

DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER



DON A. RASCHKE
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

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SOAH DOCKET NO. 312-05-1627 SSB DOCKET NO. 04-IC02

IN THE MATTER OF THE
DEALER REGISTRATION OF
LH ROSS & COMPANY, INC.

§
§
§

Order No. IC05-REV-04

TO: Franklin R. Michelin, President
LH Ross & Company, Inc. (CRD # 37920)
2255 Glades Road, Suite 425W
Boca Raton, FL 33431

DEFAULT ORDER

Be it remembered that this is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("Securities Commissioner") of a DEFAULT ORDER pursuant to Sections 14.A(3), 14.A(6), 14.A(7), and 14.A(9) of The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2004-2005) ("Texas Securities Act") and § 105.8(a)(2) of the Rules and Regulations of the Texas State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. ("Board Rules").

The staff of the Inspections and Compliance Division of the Texas State Securities Board (the "Staff") has presented evidence sufficient for the Securities Commissioner to find that:

FINDINGS OF FACT

1. On or about December 1, 2004, a Notice of Hearing, SOAH DOCKET NO. 312-05-1627, SSB DOCKET NO. 04-IC02 (the "Amended Notice") was mailed by certified mail to LH Ross & Company, Inc. ("Respondent"), at its last known address, as filed with the Securities Commissioner.
2. On or about December 15, 2004, the hearing was rescheduled to January 26, 2005 pursuant to an order of the Administrative Law Judge.
3. On or about January 21, 2005, the Staff mailed a Third Amended Notice of Hearing ("Third Amended Notice"), by certified mail, to Respondent at its last known address, as filed with the Securities Commissioner.

4. The Staff requested the REVOCATION of Respondent's registration with the Securities Commissioner, setting forth the following matters in the Third Amended Notice:
- (a) Respondent is a New York Corporation with its last known address, as filed with the Securities Commissioner, at 2255 Glades Road, Suite 425W, Boca Raton, FL 33431.
 - (b) On or about June 27, 1996, Respondent registered with the Securities Commissioner as a securities dealer, which is currently effective.
 - (c) From in or about November 2000 to in or about February 2004, Respondent sold shares of Respondent's Convertible Preferred Stock (the "Stock") in Texas through multiple offerings.
 - (d) The Stock constitutes a "security" as the term "security" is defined by Section 4.A of the Texas Securities Act.
 - (e) The Stock offered and sold in Texas have not been registered by qualification, notification, or coordination and no permit has been granted for their sale in the State of Texas.
 - (f) Pursuant to Section 7 of the Texas Securities Act, no dealer shall sell or offer for sale any securities, except those which have been registered by qualification, notification, or coordination and except those which come within the exempt classes enumerated in Section 5 or Section 6 of the Texas Securities Act.
 - (g) Respondent's offer for sale and sale of the Stock constitutes a violation of Section 7 of the Texas Securities Act, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(6) of the Texas Securities Act.
 - (h) Respondent, by and through its agents, represented to potential Texas investors that Respondent was going to become a publicly traded company ("go public") in a specific month and at a specific price per share.

Respondent's agents did not have a reasonable basis for making these representations because Respondent had not taken any material steps to go public. Therefore, the representations were fraudulent because they constituted misrepresentations of a relevant fact and/or were representations as to the future not made honestly and in good faith.

These fraudulent representations constitute a fraudulent business practice and/or inequitable practice in the sale of securities, and therefore are a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (i) Respondent represented in a "Private Placement Memorandum" that a 6% quarterly dividend would be paid to purchasers of the Stock. The Private Placement Memorandum further stated that the Respondent was not currently paying dividends on the Stock, but anticipated resuming dividend payment in the first quarter of 2003. Respondent did not resume paying the quarterly dividends in, or after, the first quarter of 2003.

Respondent's representation to prospective investors, subsequent to the first quarter of 2003, that a 6% quarterly dividend would be paid to investors in the Stock was fraudulent, because it constitutes a misrepresentation of a relevant fact and/or an intentional omission of a material fact and/or a representation as to the future not made honestly and in good faith.

Respondent's fraudulent conduct constitutes a fraudulent business practice and/or inequitable practice in the sale of securities, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (j) Respondent offered and sold the Stock to Texas investors despite the fact that the Stock was not a suitable investment for them based on several factors, including: the investors' investment objectives, financial goals, annual income, and net worth.

Each sale of the Stock by Respondent to Texas investors that was unsuitable constitutes an inequitable practice in the sale of securities, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (k) Respondent sold the Stock to an investor located in Texas (the "Investor") despite the fact that the Investor had indicated on the prospective purchaser questionnaire that the Investor was not aware that the investment in the Stock would have "to be maintained for an indefinite period of time" because it was "not liquid". The fact that an investment in the Stock would have to be maintained indefinitely because of the illiquid nature of the investment is a material fact.

Respondent's sale of the Stock to the Investor, despite the Investor's indication that the Investor was not aware of a material fact related to the investment in the Stock, constitutes an inequitable practice in the sale of securities, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (l) Respondent also failed to provide the Investor with the "Private Placement Memorandum" until after the Investor had already purchased shares of the Stock. The Private Placement Memorandum describes the essential terms of an investment in the Stock, provides data about Respondent's business and what the funds raised by the offering would be used for, and also states the risks associated with an investment in the Stock.

Respondent's failure to provide the Investor with a Private Placement Memorandum prior to the Investor's purchase of the Stock constitutes an inequitable practice in the sale of securities, and therefore is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (m) Pursuant to § 115.10(b)(1) of the Board Rules, a dealer shall establish, maintain, and enforce written procedures to supervise the activities of its agents that are reasonably designed to achieve compliance with the Texas Securities Act and Board Rules.
- (n) Respondent's Supervisory Procedures and Compliance Manual ("WSP") requires a designated principal of Respondent to review the new account forms and approve the opening of each new account for its customers. Respondent's new account forms contain a signature line for the appropriate principal to indicate his or her review of each new account form. The new account forms completed for several Texas residents were not signed by a designated principal of Respondent. Respondent's failure to have a designated principal sign each new account form constitutes a failure to enforce Respondent's WSP, and is a violation of § 115.10(b)(1) of the Board Rules and an inequitable practice in the sale of securities.
- (o) Several new account forms ("Electronically Signed NAF") completed by Texas residents had the name of the designated supervisory principal electronically printed on the signature line. Marc S. Kimmel a/k/a Mark Kimmel ("Kimmel") was designated as the supervisory principal on each of the Electronically Signed NAFs even though Kimmel had not obtained the proper licenses and qualifications to become an authorized principal.

Respondent's WSP states that Respondent will ensure that each designated principal has obtained the proper licenses and qualifications. Respondent's designation of Kimmel as a supervisory principal on the Electronically Signed NAFs at a time that Kimmel had not obtained the necessary licenses and/or qualifications to become an authorized principal constitutes a failure to enforce Respondent's WSP, and is a violation of § 115.10(b)(1) of the Board Rules and an inequitable practice in the sale of securities.

- (p) Respondent's WSP states that a designated principal will review the suitability profile ("Purchaser Questionnaire") completed by customers in connection with private placement sales and will evidence his or her review by initialing the document. Purchaser Questionnaires completed for Texas investors in the Stock did not bear any evidence of review by a designated principal of Respondent. Respondent's failure to have a designated principal review and initial the Purchaser Questionnaires completed by Texas customers constitutes a failure to enforce Respondent's WSP, and is a violation of § 115.10(b)(1) of the Board Rules and an inequitable practice in the sale of securities.
- (q) Kimmel was designated as both the registered representative and the supervisory principal on an Electronically Signed NAF for a Texas customer account. Respondent's WSP does not contain any procedures or policies prohibiting the assignment of a person as both the designated principal and registered representative for an account.

Respondent's failure to establish, maintain and enforce written procedures reasonably designed to prohibit the assignment of a person as both the designated principal and registered representative for an account is an inequitable practice in the sale of securities.

