UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60917/November 3, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13556

In the Matter of

RDM SPORTS GROUP, INC.,	:	
REAL DEL MONTE MINING CORP.,	:	
RECOTON CORP.,	:	ORDER DENYING MOTION
RED HOT CONCEPTS, INC.,	:	OF RHINO ENTERPRISES
REDHAND INTERNATIONAL, INC.	:	GROUP, INC. (N/K/A
(N/K/A AFRICAN DIAMOND	:	PHYSICIANS ADULT DAYCARE,
CO., INC. OR COAL CORP.),	:	INC.), TO SET ASIDE THE
REDLAW INDUSTRIES, INC.,	:	DEFAULT ORDER OF AUGUST
REPUBLIC RESOURCES, INC.,	:	31, 2009
REWARD ENTERPRISES, INC.,	:	
RHINO ENTERPRISES GROUP, INC. (N/K/A	:	
PHYSICIANS ADULT DAYCARE, INC.),	:	
RIDGEVIEW, INC.,	:	
RIVERSIDE GROUP, INC., and	:	
ROCKY MOUNT UNDERGARMENT CO., INC.	:	

Physicians Adult Daycare, Inc. (PAD), the corporate successor to Rhino Enterprises Group, Inc. (Rhino), moves to set aside a default order entered on August 31, 2009. The Division of Enforcement (Division) opposes the motion. Applying the criteria of Rule 155(b) of the Rules of Practice of the Securities and Exchange Commission (Commission), I deny PAD's motion to set aside the default.

History of the Proceeding

The Commission issued its Order Instituting Proceedings (OIP) on July 20, 2009, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleged that twelve unrelated corporate Respondents failed repeatedly to file required annual and quarterly reports while their securities were registered with the Commission. The OIP directed the presiding Administrative Law Judge (ALJ) to hold a hearing and to determine whether the registration of each class of the issuers' securities should be revoked or suspended for a period not exceeding twelve months. By separate Order issued the same day, the Commission temporarily suspended trading in the securities of these twelve companies pursuant to Section

12(k) of the Exchange Act (Exchange Act Release No. 60339). The temporary trading suspensions commenced on July 20, 2009, and terminated on July 31, 2009.

Paragraph II.A.9 of the OIP alleged that: (1) Rhino has not filed any periodic reports with the Commission since it filed a quarterly report for the period ended September 30, 2001; (2) Rhino filed a Form 15 to voluntarily deregister its shares on May 22, 2006, "but the form was unsigned and therefore invalid on its face;"[1] and (3) as of a date shortly before the Commission issued the OIP, the stock of PAD was quoted on the Pink Sheets and had ten market makers.

The Commission promptly delivered the OIP to Rhino/PAD in a manner that complies with Rule 141 of the Commission's Rules of Practice. On July 22, 2009, a professional process server delivered the OIP to Laughlin Associates, Inc. (Laughlin Associates), the commercial registered agent for Rhino/PAD, at 2533 North Carson Street, Carson City, Nevada 89706. In addition, the United States Postal Service (Postal Service) delivered the OIP by express mail to Rhino/PAD in care of Laughlin Associates at the same address on the same date. Counsel for PAD then communicated with counsel for the Division about the OIP. However, PAD did not file an Answer and did not move for an enlargement of time to file an Answer.[2]

After the time for filing Answers expired, I ordered Rhino/PAD and the other non-answering Respondents to show cause why they should not be held in default and why the registrations of their registered securities should not be revoked (Order to Show Cause, dated Aug. 10, 2009). Respondent Riverside Group, Inc., submitted a settlement offer that the Commission accepted on August 21, 2009 (Exchange Act Release No. 60553). The other non-answering Respondents, including Rhino/PAD, did not reply to the Order to Show Cause.[3] I then issued an Order Making Findings and Revoking Registrations by Default as to Ten Respondents on August 31, 2009 (Exchange Act Release No. 60588). See Rules 155(a) and 220(f) of the Commission's Rules of Practice.

