

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9205 /May 11, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-13927

In the Matter of	:	
	:	ORDER MAKING FINDINGS
GORDON BRENT PIERCE,	:	AND IMPOSING SANCTIONS
NEWPORT CAPITAL CORP., and	:	BY DEFAULT AS TO TWO
JENIROB COMPANY LTD.	:	RESPONDENTS
	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Newport Capital Corp. (Newport) and Jenirob Company Ltd. (Jenirob) on June 8, 2010, pursuant to Section 8A of the Securities Act of 1933 (Securities Act).¹ Newport and Jenirob were served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(ii), (iv) on October 5 and September 10, 2010, respectively.

On March 15, 2011, the Division of Enforcement (Division) filed a Motion for Sanctions and Entry of Default Judgment Against Newport and Jenirob (Motion). Also on March 15, the Division filed: (i) a Declaration of Steven D. Buchholz in Support of Division's Motion and Anticipated Motion for Summary Disposition Against Respondent Pierce, with thirty-three exhibits; and (ii) a Declaration of Jeffrey A. Lyttle in Support of Division's Motion and Anticipated Motion for Summary Disposition Against Respondent Pierce, with two exhibits.

The Division requests that Newport and Jenirob be ordered to cease-and-desist from committing or causing violations or any future violations of Sections 5(a) and 5(c) of the Securities Act and disgorge \$5,264,466.64 and \$1,983,169.11, respectively, plus prejudgment interest. Mot. at 1, 10-13.

Since Newport and Jenirob have not filed Answers, responded to the Division's dispositive motion, or otherwise defended the proceeding, they are in default. See 17 C.F.R. §§

¹ The proceeding with respect to Respondent Gordon Brent Pierce (Pierce) is still pending and will be decided on summary disposition. Gordon Brent Pierce, Order, Admin. Proc. No. 3-13927 (A.L.J. Mar. 11, 2011) (unpublished).

201.155(a)(2), .220(f). Accordingly, I GRANT the Division's Motion and find the following allegations of the OIP to be true.² See 17 C.F.R. § 201.155(a).

FINDINGS OF FACT

Newport is a privately-held corporation organized in March 2000 under the laws of Belize. OIP at ¶4. Newport has a registered agent in Belize and maintains offices in Zürich, Switzerland, and London, England. Id. Jenirob is a privately-held corporation organized in January 2004 under the laws of the British Virgin Islands. OIP at ¶5. Jenirob has a registered agent in the British Virgin Islands and uses the mailing address of a law firm in Liechtenstein. Id. Pierce, age fifty-two, is a Canadian citizen residing in Vancouver, British Columbia, Canada, and the Cayman Islands. OIP at ¶3. Pierce has been President and a director of Newport since 2000. OIP at ¶4.

Lexington Resources, Inc. (Lexington), is a Nevada corporation that was a public shell company known as Intergold Corp. (Intergold) until November 2003, when it entered into a reverse merger with a private company known as Lexington Oil and Gas LLC and changed its name to Lexington Resources. OIP at ¶6. Lexington's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) from 2003 until June 4, 2009, when its registration was revoked. Id. From 2003 to 2007, Lexington stock was quoted on the over-the-counter bulletin board under the symbol "LXRS." Id. In 2008, Lexington's only operating subsidiaries entered Chapter 7 bankruptcy. Id.

From 2002 to 2007, Pierce provided Intergold and then Lexington with operating funds, stock promotion services, and capital-raising services through at least three different consulting companies that Pierce controlled, including Newport. OIP at ¶7. Pierce used these companies to conceal his role and avoid being identified by name in Commission filings. Id. Intergold and Lexington did not have their own offices, but used the offices of Pierce's consulting companies in northern Washington State, near Vancouver. OIP at ¶9. Pierce's employees answered telephones, responded to shareholder inquiries, and performed all other administrative functions for Intergold and Lexington. Id.

By October 2003, shortly before the reverse merger, Intergold owed one of Pierce's consulting companies nearly \$1.2 million. OIP at ¶10. On November 18, 2003, to satisfy part of this debt, the CEO and Chairman of Intergold agreed to issue to Pierce, through one of his consulting companies, vested options to acquire 950,000 shares of the public company. Id. At the time, these shares constituted sixty-four percent of Intergold's outstanding shares (on a post-exercise basis). Id. Three days later, as part of the reverse merger, the CEO and Chairman agreed to issue 2.25 million additional shares with restrictive legends to another offshore company that Pierce formed and controlled. OIP at ¶11. As a result, Pierce controlled more than seventy percent of Lexington's outstanding stock after the reverse merger. Id.

² Although the proceeding remains pending as to Pierce, the allegations of the OIP relating to violations by Pierce are taken as true as to defaulting Respondents Newport and Jenirob. Any findings relating to violations by Pierce are not binding on Pierce. See CentreInvest, Inc., 96 SEC Docket 19387, 19388 n.5 (A.L.J. July 31, 2009).

