

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 736 /December 28, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14770

In the Matter of	:	
	:	ORDER AS TO AMS HOMECARE INC.
AMERICAN UNITED GOLD CORPORATION,	:	FOLLOWING REMAND AND SETTING
AMS HOMECARE INC.,	:	DATE FOR HEARING
AUCXIS CORP., and	:	
CYOP SYSTEMS INTERNATIONAL INC.	:	

Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on February 24, 2012, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act). All Respondents were served with the OIP by March 1, 2012. 17 C.F.R. § 201.141(a)(2)(ii), (iv). The allegations have been resolved as to all Respondents except AMS Homecare Inc. (AMS Homecare).¹

I held a prehearing conference on March 19, 2012, at which Harjit Gill, President and CEO, and sole employee, appeared for AMS Homecare, a foreign private issuer with a class of securities registered with the Commission pursuant to Section 12(g) of the Exchange Act. Harjit Gill acknowledged that AMS Homecare had not made any filings since it filed a Form 20-F for the period ended February 28, 2007, and had not filed an Answer to the OIP. Tr. 5-7, 15; OIP at 2. The Division of Enforcement (Division) requested an immediate revocation of the registration of AMS Homecare's registered securities, however, I granted Harjit Gill's request for "a certain period of time so [he could] retain accountants to do the audits to submit the financial statements." Tr. 5-9, 12.

I'll give you until we have another prehearing conference; or, if we don't have [another] prehearing conference, you contact [the Division]. And I have to hear from somebody, but if I don't hear by the 27th of April that you have filed the missing financial statements, then I will go ahead and I will default you, okay, by the 27th. Tr. 10.

¹ See American United Gold Corporation, Exchange Act Release No. 66632 (Mar. 21, 2012), and Exchange Act Release No. 66633 (Mar. 21, 2012).

Following the prehearing conference, I issued an Order revoking the registrations of two respondents and setting a prehearing conference. American United Gold Corporation, Exchange Act Release No. 66633 (Mar. 21, 2012). I ordered that AMS Homecare and Aucxis Corp. each file an Answer and appear at the prehearing conference on May 16, 2012.² On March 23, 2012, I issued a Clarifying Order making clear that I was going to treat AMS Homecare's letter as its Answer.³ AMS Homecare's Answer confirmed the statement in the OIP that as of February 17, 2012, AMS Homecare's common shares were quoted on OTC Link and it recently had seven market makers.⁴ Answer; OIP at 2. In the March 23, 2012, Clarifying Order I directed AMS Homecare to communicate with the Division's Liaison in the Division of Corporation Finance and provided a direct dial number for obtaining information on what was required to avoid revocation of its registered securities. I concluded by stating that I would revoke AMS Homecare's registration of its registered securities if it had not resolved the allegations in the OIP by the May 16, 2012, prehearing conference.

At the prehearing conference on May 16, 2012, Harjit Gill again asked for additional time to raise the funds necessary to complete the financials and get them audited and filed. Tr. 24-26. I ruled that AMS Homecare was not able to cure the deficiencies set out in the OIP by the deadline for the Initial Decision and that I would revoke the registration of its registered securities. Tr. 26. I followed up with an Initial Decision on June 14, 2012, which finds AMS Homecare in violation of Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13 and revokes the registration of each class of its registered securities as being necessary and appropriate for the public interest.⁵ See SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977).

Pending Issue

Six months after the Initial Decision, the Commission remanded the proceeding because it sees "no justification for departing from" procedural rules that "contemplate the holding of a hearing prior to the issuance of an initial decision in the absence of a successful motion for summary disposition by one of the parties." AMS Homecare, Inc., Exchange Act Release No. 68506 (Dec. 20, 2012) (Remand Order). "Moreover, it appears that there are issues in this case that

² The Commission issued an Order Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Exchange Act as to Aucxis Corp. on March 21, 2012. American United Gold Corporation, Exchange Act Release No. 66632.

³ The letter is dated March 22, 2012, and I believe my Office furnished copies to the Office of the Secretary and the Division. The Commission's administrative database shows it was filed on April 4, 2012, and this Office received a stamped copy on April 5, 2012.

⁴ AMS Homecare has not kept its address current with the Commission, as required, because in the Answer, Harjit Gill states that he learned of the prehearing conference when he called the Division in early March 2012 to inquire about the order temporarily suspending trading in AMS Homecare. Answer at 1.

⁵ A default is not appropriate where a party filed an Answer, participated in prehearing conferences, and otherwise contested the proceeding. See 17 C.F.R. § 201.155(a).

were not developed below, such as the additional filing deficiencies (identified by the Division subsequent to issuance of the initial decision) that the Division cites as further support for its argument that revocation is necessary for the protection of investors.”⁶ Id.

The Commission’s Remand Order takes no position on “whether a proper motion for summary disposition that complies with the procedural requirements of Rule 250 [of the Commission’s Rules of Practice] should be granted.”⁷ However, the Commission’s Rules of Practice provide that “[i]f the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer.” 17 C.F.R. § 201.250. The Division has not presented its case in chief and neither party has asked me for leave to file a motion, because I thought, given the undisputed facts - the allegations in the OIP are admitted, there are no material facts in dispute, AMS Homecare did not request an in-person hearing, and I accepted the truth of its representation and allowed it two months to bring its filings into compliance, but it failed to do so - that resolution was appropriate and necessary for the protection of investors. I erred in thinking that on these facts substance was more important than form. See 17 C.F.R. § 201.111. AMS Homecare filed an Answer and participated in two prehearing conferences but it has not filed any of the missing periodic reports, yet it has managed to keep the registration of its registered securities effective for over ten months following issuance of the OIP.

Ruling

As the Commission directed, I ORDER a hearing in this matter commencing at 9:30 a.m. EST, on Wednesday, January 16, 2013, in the Commission’s Headquarters Offices, Hearing Room 2, 100 F Street, N.E., Washington, D.C. 20549. The hearing will take place unless a party requests leave to file a motion for summary disposition prior to the hearing date. No time extension will be given because the OIP directed that an Initial Decision be issued by June 29, 2012, and the protection of investors requires expedited resolution of the allegations in the OIP.

Brenda P. Murray
Chief Administrative Law Judge

⁶ With all due deference, there are no new issues that need development. The allegations in the OIP are admitted and they support a finding that revocation is necessary and appropriate for the protection of investors. The Division’s reference to additional filing deficiencies by AMS Homecare was likely an effort to support its position, advanced at the initial prehearing conference, that AMS Homecare’s registrations should be revoked. Prehearing Conference March 19, 2012, Tr. 7-9, 12.

⁷ The Division, in its Response to the Commission’s October 22, 2012, Order Directing the Filing of Additional Briefs, moved for a motion for summary disposition. Div. Resp. at 6.