

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

---

In the Matter of	:	
	:	
Registration Statement of	:	INITIAL DECISION
TSUKUDA-AMERICA INC.	:	February 26, 2010
519 East Interstate 30, Suite #248	:	
Rockwall, Texas 75087	:	

---

APPEARANCES: Robert B. Long and Robert C. Hannan for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

**BACKGROUND**

On January 26, 2010, the Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings Pursuant to Section 8(d) of the Securities Act of 1933 (Securities Act) and Notice of Hearing (OIP) with an attached Statement of Matters of the Division of Enforcement to be Considered at a Public Hearing Pursuant to Section 8(d) of the Securities Act (Statement of Matters). In this material, the Division of Enforcement (Division) alleges that Tsukuda-America Inc.'s (Tsukuda), registration statement that was declared effective on April 14, 2009, included a false audit report purportedly performed by Weinberg & Company, P.A., Certified Public Accountants (Weinberg).<sup>1</sup>

---

<sup>1</sup> Simultaneous with issuance of the OIP, the Commission filed a complaint in the United States District Court for the Northern District of Texas, SEC v. Tsukuda-America Inc. and John W. Petros, No. 3:10-cv-00136-M (Jan. 26, 2010), alleging that Tsukuda's registration statement included a forged audit report and consent; falsely identified a stock transfer agent company as being the transfer agent; included a bogus legal opinion and geologist's report, and sham consents from a geologist and an attorney who do not exist; and contained fictitious financial information. The complaint also alleges that John W. Petros (Petros), Tsukuda's sole officer and director, prepared and submitted the false and misleading registration statement; that Petros prepared and submitted bogus audit and legal opinions and consents from nonexistent lawyers and accountants; fabricated corporate financial information; and falsely held himself out as an attorney issuing legal opinions as company counsel in registration and offering statements for

At a public hearing held on February 9, 2010, to determine whether the Division's allegations set out in the OIP are true, to afford Tsukuda an opportunity to establish any defenses, and to determine whether a stop order should issue suspending the effectiveness of Tsukuda's registration statement, I admitted into evidence eight exhibits offered by the Division.<sup>2</sup> OIP at 2; Tr. 14. Tsukuda was not represented at the hearing and has not filed an Answer to the OIP. Tr. 4.

## **FINDINGS OF FACT**

Tsukuda filed Articles of Incorporation in the State of Indiana that became effective on February 4, 2009. Petros was the single incorporator, and his address and the corporation's principal address are the same: 519 Interstate 30, #248, Rockwall, Texas 75087. Exhibit 6. Tsukuda was authorized to transact business in the State of Indiana on January 27, 2010. Exhibit 5.

Tsukuda filed a registration statement on Form S-1 with the Commission on March 27, 2009, and an amendment on Form S-1/A on April 10, 2009, for an initial offering of three million common stock shares at \$0.20 per share for net proceeds of \$600,000 (registration statement). Exhibits 1 at 2, 2 at 5. Tsukuda's registration statement became effective on April 14, 2009. OIP at 1; Exhibit 3 at Exhibit D. The registration statement represented that Petros was Tsukuda's sole officer/director and it shows his office and Tsukuda's principal office were located at 519 East Interstate 30, # 248, Rockwall, Texas 75087. Exhibits 1 at 1, 4, 14; 2 at 1, 4.

Tsukuda was served with the OIP but did not appear at the hearing of which it had notice. On January 28, 2010, Petros informed the Division via email that it could serve him with papers at 519 Interstate 30, #248, Rockwall, Texas 75087, and someone would sign and forward the materials to him, or the Division could email papers to him. Exhibit 3 at Exhibits A, B. The Division used both means of delivering materials.<sup>3</sup> On January 28, 2010, however, the owner of

---

Pioneer Capital Associates, Inc., Phoenix Gold Mining Corporation, Euro Capital Incorporated, and Lone Mountain Mining Company. Exhibit 3 at Exhibit D.

<sup>2</sup> Exhibit 1, a certified copy of the registration statement filed on Form S-1 by Tsukuda on March 27, 2009; Exhibit 2, a certified copy of an amendment to the registration statement filed on Form S-1/A on April 10, 2009; Exhibit 3, the sworn Declaration of Angelia L. Stewart, executed on February 3, 2010, with attachments A through E; Exhibit 4, the sworn Declaration of Robert C. Hannan, executed on February 3, 2010; Exhibit 5, a certified Certificate of Existence from the Secretary of the State of Indiana; Exhibit 6, a certified copy from the Secretary of the State of Indiana of Tsukuda's Certificate of Incorporation and Articles of Incorporation; Exhibit 7, a letter dated September 3, 2009, signed by Bruce Weinberg, Firm Administrator, on Weinberg letterhead; and Exhibit 8, the sworn Declaration of Bruce Weinberg executed on February 3, 2010.

