

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11858

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
May 5, 2005

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In the Matter of :  
: **ORDER ON MOTIONS**  
CMKM DIAMONDS, INC. :  
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The Securities and Exchange Commission (Commission) instituted this proceeding on March 16, 2005, to determine whether CMKM Diamonds, Inc. (CMKM Diamonds), has common stock registered with the Commission and, if so, whether it violated Section 13(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 13a-1 and 13a-13 thereunder by not filing annual reports since May 9, 2002, and quarterly reports since December 18, 2002. In its Answer to the Order Instituting Proceedings, CMKM Diamonds acknowledged that its stock is registered with the Commission and that it did not make the required filings. (Answer at 6-7.) Therefore, pursuant to Section 12(j) of the Exchange Act, the only issue to be decided is what action is necessary and appropriate for the protection of investors.

The hearing will commence on May 10, 2005, at 9:30 a.m. Pacific time, in the Courtroom 1339, Edward R. Roybal Federal Building and Courthouse, 255 East Temple Street, Los Angeles, California, 90012. The Division of Enforcement (Division) expects to call sixteen witnesses and introduce ninety-four exhibits in its direct case. CMKM Diamonds expects to call five of the same people as witnesses and introduce seventeen exhibits in its direct case.

**Issue**

On or about May 2, 2005, the Division filed an In Limine Motion to Exclude all Evidence of Naked Short Selling (Motion). A motion in limine is a request made before a hearing or trial begins that certain inadmissible evidence not be referred to or offered into evidence. The Division asserts that I should rule in advance that I will not allow evidence of naked short selling at the hearing because the practice of naked short selling is wholly unrelated to whether CMKM Diamonds violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13.

In its response filed on or about May 4, 2005, CMKM Diamonds requests that I deny the Motion, arguing that the Commission's Rules of Practice do not provided for such a

motion, and the Division's approach to evidence of short selling in CMKM Diamond is simplistic. CMKM Diamonds understands "that evidence of naked shorting does not excuse extended filing deficiencies but will prove that such outstanding share numbers are very material to having correctly filed financial reports." (Response of CMKM Diamonds at 2.)

On May 4, 2005, the Owners Group filed a Motion to Permit Video Transmission of Proceeding to a Remote Site. The Owners Group is concerned that the courtroom will not accommodate the number of people who want to attend the hearing.

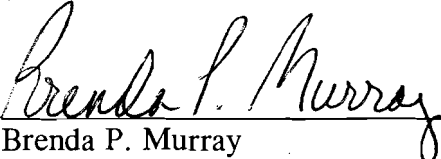
The Division filed an opposition citing the Local Rules of Practice for the U.S. District Court, Central District of California (L.R.), effective February 1, 2005. L.R. 83-6.1, Prohibition of Broadcasting, Television, Photography, prohibits the use of any forms, means or manner of radio or television broadcasting and the taking or making of photographs, motion pictures, video or sound recordings in any room where court proceedings are being held, including but not limited to most floors of the Roybal Federal Building. L.R. 83-6.5.1 provides that recording and broadcasting equipment shall not be possessed in the areas specified in L.R. 83-6.1 unless authorized by a judge or magistrate judge of this Court.

### **Ruling**

The evidentiary standard for what is admissible in a Commission hearing is set out in Rule 320 of the Commission's Rules of Practice. Rule 320 provides that relevant evidence is admissible but that irrelevant, immaterial or unduly repetitious evidence should be excluded. 17 C.F.R. § 201.320. The Commission's Rules of Practice do not specifically allow in limine motions. In limine motions are allowed, however, because Rule 154 provides generally for motions and does not exclude an in limine motion. 17 C.F.R. § 201.154.

CMKM Diamonds's Answer does not allege that short selling was the reason CMKM Diamonds did not file the required reports. Accordingly, I GRANT the Division's Motion. I will not allow extensive evidence of short selling into evidence because it is irrelevant to the issue that I have to decide in this proceeding. For example, CMKM Diamonds's proposed exhibit list shows as item 17, Short Selling, Death Spiral Convertibles, and the Profitability of Stock Manipulation, John D. Finnerty (March 2005). If offered, I will not allow this material into evidence because it is irrelevant to what Commission action is necessary and appropriate for the protection of investors given that CMKM Diamonds has not yet made the required filings.

I DENY the motion to authorize video transmission of the hearing because I am not a judge of the Court where the hearing is being held and therefore have no authority to grant exceptions to the local rules. See L.R 83-6.5.1.

  
Brenda P. Murray  
Chief Administrative Law Judge