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[1] Section 13 of the Exchange Act establishes a periodic reporting obligation for every issuer of a class of securities registered under Section 12 of the Exchange Act. Pursuant to Exchange Act Rule 12g-4(a)(1), 17 C.F.R. § 240.12g-4(a)(1), a Section 12 issuer can terminate this obligation if it has fewer than 300 securities holders by filing a certification with the Commission on Form 15.

[2] Only one of the twelve Respondents, Reward Enterprises, Inc. (Reward), filed an Answer to the OIP. The Division and Reward have filed cross-motions for summary disposition and the proceeding is pending as to Reward.

[3] The Office of the Secretary transmitted the Order to Show Cause to Rhino/PAD by certified mail on August 11, 2009. The envelope was properly addressed to Rhino/PAD in care of Laughlin Associates at 2533 North Carson Street, Carson City, Nevada 89706—the same addressee and the same address at which the OIP had been delivered some three weeks earlier. The Postal Service attempted to deliver the Order to Show Cause on August 14, 2009, but the unopened envelope was later returned to the Commission marked "attempted, not known."

By letter dated September 11, 2009, as supplemented by letter dated September 22, 2009, PAD moved to set aside the default. On September 15, 2009, the Division opposed PAD's motion. On September 24, 2009, I held a telephonic prehearing conference with counsel for the Division and counsel for PAD. PAD's officers, Duane Starkey (Starkey) and Deirdre Wyatt (Wyatt), also participated in the conference. On October 9, 2009, the Division filed a supplemental opposition and two declarations. On October 16, 2009, PAD replied to the Division and submitted a letter from Starkey.[4]

The Division's Theory of the Case

Section 12(g)(4) of the Exchange Act provides that registration of any class of registered security shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons. By regulation, such certifications are filed on Forms 15.

In May 2006, Rhino filed with the Commission a Form 15, seeking to deregister its securities voluntarily. Rhino stated that it sought termination based on Exchange Act Rule 12g-4(a)(1), which permits termination of registration if the issuer certifies that the class of securities being deregistered is "held of record . . . by less than 300 persons." Rhino represented that its approximate number of holders of record was 142 as of May 3, 2006.

The Division contends that Rhino filed its Form 15 electronically, through the Commission's Electronic Data Gathering and Retrieval (EDGAR) System. According to the OIP, Rhino's Form 15 was "invalid on its face" because it was not properly certified.[5] Rule 302

[4] PAD argues that the Division's supplemental opposition improperly raises unproven, prejudicial, and irrelevant allegations of misconduct. The allegations raised by the Division have not been charged in the OIP. I have not considered these allegations in resolving PAD's motion to set aside the default.

[5] The allegation that Forms 15 can be facially invalid has been raised in several administrative proceedings brought under Section 12(j) of the Exchange Act. See, e.g., N.U. Pizza Holding Corp., Exchange Act Release No. 60467, 2009 SEC LEXIS 2698, __ SEC Docket ___ (Aug. 10, 2009) (default order finding that Nextpath Technologies, Inc., identified more than the maximum allowable number of shareholders on its Form 15); Paivis Corp., 96 SEC Docket 18668, 18670 (July 14, 2009) (default order finding that Phoenix Metals USA II, Inc. (Phoenix Metals), filed an unsigned Form 15); The JPM Co., 95 SEC Docket 13692, 13693 (Jan. 29, 2009) (default order finding that Tidalwave Holdings, Inc., identified more than the maximum allowable number of shareholders on its Form 15).

I take official notice of Phoenix Metals' Form 15 from EDGAR. In its Form 15, Phoenix Metals used the same business address as Rhino—2355 North Carson Street, Carson City, Nevada 89706. Phoenix Metals' Form 15 was dated May 3, 2006, and was filed with the Commission on May 22, 2006—just like Rhino's Form 15. The two issuers' accession numbers on EDGAR are sequential: #0001086715-06-000026 for Phoenix Metals and #0001086715-06-

of Regulation S-T, 17 C.F.R. § 232.302, provides that, if a signature is required, an electronic filing must contain a typed signature. No typed signature appears on the Rhino Form 15 that is posted to EDGAR. The signature block on Rhino's Form 15 only contains the title of the certifying individual ("President"), without identifying the individual by name. Rhino's Form 15 was dated May 3, 2006. The unsigned Form 15 was posted to the Commission's EDGAR website on May 22, 2006. The Division reasons that a "certification" without the signature of a certifier is a nullity. As a result, the Division maintains that Rhino's Form 15 never became effective, that Rhino and PAD had an ongoing duty to file periodic reports with the Commission, and that their failure to do so is now grounds for revocation of registration pursuant to Section 12(j) of the Exchange Act.[6]

