no serious dispute that Beatty knew of or was reckless with regard to the CDs' worthlessness. He could not get a loan on the CDs despite numerous attempts. Moreover, he ultimately told others that the CDs were worthless. Beatty argues that his admission referred to the CDs' value as collateral for a loan, not their value as a corporate asset. However, his inability to get a loan coupled by the subsequent revelation that another company (Prodigy) had *identical* certificates and had also been unable to secure a loan certainly should have alerted him to the substantial problems with the CDs. At a minimum, these various facts created a 'danger of misleading buyers that . . . [was] so obvious that [Beatty] must have been aware of it.' (Citing Anixter v. Home-Stake Production, Co., 77 F.3d 1215, 1232-33 (10th Cir. 1996); Hackbart v. Holmes, 675 F.2d 1114, 1117-18 (10th Cir. 1982).)

(Exhibit B at 10.)

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[6] The permanent injunction was based on Beatty's illegal conduct when he was reinstated as AutoCorp's president in September 1994. (Exhibit B at 5, 8.) Beatty does not dispute the Division's representation that Exhibit E is a Blue Sheet Report for Chariot's common stock. (Memorandum at 6.) "Blue sheets consist of information from broker-dealers, generally market makers, setting forth the firm's inter-dealer and agency trades in a subject security or securities by date, price, size and contra-party." Escalator Securities, Inc., 62 SEC Docket 1927, 1929 n.4 (1996).

[7] On these facts, the Commission prevailed on motions for summary judgment: (1) as to violations of the antifraud statutes against Michael Carnicle, Hillel Sher, and Amotz Frenkel; and (2) as to violations of Section 5 of the Securities Act against Michael Carnicle, Amotz Frenkel, and Nili Frenkel. The Commission obtained: (1) permanent injunctions against Michael Carnicle, Hillel Sher, and Amotz Frenkel, each of whom worked with Beatty to raise funds from the public; (2) disgorgement orders against Michael Carnicle and Nili Frenkel; and (3) civil penalties against Michael Carnicle, Hillel Sher, and Amotz Frenkel. (SEC v. Autocorp Equities Inc., 292 F. Supp. 2d 1310 (D. Utah Dec. 8, 2003), Exhibit A at 41-42.)

> Here, there can be no serious dispute that [AutoCorp] violated Section 13(b)(2)(A) by including the fake CDs on its books. Moreover, as discussed above, Beatty eventually learned of the fraud and, as president, must have known that his failure to disclose the fraud provided substantial assistance to the company's continued record-keeping violation.

(Exhibit B at 14.)

On August 23, 2004, the court permanently enjoined Beatty from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2, and from aiding and abetting future violations of Section 13(b)(2)(A) of the Exchange Act. (Exhibit C.)

**Rulings**

I DENY Beatty's motion for reconsideration for the reasons stated in the November 12, 2004, ruling.

The Motion for Summary Disposition is allowed because Respondent has filed an answer and the Division made the documents in the investigatory file available to Beatty in connection with the civil action. (Motion for Summary Disposition at 2 n.1.) 17 C.F.R. § 201.250(a). I reject Beatty's affirmative arguments and GRANT the Motion for Summary Disposition because there is no dispute that the material allegations in the OIP are true and the Division is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250.

Section 15(b)(6) of the Exchange Act states that the Commission shall bar a person from participating in an offering of penny stock where it is in the public interest to do so and the person has been enjoined from violations of the securities statutes based on conduct that occurred while participating in an offering of penny stock. Beatty does not dispute that on August 23, 2004, Judge Cassell enjoined him from future violations of the securities statutes. (Answer at 3.) The statute of limitations is not relevant because the permanent injunction, rather than Beatty's conduct in 1994, is the basis for the action taken pursuant to Section 15(b)(6). See Michael J. Markowski, 74 SEC Docket 1537, 1539-41 (Mar. 20, 2001).

Consideration of the applicable public interest factors indicates that it is in the public interest to bar Beatty from participating in an offering of penny stock. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Beatty's actions were egregious. He violated the antifraud provisions of the securities statutes, and aided and abetted a public company's failure to keep books and records as required by law. He violated Exchange Act Rule 13b2-2's requirement that a corporate officer clarify previous statements that are misleading in the absence of some material fact. 17 C.F.R. § 240.13b2-2. Beatty's actions were not isolated but recurrent in nature. Judge Cassell concluded that Beatty "knew of or was reckless with regard to the CDs' worthlessness" when assessing Beatty's scienter both for granting summary judgment and for imposing an injunction. (Exhibit B at 10, 16.) Also, Judge Cassell issued a permanent

injunction after considering a number of Steadman factors such as whether: (1) Beatty's occupation would present opportunities for future violations, (2) Beatty recognized his wrongful conduct, and (3) Beatty gave sincere assurances against future violations. (Exhibit B at 16-17.) In a deposition taken in July 2003, Beatty denied any wrongdoing in this situation. (Exhibit G.)

The Memorandum in support of the Motion for Summary Disposition cites additional public interest considerations. On November 1, 1995, Beatty was enjoined from any future violations of Sections 5(a), 5(c), and 17(a)(1), (a)(2) and (a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5, and ordered to disgorge $502,000, and prejudgment interest of $157,111 by a Final Judgment of Permanent Injunction. The court waived payment of disgorgement and prejudgment interest, and did not order a civil penalty based on Beatty's Statement of Financial Condition. See SEC v. Robert Cord Beatty, No. 2:95 CV 0886S (D. Utah Nov. 1, 1995); Exhibit H at 3-4.

In addition, a Beatty family trust is the majority shareholder of Uniprime, a public company that is the subject of a Commission enforcement action. (Motion for Summary Disposition at 7; Exhibit I at 11-14, Exhibit J.)

Finally, Dr. Todd Cressman ("Cressman") in a declaration signed on December 16, 2004, under penalty of perjury pursuant to 28 U.S.C. § 1746, stated that he and a partner invested funds in a company where Beatty is a director and chief financial officer. Cressman represents that Beatty received approximately $105,000 from the company that was not authorized by the board of directors, and that the company has failed to pay Cressman and his partner $276,000 due in November 2004. (Exhibit K.)

There are no mitigating circumstances.

I GRANT the relief requested by the Division because the considerations set forth above demonstrate that it is in the public interest to bar Beatty from participating in any offering of penny stock.

## Order

Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, I ORDER that Robert Cord Beatty be, and hereby is, barred from participating in any offering of penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to

correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge