

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
CITIZENS CAPITAL CORP.,	:	INITIAL DECISION
COHO ENERGY, INC.,	:	AS TO CITIZENS
COLONIAL INDUSTRIES, INC.,	:	CAPITAL CORP.
COMP-U-CHECK, INC.,	:	September 23, 2011
COMPUTER AUTOMATION, INC.,	:	
CONCENTRAX, INC., and	:	
CONSOLIDATED CAPITAL PROPERTIES VII	:	

APPEARANCES: Neil J. Welch, Jr. and Kyle M. DeYoung for the Division of Enforcement, Securities and Exchange Commission.

Billy D. Hawkins for Citizens Capital Corp.

BEFORE: Robert G. Mahony, Administrative Law Judge.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on May 23, 2011, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act).¹ Pursuant to 17 C.F.R. § 201.230, the Division of Enforcement (Division) notified Respondent Citizens Capital Corp. (Citizens or Respondent) that documents were available for inspection and copying. Citizens filed an Answer to the OIP on June 6, 2011 (First Answer), which includes three exhibits. Exhibit 1 is a copy of Respondent's preliminary Form 10-K for the fiscal year ended December 31, 2010. Exhibit 2 is a copy of an engagement letter

¹ The proceeding has ended as to the remaining captioned Respondents. See Citizens Capital Corp., Exchange Act Release No. 65028 (August 4, 2011).

between Citizens and Montgomery Coscia Greilich LLP (Montgomery), dated March 23, 2011. Exhibit 3 is a copy of Montgomery's PBC (prepared by client) List for the fiscal year 2010 audit of Citizens, dated May 11, 2011. Citizens filed a second Answer to the OIP on June 14, 2011 (Second Answer).

The Division and a representative of Citizens participated in a prehearing conference on July 15, 2011, at which the Division was granted leave to file a motion for summary disposition, pursuant to 17 C.F.R. § 201.250. On August 12, 2011, the Division filed its Motion for Summary Disposition and Brief in Support (Motion), Declaration of George Johnson Certifying Record of Regularly Conducted Business Activity, and Declaration of Neil J. Welch, Jr. in Support of the Motion (Welch Declaration), which includes seven exhibits. Exhibit 1 is a copy of an excerpt from Respondent's Form 10-SB securities registration statement, dated March 19, 1999. Exhibit 2 is a copy of a delinquency letter sent by the Division of Corporation Finance to Citizens, dated November 4, 2004. Exhibit 3 is a copy of the transcript from the July 15, 2011, prehearing conference in this proceeding. Exhibit 4 is a copy of a printout from the commercial over-the-counter stock database www.otcquote.com, which shows the trading status of Citizens as of August 12, 2011. Exhibit 5 is copy of a printout from the commercial database Thompson Research, which shows all filings for Citizens as of August 12, 2011. Exhibit 6 is a copy of an excerpt from the Division of Corporation Finance's Compliance and Disclosure Interpretations of the rules adopted under the Securities Act of 1933 (Securities Act). Exhibit 7 is a copy of a Form 8-K filed by Citizens on October 5, 2004.

Citizens filed its Response to the Motion (Opposition) on September 7, 2011. On September 12, 2011, the Division filed its Brief in Reply on its Motion (Reply) and Supplemental Declaration of Neil J. Welch, Jr. in Support of the Motion, which includes two exhibits. Exhibit 1 is a copy of a printout from the commercial over-the-counter stock database www.otcquote.com, which shows the trading status of Citizens as of September 12, 2011. Exhibit 2 is a copy of a printout from the Commission's EDGAR database showing the filings made regarding Citizens as of September 12, 2011. The Division filed its Corrected Declaration of Chauncey L. Martin (Martin) in Support of its Motion (Martin Declaration) on September 19, 2011.²

B. Allegations and Positions of the Parties

The OIP alleges that Citizens is delinquent in its periodic filings with the Commission, having failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. See OIP at 1, 3. Citizens admits that it is delinquent in its periodic filings with the Commission. (First Ans. at 3.) The Division requests revocation of the registration of Respondent's registered

² References in this Initial Decision to the Division's Motion and any of its attached Exhibits 1-7, found in the Welch Declaration, will be cited as "(Mot. at ___)" and "(Mot. Ex. ___)," respectively. The Division's Reply will be cited as "(Reply at ___)," and the Martin Declaration will be cited as "(Martin Decl. at ___)." References to Respondent's First Answer and any of its attached Exhibits 1-3 will be cited as "(First Ans. at ___)" and "(First Ans. Ex. ___)," respectively. Respondent's Second Answer will be cited at "(Second Ans. at ___)," and its Opposition will be cited as "(Opp'n at ___)."

securities. (Mot. at 7-17.) Citizens contends that it can cure its delinquency by completing and filing its disclosure reports with the Commission by September 23, 2011. (Opp'n at 5.)

C. Standards for Summary Disposition

After a respondent has filed an answer and documents have been made available under 17 C.F.R. § 201.230, the Commission's Rules of Practice provide that a party may make a motion for summary disposition of any or all allegations of the OIP. 17 C.F.R. § 201.250(a). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to 17 C.F.R. § 201.323. Id. A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

By analogy to Rule 56 of the Federal Rules of Civil Procedure, in assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999). A factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing, and the hearing officer's function is to determine whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

The findings and conclusions of this Initial Decision are based on the entire record, which includes the parties' motions, briefs, and all exhibits. See 17 C.F.R. § 201.350. Official notice is taken of the Commission's public official records concerning Citizens.³ See 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact. Thus, this proceeding may be resolved by summary disposition. See 17 C.F.R. § 201.250. Any other facts in Respondent's pleadings have been taken as true, in light of the Division's burden of proof. Id. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

II. FINDINGS OF FACT

Citizens is a Texas corporation with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). (First Ans. Ex. 1; Mot. Ex. 1.) Citizens is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001. (First Ans. at 3.) As of August 12, 2011, Respondent's stock was traded on the over-the-counter markets, had no market makers,

³ These include, but are not limited to, Respondent's filings made with the Commission found in the Commission's EDGAR database.

and was not eligible for the “piggyback” exception of Exchange Act Rule 15c2-11(f)(3). (Opp’n at 2, 4.)

Citizens filed a notification of late filing with the Commission on Form 12b-25 on April 1, 2002. (Mot. Ex. 5.) On November 4, 2004, the Division of Corporation Finance sent a delinquency letter by certified mail to Citizens, which stated that Citizens appeared to be noncompliant with its reporting requirements under Section 13(a) of the Exchange Act and instructed Citizens to file all required reports within fifteen days from the date of the letter. (Mot. at 2, Mot. Ex. 2). Citizens claims that it did not receive such letter. (Opp’n at 4.) Citizens knew of its periodic filing obligations and considered whether to continue making current information disclosures during the nearly ten-year delinquent period. (First Ans. at 3.) On April 28, 2011, Citizens entered into an engagement letter with Montgomery for the performance of audit services for the years ended December 31, 2010, and 2009. (Id. at 4; First Ans. Ex. 2.)

Citizens estimated that it would complete and file its delinquent reports with the Commission by September 1, 2011. (Second Ans. at 2-3.) Citizens did not meet this timeline, and now states that it can become current in its filing obligations by September 23, 2011. (Opp’n at 5.)

According to the Commission’s EDGAR database, on September 12, 2011, Citizens filed an unaudited Form 10-K, purportedly for the fiscal years ended December 31, 2001, through December 31, 2010 (2010 Form 10-K). Citizens claims in the 2010 Form 10-K that it is exempt from providing audited financial statements for the specified period because it constituted an inactive entity under Rule 3-11 of Regulation S-X. Martin, Assistant Chief Accountant in the Office of Enforcement Liaison in the Division of Corporation Finance, states that he reviewed the 2010 Form 10-K and it fails to comply with the reporting requirements of the Securities Act and Exchange Act and is materially deficient in several respects. (Martin Decl. at 1-2.)

First, Martin states that Respondent’s attempt to combine all of its delinquent annual reports into a single Form 10-K does not comply with the requirement of Rule 13a-1 that an issuer registered pursuant to Section 12 of the Exchange Act file an annual report for each fiscal year. (Id. at 2.) In order for an issuer to combine multiple years into one filing, it must request permission to file a modified or combined report from the Division of Corporation Finance’s Office of the Chief Accountant, and Citizens did not request such permission. (Id.) Even if Citizens had requested such permission, it is highly unlikely that the request would have been granted because the 2010 Form 10-K does not include all of the information that would be required if each annual report was filed individually. (Id.)

Second, Martin notes that Respondent’s purported audit exemption is questionable because one of the requirements of Rule 3-11 of Regulation S-X is that no material change in the business occurs during the relevant fiscal year, and Citizens states in its 2010 Form 10-K that it has made “significant changes” to its business during the relevant years. (Id. at 3.) Additionally, it seems clear that, at least for 2004, Citizens did not meet the inactive registrant standard because its employee stock purchase plan sold 1.5 million shares in the open market. (Id.)

Finally, the 2010 Form 10-K omits the conclusions of the company's principal executive and financial officers regarding the company's disclosure controls and procedures required by Item 307 of Regulation S-K. (Id. at 3-4.)

According to the Commission's EDGAR database, on September 15, 2011, Citizens filed a Form 10-Q for the quarterly period ended March 31, 2011 (March 2011 Form 10-Q), and a Form 10-Q for the quarterly period ended June 30, 2011 (June 2011 Form 10-Q). Martin states that he reviewed the March 2011 Form 10-Q and June 2011 Form 10-Q and each is materially deficient. (Id. at 2.) The deficiencies include the following: neither report was reviewed by an independent auditor, as required by Rule 8-03 of Regulation S-X; each report omits the conclusions of the company's principal executive and financial officers regarding the company's disclosure controls and procedures required by Item 307 of Regulation S-K; and each report omits a comparative balance sheet for the preceding fiscal year end, as required by Rule 8-03 of Regulation S-X. (Id. at 4-5.)

Paul Greilich of Montgomery informed Martin that as of September 15, 2011, Montgomery had not performed any audit work or reviewed any filings for Citizens. (Id. at 4 n.3.) Citizens promises to file its required periodic reports with the Commission in a timely manner in the future, after it becomes fully compliant. (Second Ans. at 3.)

III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) requires that "[e]very issuer of a security registered pursuant to [S]ection 12 . . . shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security . . . such annual reports . . . certified . . . by independent public accountants, and such quarterly reports . . . as the Commission may prescribe." 15 U.S.C. § 78m(a). The Commission has prescribed Rules 13a-1 and 13a-13, which require the filing of an annual report for each fiscal year and a quarterly report for each of the first three quarters of each fiscal year, respectively. 17 C.F.R. §§ 240.13a-1, -13. "Compliance with those requirements is mandatory and may not be subject to conditions from the registrant." Am.'s Sports Voice, Inc., Exchange Act Release No. 55511 (Mar. 22, 2007), 90 SEC Docket 879, 885, reconsideration denied, Exchange Act Release No. 55867 (June 6, 2007), 90 SEC Docket 2419. Scierer, which is often described as "a mental state embracing intent to deceive, manipulate, or defraud," is not required to establish violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder. See SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

Relevant to these proceedings, Section 12(j) of the Exchange Act authorizes the Commission to suspend for a period not exceeding twelve months or to revoke the registration of a security, as it deems necessary or appropriate for the protection of investors, if the Commission finds that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules thereunder. 15 U.S.C. § 78l(j).

It is undisputed that Citizens failed to file required periodic reports for almost ten years since it filed a Form 10-QSB for the period ended September 30, 2001. Respondent's 2010

Form 10-K does not comply with the reporting requirements of the Securities Act and Exchange Act and is materially deficient. Respondent's March 2011 Form 10-Q and June 2011 Form 10-Q are also materially deficient, and Respondent has not filed any other quarterly reports for the nearly ten-year delinquent period. Therefore, despite its recent filings, Citizens remains delinquent in its reporting obligations. Furthermore, even bringing all of its overdue periodic reports current would not extinguish Respondent's violations. See Phlo Corp., Exchange Act Release No. 55562 (Mar. 30, 2007), 90 SEC Docket 1089, 1108 (“[T]he fact that Phlo eventually cleared up its backlog of overdue filings does not cure its earlier violations.”). Accordingly, Citizens has violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, and the Division's Motion is granted.