PAD'S Motion to Set Aside the Default

As PAD outlines its proposed defense, it will not dispute that Rhino registered its shares with the Commission or that Rhino last filed a periodic report with the Commission for the quarter ended September 30, 2001. Nor will it dispute that PAD became the successor to Rhino in July 2006, and that PAD has never filed any periodic reports with the Commission.

PAD's First Proposed Defense

In its September 11 motion, PAD expressed an intention to defend by showing that Rhino filed its Form 15 with the Commission in paper format, that the Form 15 was manually signed, and that PAD retained a manually signed copy of the Form 15 in its files. PAD suggested that the Commission's staff may have inadvertently lost this paper filing. In support of its motion, PAD presented a sworn statement from Mark Smith (Smith), Rhino's former president, to explain the circumstances surrounding the filing of Rhino's Form 15. In his statement, Smith represented that he manually signed Rhino's Form 15 and filed a paper copy—not an electronic copy—with the Commission:

> The Company did not have the capability to file the Form 15 via EDGAR, so it was executed by me as President, and sent to the SEC by United States Postal Services [sic] or overnight delivery service.

000027 for Rhino. Phoenix Metals' filing error was the same as Rhino's—failure of the issuer's president to provide an electronic signature. See Attachments 1 and 2 to this Order.

[6] As recently as four years ago, the Commission's Division of Corporation Finance (Corporation Finance) notified a registrant in advance of an OIP if the staff believed the registrant's Form 15 termination notice was ineffective. See AirCharter Express, Inc., Exchange Act Release No. 52536, 2005 SEC LEXIS 2483 (Sept. 30, 2005) (OIP ¶ II.B.3); see also AirCharter Express, Inc., 87 SEC Docket 144, 145 (Jan. 3, 2006) (default order). In the more recent administrative proceedings, including this proceeding and the proceedings cited in note 5 supra, the OIP has provided the first notice to the registrant that the staff considered its Form 15 termination to be ineffective. The record does not explain the staff's rationale for eliminating the advance notice from Corporation Finance.

This proposed defense cannot succeed and, in fact, PAD has now abandoned it. As a general matter, the Commission will not accept paper filings of documents that it requires filers to submit electronically. Since 2008, Rule 101(a)(1)(xii) of Regulation S-T, 17 C.F.R. § 232.101(a)(1)(xii), has explicitly required Forms 15 to be submitted to EDGAR in electronic format. Before 2008, the electronic filing requirement for Forms 15 was implicit. See Termination of a Foreign Private Issuer's Registration of a Class of Securities under Section 12(g) and Duty to File Reports Under Section 15(d) of the Securities Exchange Act of 1934, 70 Fed. Reg. 77688, 77700 n.93 (Dec. 30, 2005) (proposed rule) (stating that proposed Rule 101(a)(1)(xii) clarifies the Commission's current interpretation of Regulation S-T by requiring an issuer to file a Form 15 on EDGAR). Of course, Rules 201 and 202 of Regulation S-T, 17 C.F.R. §§ 232.201-.202, have always been available to provide a temporary or continuing hardship exemption for a filer who cannot file electronically. A hardship filer need only set forth a legend on the cover page of the paper format document for which an exemption is claimed. The paper copy of Rhino's May 2006 Form 15 does not contain the required legend.

At the September 24 prehearing conference, counsel for PAD acknowledged that Rhino filed its May 2006 Form 15 electronically and not in a paper format. He specifically disavowed Smith's declaration to the contrary (PHC Tr. 13-14) ("[Y]ou cannot rely on that.").

PAD's Second Proposed Defense

PAD acknowledges that it does not have the financial resources to retain a certified public accountant and cannot file audited financial statements with the Commission (PHC Tr. 16, 20-21). It nonetheless seeks a "practical solution" that would permit brokers and dealers to resume posting quotes for its shares through the Pink Sheets.