Within days of the reverse merger, Lexington began issuing stock to Pierce and his associates pursuant to the stock options granted to Pierce's consulting company. OIP at ¶13. Between November 2003 and January 2004, Lexington issued 500,000 shares to Pierce and 300,000 shares to one of Pierce's associates. OIP at ¶14. These became 1.5 million shares and 900,000 shares, respectively, upon Lexington's three-for-one stock split on January 29, 2004. Id. In February 2004, Pierce told Lexington's CEO and Chairman to grant his company additional stock options. OIP at ¶15. Lexington then issued an additional 320,000 shares to Pierce and 495,000 shares to Pierce's associate in May and June 2004. Id. In total, Pierce and his associate received 3.2 million shares (on a post-split basis) between November 2003 and June 2004, all without restrictive legends. Id.

Lexington improperly attempted to register these issuances by filing registration statements on Form S-8, an abbreviated form of registration statement that may not be used for the issuance of shares to consultants who provide stock promotion or capital-raising services, like Pierce and his associate. OIP at ¶16. Lexington's invalid S-8 registration statements only purported to cover issuances by Lexington, not any subsequent resales by Pierce and his associate. Id.

In late February 2004, Pierce and his associate began actively promoting Lexington by sending millions of spam emails and newsletters through a publishing company that Pierce controlled. OIP at ¶17. At the same time, Lexington issued a flurry of optimistic press releases about its current and potential operations. Id. From February to June 2004, Lexington's stock price increased from \$3.00 to \$7.50, and Lexington's average trading volume increased from 1,000 to about 100,000 shares per day, reaching a peak of more than 1 million shares per day in late June 2004. OIP at ¶19.

The stock option agreements between Lexington and Pierce's consulting company and the option exercise agreements signed by Pierce and his associate provided that all shares were to be acquired for investment purposes only and with no view to resale or other distribution. OIP at ¶20. No registration statements were filed relating to any resales of Lexington stock by Pierce, Newport or Jenirob. Id. Of the 3.2 million shares Lexington issued to Pierce and his associate between November 2003 and June 2004, Pierce sold 300,000 through his personal account at a bank in Liechtenstein and distributed 2.8 million through Newport and Jenirob. OIP at ¶21.

Within days of Lexington's issuance of these 2.8 million shares, Pierce instructed Lexington's CEO and Chairman to transfer them all to Newport or Jenirob. OIP at ¶22. Pierce then further transferred 1.2 million of the 2.8 million shares to ten individuals and entities in Canada and the U.S., and Pierce deposited the remaining 1.6 million shares in accounts at the Liechtenstein bank in the names of Newport and Jenirob. OIP at ¶¶22, 25. Pierce was the beneficial owner of the Newport and Jenirob accounts. OIP at ¶25. Pierce then sold the 1.6 million shares through the Newport and Jenirob accounts between February and December 2004 for net proceeds of \$7.7 million. Id.

PROCEDURAL HISTORY

On July 31, 2008, the Commission instituted cease-and-desist proceedings against Pierce, Lexington, and Lexington's CEO/Chairman to determine whether all three respondents violated Sections 5(a) and 5(c) of the Securities Act and whether Pierce also violated the Exchange Act by failing to accurately report his Lexington stock ownership and transactions. Admin. Proc. No. 3-13109; OIP at ¶27. The Initial Decision was issued on June 5, 2009, and found that Pierce committed the alleged violations of the Securities Act and Exchange Act and ordered Pierce to disgorge \$2,043,362.33 in proceeds from his sale of the 300,000 Lexington shares in his personal account. See Lexington Res., Inc., Initial Decision No. 379.

Before issuance of the Initial Decision in the prior action, the Division moved to admit new evidence first received in March 2009 showing that Pierce sold an additional 1.6 million Lexington shares through the Newport and Jenirob accounts and also sought the additional \$7.7 million in disgorgement. OIP at ¶29. The new evidence was admitted in the prior action, but the Administrative Law Judge ruled that disgorgement of the \$7.7 million in proceeds from Pierce's sales in the Newport and Jenirob accounts was outside the scope of the OIP in the prior action because Newport and Jenirob were not named in the OIP. Id.

CONCLUSIONS OF LAW

As a result of the conduct described above, Newport and Jenirob violated Securities Act Sections 5(a) and 5(c) by offering to sell and selling to members of the public Lexington stock when no registration statement had been filed or was in effect. Section 5(a) provides:

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly:

- (1) [t]o make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise

15 U.S.C. § 77e(a). Section 5(c) of the Securities Act provides in pertinent part:

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security

15 U.S.C. § 77e(c).

The registration requirements of Section 5 apply to every sale of securities, including those issued under a Form S-8 registration statement. See SEC v. Cavanaugh, 155 F.3d 129, 133

(2d Cir. 1988). The Form S-8 instructions specifically “advise all potential registrants that the registration statement does not apply to resales of the securities previously sold pursuant to the registration statement.” Id. (citing 17 C.F.R. § 230.462(b)(1)).

