

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— MDFla: Investor Relations Firm Fined for Role in Scheme Involving Fake Purchase Order, (Apr. 2, 2013)

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By Matthew Garza, J.D.

Two companies that aided CyberKey Inc. in a 2009 scheme to sell shares by promoting a fictitious purchase order from the Department of Homeland Security were fined by the U.S. District Court sitting in Orlando (*SEC v. Big Apple Consulting USA, Inc.*, March 29, 2013, Antoon, II, J.).

Big Apple Consulting and its subsidiary MJMM Investments entered into an agreement in 2005 with CyberKey Solutions, Inc. to provide public relations services to the company and promote its business. They received stock as compensation for their services, and also were provided options to purchase CyberKey stock at a discount. The court's order specified that between July 5, 2005, and March 20, 2007, the two companies received millions of shares of CyberKey stock and sold millions on the market for approximately \$7.5 million.

Fake transaction. At the time Big Apple Consulting and MJMM Investments were selling CyberKey stock to brokers and dealers through Big Apple's telephone call room, the SEC alleged, they drafted numerous press releases publicizing a fictitious \$25 million purchase order that the company claimed to have from the Department of Homeland Security. The companies then engaged in a scheme to publicize the purchase order. The SEC said that Big Apple executives had learned by Aug. 8, 2006, that the \$25 million purchase order from the Department of Homeland Security, CyberKey's only significant source of revenue, could not be located and almost certainly did not exist. The CEO of CyberKey and was indicted in the U.S. District Court for the Eastern District of Pennsylvania and sentenced to 97 months in prison in March 2009.

Civil penalties. The SEC brought charges against Big Apple Consulting and MJMM Investments in November 2009. A jury returned a verdict finding that the defendants in that action violated Exchange Act Sections 10(b) and 20(e) and Securities Act Sections 5 and 17(a). In levying the fines, the court took into account that Big Apple Consulting and MJMM Investments acted knowingly and recklessly in aiding CyberKey's fraud, but also that they did not have ultimate authority over the fraudulent press releases, which were issued by CyberKey and approved by its CEO. The court levied \$1,130,000 in penalties against both Big Apple Consulting and MJMM Investments, holding them jointly and severally liable for payment of the penalties. Fines against the executives of the two companies ranged from \$156,000 to \$213,000.

The case is No: 6:09-cv-1963-Orl-28GJK.

Attorneys: Cheryl J. Scarboro for the SEC. Carl Francis Schoepl (Schoepl & Burke, PA) for Big Apple Consulting USA, Inc., MJMM Investments, LLC and Marc Jablon. Matthew Maguire, pro se. Mark C. Kaley, pro se. Keith Jablon, pro se.

Companies: Big Apple Consulting USA, Inc.; MJMM Investments, LLC

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