The "practical solution" that PAD envisions would begin with an order setting aside the default. Thereafter, PAD would file its own Form 15, along with a motion to accelerate the effective date of the termination of registration from the usual ninety-day period provided in Section 12(g)(4) of the Exchange Act and 17 C.F.R. § 240.12g-4(a). Once PAD's voluntary deregistration becomes effective, PAD would no longer have a class of securities registered under Section 12 of the Exchange Act. Because revocation or suspension of registration are the only remedies available in this proceeding instituted pursuant to Exchange Act Section 12(j), PAD would then move for a Commission order dismissing this proceeding. PAD anticipates that brokers and dealers could resume posting quotes for its shares through the Pink Sheets. PAD promises to provide enough financial disclosure to satisfy the Pink Sheets. PAD also asserts that the Pink Sheets will provide proper surveillance of any trading activity.

Discussion and Conclusions

Rule of Practice 155(b) provides that a motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, an ALJ may set aside a default for good cause shown at any time prior to the filing of the Initial Decision.

I conclude that PAD has presented its motion to set aside the default within a reasonable time after the entry of the default.

I further conclude that PAD has not adequately explained why it failed to file a timely Answer and why it failed to seek an enlargement of time to answer the OIP. Initially, counsel for PAD argued that his conversation with Division counsel before the entry of the default should be deemed to constitute a de facto answer to the OIP, thus making it "legally improper" for a default to have been entered. I reject this argument as frivolous. Subsequently, counsel for PAD explained that he had been unable to locate Smith, Rhino's former president, to obtain Smith's sworn declaration until shortly before the default was entered (PHC Tr. 27). Counsel's search for Smith might well have been grounds for requesting additional time to file an Answer; it was not a legitimate reason for an experienced securities attorney to ignore the OIP and fail to communicate with the presiding ALJ. Counsel for PAD also argued that the Division would not be prejudiced if the proceeding were now to be reopened (PHC Tr. 27-28). However, the Commission has directed that these proceedings be concluded within 120 days (OIP ¶ IV). PAD has not even attempted to explain how reopening the proceeding at this juncture would be consistent with that directive.

As a separate matter, I decline to set aside the default on the grounds that the Postal Service returned the August 10, 2009, Order to Show Cause to the Commission. See supra note 3. The Commission considers Orders to Show Cause a good practice, but the Rules do not explicitly require such Orders as a precondition to the entry of defaults. Orders to Show Cause are discretionary and they are used irregularly before the entry of defaults. The mailing in this instance was properly addressed. No more was required of the Office of the Secretary, the Division, or this Office. The failure of Laughlin Associates to accept properly addressed mail is a matter for PAD to pursue with Laughlin Associates.

As for PAD's second proposed defense, the Division opposes any solution that might encourage other delinquent issuers to file Forms 15 after they have been served with OIPs under Section 12(j). However, the precedent for such conduct already exists. See World Assocs., Inc., 94 SEC Docket 12054 (Dec. 1, 2008) (dismissing a Section 12(j) proceeding on the grounds that the Respondent filed a Form 15 after the Commission issued the OIP and the termination of registration became effective before the ALJ prepared an Initial Decision).[7]

The Division also observes that the Commission has delegated its authority to accelerate the termination of registration under Section 12(g)(4) of the Exchange Act to Corporation Finance. See 17 C.F.R. § 200.30-1(e)(8). On September 30, 2008, Corporation Finance announced a policy whereby it generally will not accelerate the time of a registration termination under Exchange Act Rule 12g-4 "where an Exchange Act event is anticipated" (Declaration of

[7] If the Commission shares the Division's concern that it is inappropriate for an issuer to file a Form 15 once an OIP under Section 12(j) is pending, it would be a simple matter to amend 17 C.F.R. §§ 240.12g-4(a) and 249.323(a) to so provide.