The Division has established a prima facie case for a violation of Section 5 of the Securities Act: (i) Newport and Jenirob offered and sold the Lexington shares (OIP at ¶25); (ii) no registration statement was filed or in effect for their sales of Lexington shares, as Lexington’s invalid S-8 registration statements did not cover the resales (OIP at ¶¶16, 20); and (iii) interstate commerce was used to sell the Lexington shares through an omnibus brokerage account in the United States held in the name of the Liechtenstein bank where Newport and Jenirob held their accounts (OIP at ¶¶21, 24, 25).³ See SEC v. Continental Tobacco Co., 463 F.2d 137, 155 (5th Cir. 1972); Mot. at 8.

SANCTIONS

A. Cease-and-Desist Orders

Section 8A of the Securities Act authorizes the Commission to impose a cease-and-desist order upon any person who “is violating, has violated, or is about to violate” any provision of the Securities Act or rules thereunder. In KPMG, the Commission addressed the standard for issuing cease-and-desist relief. KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-92 (2001). It explained that the Division must show some risk of future violations; however, it also ruled that such a showing should be “significantly less than that required for an injunction” and that, “absent evidence to the contrary,” a single past violation ordinarily suffices to establish a risk of future violations. Id. at 1185, 1191.

Along with the risk of future violations, the Commission considers the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent’s state of mind, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his or her conduct, and the respondent’s opportunity to commit future violations. Id. at 1192. In addition, the Commission considers whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceeding. Id. The Commission weighs these factors in light of the entire record, and no one factor is dispositive. Id.

Newport and Jenirob’s violations were serious and recurrent. The unregistered sales of Lexington stock, occurring in multiple transactions over an extended period of time, deprived investors of disclosures about the transactions. Moreover, Respondents have not recognized the wrongful nature of their conduct or provided any assurance against future violations. Cease-and-desist orders will serve the public interest and the protection of investors.

³ Once the Division establishes a prima facie violation, the burden is on Newport and Jenirob to establish that an exemption to the registration requirements of Section 5 of the Securities Act applies; Newport and Jenirob have failed to defend themselves in this proceeding. See SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953).

B. Disgorgement

Section 8A(e) of the Securities Act authorizes disgorgement, including reasonable interest, in any proceeding in which a cease-and-desist order is sought, such as this proceeding. Disgorgement is described as “an equitable remedy designed to deprive [wrongdoers] of all gains flowing from their wrong . . . [and] to deter violations by making them unprofitable.” SEC v. AMX, Int’l, Inc., 872 F. Supp. 1541, 1544 (N.D. Tex. 1994)(citations omitted); accord. SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996); SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989). “[D]isgorgement need only be a reasonable approximation of profits causally connected to the violation.” First City, 890 F.2d at 1231.

Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden shifts to the respondent to demonstrate clearly that the Division’s disgorgement figure is not a reasonable approximation. See SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996); SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995). Any risk of uncertainty as to the disgorgement amount falls on the wrongdoer whose illegal conduct created the uncertainty. See First City, 890 F.2d at 1232.

By defaulting, neither Newport or Jenirob contested the Division’s allegation that they received approximately \$7.7 million in proceeds from their unregistered sales of Lexington shares in 2004. OIP at ¶25. More specifically, the Division has provided evidence that Newport realized gains of \$5,264,466.64 from sales or deliveries of 1,308,400 Lexington S-8 shares between February 20, 2004, and September 29, 2004. Lyttle Decl. at ¶6, Ex. A. The Division also provided evidence that Jenirob realized gains of \$1,983,169.11 from sales or deliveries of 435,000 Lexington S-8 shares between June 10, 2004, and June 30, 2004. Lyttle Decl. at ¶7, Ex. B. I find the Division’s calculation of Newport’s and Jenirob’s ill-gotten proceeds to be a reasonable approximation of gains from their violative conduct. Accordingly, Newport and Jenirob will be ordered to disgorge \$5,264,466.64 and \$1,983,169.11, respectively.

ORDER

IT IS ORDERED, pursuant to Section 8A of the Securities Act of 1933, that Newport Capital Corp., cease and desist from committing or causing any violations, or any future violations, of Sections 5(a) and 5(c) of the Securities Act of 1933;

IT IS FURTHER ORDERED, pursuant to Section 8A of the Securities Act of 1933, that Jenirob Company Ltd., cease and desist from committing or causing any violations, or any future violations, of Sections 5(a) and 5(c) of the Securities Act of 1933;

IT IS FURTHER ORDERED, pursuant to Section 8A(e) of the Securities Act of 1933, that Newport Capital Corp., disgorge \$5,264,466.64 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from October 1, 2004, through the last day of the month preceding which payment is made; and

IT IS FURTHER ORDERED, pursuant to Section 8A(e) of the Securities Act of 1933, that Jenirob Company Ltd., disgorge \$1,983,169.11 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from July 1, 2004, through the last day of the month preceding which payment is made.

Payment of the disgorgement and prejudgment interest shall be made no later than twenty-one days after the date of this Order. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondents and Administrative Proceeding No. 3-13927, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

Cameron Elliot
Administrative Law Judge