IV. SANCTIONS

In a proceeding such as this, the assessment of what sanctions are appropriate and will ensure that investors are adequately protected is determined by “the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions, on the other hand.” Gateway Int'l Holdings, Inc., Exchange Act Release No. 53907 (May 31, 2006), 88 SEC Docket 430, 438-39. In making this determination, the following factors are considered: “the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations.”⁴ Id. at 439.

Respondent's violations were serious and recurrent. Citizens repeatedly failed to file periodic reports for almost ten years. Such failures violate a crucial provision of the Exchange Act. The purpose of the periodic reporting requirements is to publicly disclose current, accurate financial information about an issuer so that investors may make informed decisions:

The reporting requirements of the Securities Exchange Act of 1934 is the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities. Congress has extended the reporting requirements even to companies which are “relatively unknown and insubstantial.”

SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history); accord e-Smart Techs., Inc., Exchange Act Release No. 50514 (Oct. 12, 2004), 57 S.E.C. 964, 968-69.

⁴ This standard has been consistently applied in the Commission's considerations of Exchange Act Section 12(j) proceedings since the Gateway decision. See Nature's Sunshine Prods., Inc., Exchange Act Release No. 59268 (Jan. 21, 2009), 95 SEC Docket 13488, 13495; Impax Labs., Inc., Exchange Act Release No. 57864 (May 23, 2008), 93 SEC Docket 6241, 6250; Phlo Corp., 90 SEC Docket 1115; Am.'s Sports Voice, Inc., 90 SEC Docket 883-84; Eagletech Commc'ns, Inc., Exchange Act Release No. 54095 (July 5, 2006), 88 SEC Docket 1225, 1229-30.

Prior to filing its 2010 Form 10-K on September 12, 2011, Citizens had not filed any periodic reports since it filed Form 10-QSB for the period ended September 30, 2001. The Commission has found similar delinquencies by issuers to be both serious and recurrent. See Nature's Sunshine, 95 SEC Docket at 13495-96 (failing to file reports for a two-year period or make needed restatements going back an additional three years was serious and recurrent); Impax, 93 SEC Docket at 6251 (failing to file eight reports over eighteen months, followed by six reports subsequent to the OIP, was serious and recurrent). Likewise, Respondent's violations are serious and recurrent.

Citizens is highly culpable, and its efforts to remedy its violations are insufficient. Citizens knew of its reporting obligations and chose not to comply with them, filing only one notification of late filing with the Commission during the nearly ten-year delinquent period. As discussed above, Respondent's recent filings made with the Commission do not cure its past violations, and many of Respondent's periodic reports remain delinquent. This proceeding is not an extension of time to file delinquent reports or correct filing deficiencies as sometimes occurs during the normal filing process. As specified in the OIP, this proceeding is to determine whether violations have occurred, and, whether it is necessary and appropriate for the protection of investors to suspend or revoke the registration of registered securities. See OIP at 3.

Despite Respondent's representations that it would become current in its filing obligations, it has not succeeded in doing so. Respondent's failure to remedy its delinquent filings raises significant doubt as to the credibility of Respondent's assurances that it will comply with its filing obligations with the Commission in the future.

In e-Smart Techs., Inc., 57 S.E.C. at 970 (citation omitted), the Commission stated that an issuer's "subsequent filing history is an important factor to be considered in determining whether revocation is 'necessary or appropriate for the protection of investors,'" within the meaning of Exchange Act Section 12(j). Citizens has, to date, taken steps toward remedying its periodic filing delinquencies, but its recent attempts are incomplete and materially deficient. Accordingly, the investing public does not have access to current, accurate financial information, and the date when this will occur, if ever, cannot be predicted. Thus, neither dismissal of the proceeding nor a suspension of registration for a period of twelve months or less is an appropriate disposition. Rather, revocation of the registration of Respondent's registered securities will serve the public interest and the protection of investors pursuant to Section 12(j) of the Exchange Act.

V. ORDER

Based on the findings of fact and conclusions of law set forth above:

IT IS ORDERED THAT, pursuant to Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l(j), the registration of each class of registered securities of Citizens Capital Corp. is hereby REVOKED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party

may file a petition for review of this Initial Decision within twenty-one days after service of the 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. 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 my order resolving the motion to correct a manifest error of fact.

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

Robert G. Mahony
Administrative Law Judge