<sup>3</sup> In addition to a package that included the OIP, the Service List, a Party Letter to Tsukuda, a Party Letter to Tsukuda c/o Cassidy & Associates, and Party Letter(s) to Tsukuda c/o Petros; the materials included the Civil Complaint, the Civil Complaint Cover Sheet, the Civil Certificate of

the private mail facility at the above address refused to accept delivery of the same materials for Petros from a private investigator retained by the Division. Exhibit 3 at Exhibit B. On January 28, 2010, Petros acknowledged service on him, but not for Tsukuda. Exhibit 3 at Exhibit C. Federal Express delivered two packages of materials to c/o John Petros Tsukuda-America Inc. at the above address on January 29, 2010. Exhibit 3 at Exhibit D. On January 29, 2010, the private investigator personally served Petros at the Commission's Fort Worth, Texas, Regional Office. Exhibit 3 at Exhibit E.

On February 2, 2010, the Division attempted to set up a prehearing conference with Petros in a phone conversation. Exhibit 4. Petros acknowledged he was the registered agent for Tsukuda; stated he was not authorized to act for the company but refused to provide contact information for an authorized person; and stated he did not intend to defend or oppose the stop order proceeding. Exhibit 4.

Tsukuda's registration statement represented that:

The Law Office of Cassidy & Associate has passed upon the validity of the shares being offered and certain other legal matters and is representing us in connection with this offering. Mr. Cassidy's consent is attached to this prospectus as an exhibit.

WEINBERG & COMPANY, P.A. an independent certified public accountant, has audited our financial statements included in this prospectus and registration statement to the extent and for the periods set forth in their audit report and has presented its report with respect to our audited financial statements. The report is included in reliance upon their authority as experts in accounting and auditing, and his consent is attached to this prospectus as an exhibit.

Charlotte Anderson, BA P. Geo. is the consulting geologist. Ms. Anderson is a consulting geologist in the Geological Section and is a member in good standing of the University of San Diego of Professional Geoscientists in Hemet, California. Ms. Anderson's consent is attached to this prospectus as an exhibit.

Exhibits 1 at 14; 2 at 15.

On September 3, 2009, the Public Company Accounting Oversight Board notified Weinberg that Tsukuda's Form S-1 and Form S-1/A included, as part of the filings, audit reports with Weinberg's name, address, and audit opinion. Exhibit 7. Weinberg has no knowledge of Tsukuda. Id. On receiving this information, Weinberg notified the Commission that it did not perform an audit of Tsukuda and did not consent to the inclusion of an audit report in any Tsukuda securities registration statement. Id.

---

Interested Persons, the Civil Summons for Petros, and the Civil Summons for Tsukuda. Exhibit 3 at Exhibit D.

## **CONCLUSIONS OF LAW**

Section 8(d) of the Securities Act states:

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within 15 days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement.

The Commission has complied with the provisions of Section 8(d) of the Securities Act. The evidence is overwhelming that the allegations in the OIP are true. Petros filed a registration statement for Tsukuda that contained untrue statements of material fact and omitted material facts required to be stated so as to make the statements in the registration statement not misleading, including the false representation that Weinberg audited and prepared an audit report upon the financial statements of Tsukuda, and that Weinberg consented to the inclusion of the audit report in Tsukuda's registration statement. In addition, Tsukuda is in default because it failed to answer, to appear through a representative at a hearing of which it had notice, and to otherwise defend the proceeding.<sup>4</sup> See 17 C.F.R §§ 201.155, .220(f), .310.

## **RECORD CERTIFICATION**

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items described in the record index issued by the Secretary of the Commission on February 24, 2010.

## **ORDER**

Pursuant to Section 8(d) of the Securities Act of 1933, I ORDER that the effectiveness of the registration statement filed by Tsukuda-America Inc. be, and it hereby is, suspended.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the

---

<sup>4</sup> On February 22, 2010, my Office received several documents mailed from John Petros, 519 East Interstate 30, #248, Rockwall, Texas 75087, that included the Complaint; Motion for Summary Judgment and Statement in Support of Summary Judgment; and Motion for Summary Judgment, Defendants Denial of Allegations, and Counter Claim for Damages.

Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

---

Brenda P. Murray  
Chief Administrative Law Judge