

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64329 / April 22, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14352

In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION’S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS
	:	
David M. Otto, Esq.,	:	
	:	
Respondent.	:	
	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against David M. Otto (“Respondent” or “Otto”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e)

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Otto, age 51, is a resident of Seattle, Washington. He is and has been an attorney licensed to practice in the states of Washington and New York. In 2004, he was hired by Peter Cheung to incorporate and obtain financing for Cheung's company, then called HerbalPharm, and later renamed MitoPharm Corporation ("MitoPharm"). Otto provided advice to Cheung and MitoPharm regarding compliance with the federal securities laws.

2. On July 13, 2009, the Commission filed a complaint against Otto in SEC v. David M. Otto, et al. (Civil Action No. C-09-0960-RAJ) in the United States District Court for the District of Western Washington. On April 11, 2011, the court entered an order permanently enjoining Otto, by consent, from future violations of Section 5 and Section 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e and 77q(a), and Sections 10(b) and 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78p(a), and Rules 10b-5, 16a-3 thereunder, 17 C.F.R. §§ 240.10b-5 and 240.16a-3. The court further enjoined Otto from participating in an offering of penny stock for a period of five (5) years. Otto was also ordered to pay \$38,610.18 in disgorgement, and \$6,651.18 in prejudgment interest; and a \$180,000 civil money penalty.

3. The Commission's complaint alleged, among other things, that Otto participated in a fraudulent scheme through which millions of shares of MitoPharm stock were issued in violation of the registration requirements of the federal securities laws and then were sold to the public at inflated prices based on false information about MitoPharm's business. To facilitate the scheme, the complaint alleged that Otto and his associate drafted a legal opinion letter containing material misstatements, and filed a disclosure with the Pink Sheets quotation service that failed to disclose Otto's ownership interest in MitoPharm while a promotional campaign was underway.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Otto's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Otto is suspended from appearing or practicing before the Commission as an attorney.

B. After three (3) years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an affidavit to the Commission's Office of the General Counsel truthfully stating, under penalty of perjury, that he has complied

with the Order, that he is not subject to any suspension or disbarment as an attorney by a court of the United States or of any state, territory, district, commonwealth, or possession, and that he has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), on the Respondent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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