

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12519

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 7, 2007

In the Matter of	:	
	:	
COSMETIC CENTER, INC.,	:	ORDER FOLLOWING PREHEARING
DISCOVERY ZONE, INC.,	:	CONFERENCE AND DENYING LEAVE
DONLAR BIOSYNTREX CORP.,	:	TO FILE MOTION FOR SUMMARY
DONLAR CORP.,	:	DISPOSITION
IMPAX LABORATORIES, INC.,	:	
PHOENIX WASTE SERVICES	:	
COMPANY, INC., and	:	
TELYNX, INC.	:	

The Securities and Exchange Commission (Commission) instituted this proceeding, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act) on December 29, 2006. The Order Instituting Proceedings (OIP) alleges that each Respondent has failed to file required periodic reports in violation of Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13. All Respondents received the OIP by January 5, 2007. Only Impax Laboratories, Inc. (Impax), and Telynx, Inc. (Telynx), filed the required Answers. On February 7, 2007, the Commission issued an Order Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 as to Telynx, Inc. Cosmetic Center, Inc., Securities Exchange Act Release No. 55250 (Feb. 7, 2007)

I ordered a telephonic prehearing conference for February 5, 2007, with notice to the parties that a Respondent who failed to file an Answer and who failed to participate in the prehearing conference would be subject to default. Impax was the only Respondent present at the prehearing conference.

At the prehearing conference, the Division of Enforcement (Division) argued that it should be granted leave to file a motion for summary disposition as to Impax, which admitted to not filing a Form 10-KSB for the period ended December 31, 2004; Form 10-QSB reports for the first three quarters of 2005; a Form 10-KSB for period ended December 31, 2005, and Form 10-QSB reports for the first three quarters of 2006.

Impax opposed the Division's motion. In its Answer and in its Opposition to Motion for Leave to Move for Summary Disposition and Request for Evidentiary Hearing (Opposition), Impax requests an in-person hearing to demonstrate that it is not necessary or appropriate for the protection of investors for the Commission to suspend or revoke the

registration of any class of its securities. Impax represents that it is a successful, active pharmaceutical company with available cash and investments of approximately \$30.2 million as of December 31, 2006, and that its failure to file periodic reports since its Form 10-QSB for the third quarter of 2004, is due to a 2001 Strategic Alliance Agreement it entered with a subsidiary of Teva Pharmaceutical Industries, Ltd., in 2001. Impax describes in detail the accountants and lawyers it has retained and the many meetings, submissions, communications, etc. that it has had with the Commission's Office of the Chief Accountant (OCA) on an acceptable treatment of revenue recognition issues in Impax's 2004 financials. Impax expected to file a revised submission to the OCA within ten days of when it filed its Answer on January 8, 2007.

Impax seeks to present at an in-person hearing:

[S]everal witnesses, including senior management and consulting experts, who will testify concerning, among other things, the general health of and outlook for the company, the complexity of the accounting issues involved, the past and continuing efforts made to bring the company's periodic reports up to date, the likely timing for doing so, the company's ability to maintain current reports in the future, the information currently available to investors, the efficiency of the market for Impax's common stock during the period, and the effect of the absence of any market for the stock upon existing and prospective investors.

(Opposition at 3.)

The Division opposes an in-person hearing. The Division does not dispute the complexity of the accounting issues involved; however, it notes that Impax has admitted the violations alleged in the OIP. (Reply Brief in Support of Motion at 1-2.)

Ruling

Section 12(j) of the Exchange Act provides:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors . . . to suspend for a period not exceeding 12 months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules or regulations thereunder.

I will issue orders of default to those Respondents who failed to file an Answer and who failed to attend the prehearing conference. 17 C.F.R. § 201.155, .220.

Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250, provides that the Division may file a motion for summary disposition where a respondent has filed an Answer and documents have been made available. Both of those contingencies have been met. Rule 250(b) states that a motion for summary disposition may be granted where there is no

issue of material fact and the moving party is entitled to summary disposition as a matter of law.

Given Impax's violations, the issue is what, if any, sanction is appropriate to achieve the statutory goal of protecting not just Impax investors, but investors as a whole. The purpose of the periodic reporting provisions is to supply the investing public with current and accurate information about an issuer so that the investing public may make informed decisions.

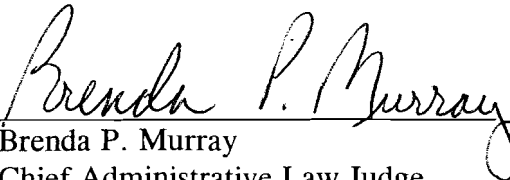
The reporting requirements of the [Exchange Act are] the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities. Congress has extended the reporting requirements even to companies which are "relatively unknown and insubstantial."

SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history)

This situation is unusual in that Impax's status and filings indicate that it is a reputable company and that it began seeking the advice of the Commission's Office of the Chief Accountant in May 2005 on an issue of revenue recognition resulting from its 2001 Strategic Alliance Agreement.

Given these particular facts and Impax's request that it be allowed an in-person hearing, I DENY the Division's motion for leave to file a motion for summary disposition and ORDER a hearing on Monday, February 26, 2007, at 9:00 a.m. EST in Hearing Room 2, 100 F Street N.E., Washington, D.C. 20549. Much of information about Impax is in its public filings and need not be repeated at the hearing. I expect the parties can stipulate to: (1) Impax's financial health and projected business outlook; (2) that the accounting issues involved are complex; and (3) that Impax has made considerable efforts to update its periodic reports. The hearing will make sure that the factors set out in Gateway International Holdings, Inc., 88 SEC Docket 430, 439 (May 31, 2006), are in the record; however, the emphasis will be on the date, if ever, that Impax expects to file the missing periodic reports. I will request the Division to explain its statement that: "more than two years after the complexities of that agreement resulted in the restatement of Impax's financial statements for the first two quarters of its fiscal year 2004, Impax still has not finalized a method for accounting for transactions under that agreement to the satisfaction of its auditors." (Reply Brief in Support of Motion at 2.)

By the close of business on February 20, 2007, Impax and the Division will each supply the other side with a list of its witnesses, the testimony of any expert, and a list of its exhibits along with copies of those exhibits that the party does not already have. The OIP directed an Initial Decision within 120 days of when the parties were served with the OIP so the procedural schedule will be brisk.


Brenda P. Murray
Chief Administrative Law Judge