

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of :
: INITIAL DECISION
INFORMATION ARCHITECTS :
CORPORATION : October 25, 2005
:

APPEARANCES: Marshall Gandy for the Division of Enforcement,
Securities and Exchange Commission

Gregory Bartko for Respondent Information Architects Corporation

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision dismisses the proceeding against Information Architects Corporation (Information Architects). The charges concerned irregularities in the required periodic reports filed during 2004 by Information Architects.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding on February 11, 2005, with an Order Instituting Proceedings (OIP), pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act). Information Architects was served with the OIP on June 27, 2005, and filed an Answer to the OIP on July 12, 2005. At an August 25, 2005, prehearing conference the parties requested leave to file cross motions for summary disposition and consented to an initial decision based on the pleadings. Leave was granted, pursuant to 17 C.F.R. § 201.250(a). Info. Architects Corp., Admin. Proc. No. 3-11822 (A.L.J. Aug. 25, 2005). The parties filed their motions for summary disposition and a joint statement of stipulated facts on October 6, 2005. No replies were filed.

The Findings of Fact in this Initial Decision are based on the joint statement of stipulated facts, which is admitted into evidence as Joint Exhibit 1,¹ and the Commission's public official records concerning Information Architects, of which official notice is taken pursuant to 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition, pursuant to 17 C.F.R. § 201.250. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Information Architects's securities are registered under Section 12(g) of the Exchange Act, that its annual report for the year ended December 2003 contained an auditors' report not prepared or issued by the auditors identified, and that the error was compounded in the following three quarterly reports and in an amended annual report. Thus, the OIP alleges, Information Architects violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1 and 13a-13 as well as the antifraud provisions of the Securities Act of 1933 (Securities Act) and the Exchange Act – Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. The Division requests that the registration of Information Architects's stock be revoked or suspended.

Information Architects acknowledges the inaccurate filings but states that, as shown by Joint Exhibit 1, the inaccuracies were due to its good faith reliance on a financial consultant and that it has amended the inaccurate filings and is otherwise in good standing and current on its periodic reports. Information Architects requests that the proceeding be dismissed.

II. FINDINGS OF FACT

Information Architects provides employment screening and background investigation services. Ex. 1 at 1. The Commission's public official records show that Information Architects's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since 1997. Its Form 10-KSB for the year ended December 31, 2003, and the three following Forms 10-QSB contained inaccuracies, as did an amended 2003 Form 10-KSB filed January 4, 2005.² Ex. 1 at 3-6. The 2003 Form 10-KSB and amended Form 10-KSB were signed and certified by Michael Clark (Clark), who was Information Architects's President, and the Forms 10-QSB were signed and certified by Clark and by William Overhulser (Overhulser), the company's Chief Operating Officer. Ex. 1 at 1-6. Information Architects had engaged Marvin Winick (Winick) to manage the preparation of its financial statements and the preparation, review, and filing of the periodic reports at issue. Ex. 1 at 2. Winick had held himself out to management of Information Architects as trained and knowledgeable in the corporate accounting field and competent to perform the duties he agreed to perform on behalf of Information Architects. Ex. 1 at 2-4.

¹ Citations to Joint Exhibit 1 will be noted as "Ex. 1 at ___."

² Forms 10-KSB and 10-QSB may be filed, in lieu of Forms 10-K and 10-Q, by a company that is a "small business issuer." See 17 C.F.R. § 228.10(a).

The 2003 Form 10-KSB, as prepared by Winick, represented that Information Architects had retained Russell & Atkins (R&A) as its auditor and that its financial statements were audited. Ex. 1 at 3-4. The Form 10-KSB contained an Auditor Report and Consent purportedly signed by R&A. Ex. 1 at 3-4. Each of Information Architects's following three Forms 10-QSB compared the financial results for the current quarter with those for the 2003 year, represented as "audited." Ex. 1 at 4. The amended 2003 Form 10-KSB, also prepared by Winick, contained an Auditor's Report indicating that the December 31, 2003, financial statements had now been audited by a different firm. Ex. 1 at 5.