Mary J. Kosterlitz, dated Oct. 8, 2009, ¶¶ 5-6 and Exhibit 1 thereto) (Kosterlitz Declaration) (attached to Division's supplemental opposition).[8]

There is little question that a pending administrative proceeding under Section 12(j), leading to the possible revocation or suspension of registration of an issuer's registered securities, would qualify as "an Exchange Act event" under Corporation Finance's new policy. However, an adverse ruling by Corporation Finance pursuant to its delegated authority is not necessarily the agency's final word on the subject. See Rules 430-431 of the Commission's Rules of Practice (governing appeals to the Commission of actions made pursuant to delegated authority). Moreover, Corporation Finance may submit a delegated authority matter to the Commission in appropriate circumstances. See 17 C.F.R. § 200.30-1(f)(2). Corporation Finance's new policy would not necessarily bind the Commission if the Commission addressed a motion to accelerate in the first instance.

The short answer to PAD's search for a "practical solution" is that the Commission will revoke the registration of a class of registered securities pursuant to Section 12(j) if an issuer is delinquent in its periodic filing obligations and if, after notice and opportunity for hearing, the issuer cannot or will not become current in its periodic filings. Registration revocation under Section 12(j) has a collateral consequence here, even though the Pink Sheets has different and lesser standards for posting quotes than the Commission has for deciding whether the public interest permits or requires the registered securities of a delinquent issuer to remain registered.[9] Perhaps that collateral consequence might have been avoided if Corporation Finance had notified Rhino of the defect in its Form 15 within ninety days after May 22, 2006, or if Corporation Finance had notified PAD of the defect before PAD had more than 300 shareholders of record, and if Rhino/PAD had promptly corrected the defective Form 15. See supra note 6. However, I can see no way to avoid that collateral consequence now.

The longer answer to PAD's search for a "practical solution" is that PAD has not shown that it would be eligible to file a Form 15 if the default order were now to be set aside. Wyatt estimated that PAD had approximately 2,150 public shareholders as of August 2009 (PHC Tr. 5).

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[8] The adoption of Corporation Finance's new policy on September 30, 2008, coincides with the September 26, 2008, motion of World Associates, Inc., in Administrative Proceeding No. 3-13086 to accelerate the effective date of its Form 15 (official notice). It is not clear from the Kosterlitz Declaration in this proceeding, or from a review of the official docket in the World Associates proceeding, that Corporation Finance promptly communicates its delegated authority ruling on an acceleration motion to the issuer, or that Corporation Finance advises an issuer of the issuer's right to appeal an adverse delegated authority ruling to the Commission. Simple fairness requires that such notice be provided whenever an administrative enforcement proceeding is pending and Corporation Finance is working closely with Division counsel.

[9] The last sentence of Section 12(j) of the Exchange Act provides that no broker or dealer may make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in or to induce the purchase or sale of any security the registration of which has been revoked.

If Wyatt's estimate is accurate, PAD could not file a Form 15 under any circumstances, because it has too many shareholders of record. See 17 C.F.R. §§ 240.12g-4(a), 249.323(a).

In contrast to the representation of Wyatt, the Division provided evidence from PAD's transfer agent showing that PAD had only 339 shareholders as of September 25, 2009 (Declaration of David S. Frye, Exhibit 6, page 30) (Frye Declaration). If the Division's evidence as to the number of shareholders is accurate (i.e., fewer than 500 shareholders), PAD could still be eligible to file a Form 15, provided that it could also certify that its total assets have not exceeded $10 million on the last day of each of its most recent three fiscal years. See 17 C.F.R. § 240.12g-4(a)(2).[10]

PAD submitted compilations of unaudited financial statements to the Pink Sheets for the year ended December 31, 2007, and the six-month period ended June 30, 2008 (Frye Declaration, Exhibits 3 and 4). These unaudited compilations represent that PAD had total assets of approximately $1.2 million during this eighteen-month period. PAD's unaudited compilations do not address its total assets during the periods from July to December 2006, or from July 1, 2008, to the present.

The Commission's definition of "total assets" contemplates that an issuer has filed financial statements prepared in accordance with the pertinent provisions of Regulation S-X, 17 C.F.R. Part 210 (General Instructions as to Financial Statements). See 17 C.F.R. 240.12g5-2. Compilations of unaudited financial statements are plainly insufficient. Because PAD has not prepared audited financial statements, it could not make the certification required by 17 C.F.R. § 240.12g-4(a)(2).