- (r) The above inequitable practices in the sale of securities and violations of § 115.10(b)(1) of the Board Rules constitute bases for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Sections 14.A(3) and 14.A(6) of the Texas Securities Act.
- (s) Numerous subscription agreements related to the purchase of the Stock by Texas investors lacked the appropriate investor's signature. Additionally, Respondent failed to sign the subscription agreements to denote Respondent's acceptance of the subscription agreement.

Respondent's sale of the Stock to each Texas investor whose subscription agreement lacked the investor's signature and/or Respondent's authorized signature constitutes an inequitable practice in the sale of securities, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (t) On or about April 15, 2003, the State of Utah's Department of Commerce, Division of Securities entered an order (the "Utah Order"), after notice and opportunity for hearing, permanently suspending Respondent's license as a dealer in the State of Utah. On or about May 15, 2003, Respondent submitted a "Request for Agency Review" of the Utah Order. On or about January 6, 2004, the permanent suspension was modified to a one (1) year suspension, a six (6) month probationary period following January 6, 2004, and a requirement that Respondent pay up to \$5,000 for an unannounced

audit to be conducted by the Division of Securities within the six (6) month period following January 6, 2004.

The Utah Order constitutes an order, issued within the last five (5) years, by the securities agency of a state, entered after notice and opportunity for hearing, suspending Respondent's license as a dealer, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(9) of the Texas Securities Act.

- (u) On or about August 20, 2004, the Staff made a request for information from Respondent by sending a request letter ("August 20 letter") to the Respondent via Respondent's attorney.
 - (v) On or about September 22, 2004, the Staff sent Respondent a reminder via Respondent's attorney of the request for information. Respondent was required to respond with the information requested in the August 20 letter by no later than September 27, 2004.
 - (w) The information requested in the August 20 letter is information deemed necessary by the Securities Commissioner to determine a dealer's business repute or qualifications.
 - (x) To date, Respondent has not submitted the information requested in the August 20 letter. Respondent's failure to submit the information requested in the August 20 letter constitutes a refusal to furnish information deemed necessary by the Securities Commissioner to determine a dealer's business repute or qualifications, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(7) of the Texas Securities Act.
5. Pursuant to § 105.8(a)(2) of the Board Rules, the Securities Commissioner may make an informal disposition of a contested case by default by issuing an order in which the relief requested in the notice of hearing is granted and the matters set forth in the notice are deemed admitted as true upon proof that the notice was mailed to Respondent by certified mail, to the Respondent's last known address as shown by records of the Agency, and that the Respondent has failed to appear in person or through a legal representative on the day and at the time set for the hearing of the case, whether or not a written response has been filed.
6. On or about January 26, 2005 at 9:00 CST, a hearing (the "Hearing") was held at the State Office of Administrative Hearings ("SOAH") for the purpose of determining whether the registration of Respondent with the Securities Commissioner should be REVOKED.

7. Respondent failed to appear in person or through a legal representative at the Hearing, at which time the Staff filed a motion with SOAH to dismiss the contested case from the SOAH Docket, without prejudice, pursuant to § 155.55(d)(2) of the Rules of Practice and Procedures of SOAH, 1 Tex. Admin. Code Chapter 155 and § 105.8(a)(2) of the Board Rules.
8. On or about February 1, 2005, Administrative Law Judge, Renee M. Rusch, issued Order No. 6, Order of Dismissal, SOAH Docket No. 312-05-1627, *In the Matter of the Dealer Registration of LH Ross & Company, Inc.*, finding that Respondent failed to appear in person, or through a representative, at the Hearing and that the Staff's motion for dismissal to proceed with an informal disposition had merit.