Clark and Overhulser had no reason to doubt Winick or the accuracy of the reports at issue at the time they were filed but subsequently learned that neither R&A nor the second auditor had audited the financial statements as represented. Ex. 1 at 4, 6. Thereafter, Information Architects filed an amended 2003 Form 10-KSB that contained audited financial statements and amended quarterly reports, as well, to the satisfaction of Commission staff. Ex. 1 at 7-8. The Commission's public official records show that it also timely filed its 2004 Form 10-KSB and Forms 10-QSB for the first two quarters of 2005 so that it is now current in its filings.

III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require public corporations to file annual and quarterly reports with the Commission. The requirement that reports be filed carries with it the obligation that those filings be accurate. See SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978). Additionally, Exchange Act Rule 12b-20 requires a filer to supplement required information with "such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

As a "small business issuer" for the purpose of the disclosure requirements, Information Architects filed annual reports on Form 10-KSB. See 17 C.F.R. § 228.10(a)(1); see generally 17 C.F.R. §§ 228.10-.702 (Regulation S-B) (setting forth disclosure requirements for small business issuers). As required by 17 C.F.R. § 228.310, financial statements included with Form 10-KSB must be prepared in accordance with Generally Accepted Accounting Principles and must be audited by an independent accountant. Pursuant to 17 C.F.R. § 228.310 Note 2, the report and qualifications of the independent accountant must comply with 17 C.F.R. § 210.2.³ See 17 C.F.R. § 210.2-02 (specifying requirements for accountants' reports).

The filings at issue were deficient and not accurate. The 2003 Form 10-KSB lacked audited financial statements and falsely identified R&A as having audited them. All the filings at issue falsely represented that the 2003 financial statements were audited. Thus, Information Architects violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

³ Part 210 of 17 C.F.R. (17 C.F.R. §§ 210.1-.12) is also known as Regulation S-X.

Based on the evidence of record, it is concluded that Information Architects did not violate Securities Act Section 17(a) or Exchange Act Section 10(b) and Rules 10b-5 and 12b-20.

IV. SANCTION

The only remedies available in this proceeding are revocation or suspension of registration of Information Architects's securities. Under the particular circumstances of this case, in light of e-Smart Tech., Inc., 83 SEC Docket 3586 (Oct. 12, 2004), e-Smart Tech., Inc., 84 SEC Docket 2979 (A.L.J. Feb. 3, 2005), and sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), the registration of Information Architects' stock will not be revoked or suspended.

Information Architects has recognized its violations and mitigated them by filing amended, compliant, periodic reports for the periods that were covered by the violative reports. Commission staff has found no fault with its subsequent periodic reports, Form 10-KSB for 2004 and the Forms 10-QSB for the first two quarters of 2005. In short, it is now in full compliance with its reporting requirements, and the investing public has access to past and current audited financial information.⁴ Future violations are unlikely. *Scienter* is absent. A mitigating factor is that the violations resulted from Information Architects' unknowingly ill-placed reliance on an individual who appeared reliable but deceived corporate officers. In light of the above considerations, the sanctions of revocation or suspension will not be imposed, and the proceeding will be dismissed.

V. ORDER

IT IS ORDERED that this administrative proceeding IS DISMISSED.

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

⁴ In e-Smart Tech., Inc. the Commission stated that a company's subsequent filing history is an important factor to be considered in determining whether revocation is "necessary or appropriate for the protection of investors" within the meaning of Section 12(j) of the Exchange Act. Nevertheless, the Commission warned that its decision was dependent on the particular facts of that proceeding and not to be construed as suggesting that a determination to revoke an issuer's registration will be reconsidered simply because the issuer has begun to submit long overdue filings during a proceeding to revoke its registration. e-Smart Tech., Inc., 83 SEC Docket at 3592 & n. 18.

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.

Carol Fox Foelak
Administrative Law Judge