PAD also alleges that it is necessary to set aside the default to prevent injustice to the company and its existing shareholders.

PAD intends to defend on the ground that its current management relied in good faith on the fact that Rhino's prior management filed a valid Form 15 in May 2006. This sounds like an effort to raise the affirmative defense of laches, an equitable doctrine by which a court may deny relief to a claimant who has unreasonably delayed or been negligent in asserting a claim, when that delay or negligence has prejudiced the party against whom relief is sought. See BLACK'S LAW DICTIONARY 879 (7th ed. 1999). The doctrine is based on the maxim that equity aids the vigilant, not those who sleep on their rights. See Ikelionwu v. United States, 150 F.3d 233, 237 (2d Cir. 1998). However, laches cannot be invoked against federal government agencies acting in a sovereign capacity to protect the public interest. See David Disner, 52 S.E.C. 1217, 1223 (1997); Kingsley, Jennison, McNulty & Morse, Inc., 51 S.E.C. 904, 911 & n.30 (1993); Richard N. Cea, 44 S.E.C. 8, 21 & n.18 (1969). I am aware of no cases in which the Commission has found a laches defense to be meritorious.

[10] Pursuant to its authority under Section 12(h) of the Exchange Act, the Commission has classified such issuers as exempt from the registration and reporting provisions of the Exchange Act.

PAD also intends to defend on the ground that revoking the registration of its registered shares harms its existing shareholders. However, the Commission has repeatedly held that "any harm to existing shareholders is not the determining factor in evaluating whether an issuer's securities registration should be revoked." Nature's Sunshine Prods., Inc., 95 SEC Docket 13488, 13500 (Jan. 21, 2009); see America's Sports Voice, Inc., 90 SEC Docket 879, 885-86 (Mar. 22, 2007), recons. denied, 90 SEC Docket 2419, 2420 (June 6, 2007); Gateway Int'l Holdings, Inc., 88 SEC Docket 430, 443 (May 31, 2006). In its recent opinions, the Commission has recognized that Section 12(j) of the Exchange Act authorizes revocation as a means of protecting investors and that, in evaluating what is necessary or appropriate to protect investors, regard must be had not only for an issuer's existing stockholders, but also for potential investors. The Commission has also held that both existing and prospective shareholders are harmed by a continuing lack of current, reliable, and audited financial information because they cannot make an informed investment decision. See Impax Labs., Inc., 93 SEC Docket 6241, 6255-56 (May 23, 2008). PAD has not explained how its proposed defense can overcome this precedent.

PAD's proposed defenses have no likelihood of success under the Commission's case law. I agree with the Division that setting aside the default is not necessary to prevent injustice.

ORDER

PAD has not shown good cause for setting aside the default order. Its motion is denied in all respects.[11]

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James T. Kelly
Administrative Law Judge

[11] Under Rule 155(b), the Commission may review a motion to set aside a default "at any time." However, the Rules of Practice do not specify the precise path to Commission review of an ALJ's order denying a motion to set aside a default. If a party elects to seek Commission review of this Order and the underlying Default Order, it should be aware that the Commission has previously treated such orders as the functional equivalent of Initial Decisions and either: (1) granted review pursuant to Rule 411 of its Rules of Practice, the rule governing Commission review of Initial Decisions, see Richard S. Kern, Administrative Proceeding No. 3-11537, Order Granting Petition for Review (Oct. 12, 2004) (unpublished) (granting review under Rule 411 of a default order and an order declining to set aside the default); or (2) entered a finality order pursuant to former Rule 360(e) (subsequently renumbered as Rule 360(d)(2)), the rule governing finality of Initial Decisions, see EVTC, Inc., 85 SEC Docket 1341 (May 4, 2005). See also Richard Cannistraro, 53 S.E.C. 388 (1998) (characterizing an ALJ's order dismissing an OIP as an "Initial Decision," granting review pursuant to Rule 411, and summarily affirming the ALJ). Assuming that Rules 410 and 411 are applicable, a party must file a petition for review within twenty-one days after the service of this Order.