CONCLUSIONS OF LAW

1. Pursuant to § 105.8(a)(2) of the Board Rules, the following matters set forth in the Third Amended Notice are deemed admitted as true:
 - (a) Respondent is a New York Corporation with its last known address, as filed with the Securities Commissioner, at 2255 Glades Road, Suite 425W, Boca Raton, FL 33431.
 - (b) On or about June 27, 1996, Respondent registered with the Securities Commissioner as a securities dealer, which is currently effective.
 - (c) From in or about November 2000 to in or about February 2004, Respondent sold shares of Respondent's Convertible Preferred Stock (the "Stock") in Texas through multiple offerings.
 - (d) The Stock constitutes a "security" as the term "security" is defined by Section 4.A of the Texas Securities Act.
 - (e) The Stock offered and sold in Texas have not been registered by qualification, notification, or coordination and no permit has been granted for their sale in the State of Texas.
 - (f) Pursuant to Section 7 of the Texas Securities Act, no dealer shall sell or offer for sale any securities, except those which have been registered by qualification, notification, or coordination and except those which come within the exempt classes enumerated in Section 5 or Section 6 of the Texas Securities Act.
 - (g) Respondent's offer for sale and sale of the Stock constitutes a violation of Section 7 of the Texas Securities Act, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(6) of the Texas Securities Act.

- (h) Respondent, by and through its agents, represented to potential Texas investors that Respondent was going to become a publicly traded company (“go public”) in a specific month and at a specific price per share.

Respondent’s agents did not have a reasonable basis for making these representations because Respondent had not taken any material steps to go public. Therefore, the representations were fraudulent because they constituted misrepresentations of a relevant fact and/or were representations as to the future not made honestly and in good faith.

These fraudulent representations constitute a fraudulent business practice and/or inequitable practice in the sale of securities, and therefore are a basis for the revocation of Respondent’s registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

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it was “not liquid”. The fact that an investment in the Stock would have to be maintained indefinitely because of the illiquid nature of the investment is a material fact.

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- (l) Respondent also failed to provide the Investor with the “Private Placement Memorandum” until after the Investor had already purchased shares of the Stock. The Private Placement Memorandum describes the essential terms of an investment in the Stock, provides data about Respondent’s business and what the funds raised by the offering would be used for, and also states the risks associated with an investment in the Stock.

Respondent’s failure to provide the Investor with a Private Placement Memorandum prior to the Investor’s purchase of the Stock constitutes an inequitable practice in the sale of securities, and therefore is a basis for the revocation of Respondent’s registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (m) Pursuant to § 115.10(b)(1) of the Board Rules, a dealer shall establish, maintain, and enforce written procedures to supervise the activities of its agents that are reasonably designed to achieve compliance with the Texas Securities Act and Board Rules.
- (n) Respondent’s Supervisory Procedures and Compliance Manual (“WSP”) requires a designated principal of Respondent to review the new account forms and approve the opening of each new account for its customers. Respondent’s new account forms contain a signature line for the appropriate principal to indicate his or her review of each new account form. The new account forms completed for several Texas residents were not signed by a designated principal of Respondent. Respondent’s failure to have a designated principal sign each new account form constitutes a failure to enforce Respondent’s WSP, and is a violation of § 115.10(b)(1) of the Board Rules and an inequitable practice in the sale of securities.
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a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(3) of the Texas Securities Act.

- (t) On or about August 20, 2004, the Staff made a request for information from Respondent by sending a request letter ("August 20 letter") to the Respondent via Respondent's attorney.
 - (u) On or about September 22, 2004, the Staff sent Respondent a reminder via Respondent's attorney of the request for information. Respondent was required to respond with the information requested in the August 20 letter by no later than September 27, 2004.
 - (v) The information requested in the August 20 letter is information deemed necessary by the Securities Commissioner to determine a dealer's business repute or qualifications.
 - (w) To date, Respondent has not submitted the information requested in the August 20 letter. Respondent's failure to submit the information requested in the August 20 letter constitutes a refusal to furnish information deemed necessary by the Securities Commissioner to determine a dealer's business repute or qualifications, and is a basis for the revocation of Respondent's registration as a dealer with the Securities Commissioner pursuant to Section 14.A(7) of the Texas Securities Act.
2. Pursuant to § 105.8(a)(2) of the Board Rules, the relief requested in the Third Amended Notice is granted.

ORDER

1. It is therefore ORDERED that the securities dealer registration with the Securities Commissioner of LH Ross & Company, Inc. is hereby REVOKED.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 14th day of February, 2005.


DENISE VOIGT CRAWFORD
Securities Commissioner