

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65446 / September 30, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14573

In the Matter of

BRIAN DVORAK, Esq.

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i) OF THE
COMMISSION'S RULES OF PRACTICE

I.

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

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, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name: (A) [p]ermanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating . . . any provision of the Federal securities laws or of the rules and regulations thereunder; or (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) . . . any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

The Commission finds that:

A. RESPONDENT

1. Dvorak is an attorney licensed to practice in the State of Nevada.

B. COURT CONCLUSIONS & INJUNCTION

2. On July 25, 2011, the U.S. District Court for the District of Nevada issued an order concluding that Dvorak violated Section 5 of the Securities Act of 1933 (“Section 5”). On August 1, 2011 the court entered final judgment against Dvorak, permanently enjoining him from future violations of Section 5; ordering him to disgorge \$318,843 in ill-gotten gains, together with \$90,795.31 in prejudgment interest, for a total of \$409,638.11(sic); and permanently barring him “from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.” Securities and Exchange Commission v. CMKM Diamonds, Inc., et al., Case Number 2:08-00437.

3. The court concluded that Dvorak and others engaged in the offer and sale of hundreds of billions of unregistered shares of CMKM stock in violation of Section 5. In writing “approximately 440 opinion letters to stock transfer agents justifying the issuance of unregistered CMKM stock by falsely claiming that the stocks were subject to a statutory exemption,” the court concluded Dvorak was “both a necessary participant and substantial factor in the sale of unrestricted CMKM stock in violation of Section 5.” The court further noted, “but for [his] participation with CMKM, there would not have been a sale of unregistered securities ... [which is] not a de minimis act: Dvorak’s participation was a crucial and integral role in the overall scheme to sell unregistered securities.”

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has permanently enjoined Dvorak, an attorney, from violating the Federal securities laws within the meaning of Rule 102(e)(3)(i)(A) of the Commission’s Rules of Practice. The Commission also finds that a court of competent jurisdiction has found that Dvorak, an attorney, violated the Federal securities laws within the meaning of Rule 102(e)(3)(i)(B) of the Commission’s Rules of Practice. In view of these findings, the Commission deems it appropriate and in the public interest that Dvorak be temporarily suspended from appearing or practicing before the Commission.

IT IS HEREBY ORDERED that Dvorak be, and hereby is, temporarily suspended from appearing or practicing before the Commission. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Dvorak may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission will, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Dvorak personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary