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PLEASE REPLY TO:

February 20, 2001

SECURITIES DIVISION
FEB 20 2001
DELAWARE

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RE: In The Matter of Brian R. Buckson t/a Buckson Realty, Inc.
Case No. 97 - 05 - 01

Dear Counsel:

This letter contains my ruling on the Respondent's Motion To Vacate Default Order. The motion is denied for the reasons stated below.

FACTS

On February 18, 2000, the Delaware Division of Securities held a hearing on charges issued pursuant to Title 6, Chapter 73 of the Delaware Code and against the Respondent, who failed to appear. A default order was issued on March 6, 2000 against the Respondent. Instead of moving to reopen the matter pursuant to Rule 232(b) of the Rules and Regulations of the Division of Securities, Respondent filed an appeal to the Court of Chancery. By a Memorandum Opinion decided September 21, 2000, Vice Chancellor Lamb dismissed the appeal without prejudice on the grounds that Mr. Buckson had failed to exhaust his administrative remedies. The Vice Chancellor ruled that the motion to vacate the default order should have been addressed initially to the administrative agency.

In a motion filed with the Division of Securities on December 20, 2000, but captioned "In the Court of Chancery . . ." and entitled "Motion To Vacate Default Judgment," the Respondent argued that the March 6, 2000 default order should be set aside. By letter dated December 26, 2000,

Securities Commissioner James B. Ropp asked counsel for Respondent whether the motion was directed to the Court of Chancery or to the Delaware Division of Securities. By letter dated January 2, 2001, counsel for Respondent stated that the motion should have been addressed to the Division of Securities. Counsel also thanked Mr. Ropp for offering to treat the motion as a filing before the Division of Securities.

On February 1, 2001, the Division of Securities filed a brief in opposition to Respondent's motion. On February 13, 2001, counsel for Respondent filed a reply (though not a reply brief) to the Division of Securities' brief in opposition. Therefore, Respondent's motion is ripe for a decision.

LAW

Respondent's motion is filed pursuant to Rule 232(b) of the Division of Securities Rules and Regulations. Rule 232(b) provides that "in order to prevent injustice and on such conditions as may be appropriate, the hearing officer may for good cause shown set aside a default." As counsel for Respondent correctly surmises, no opinions exist that would provide more definition to the meaning of these terms. In its brief the State analogizes Rule 232(b) to the standards of setting aside a default judgment under Rules 55 and 60(b) of the Superior Court Civil Rules. These grounds for setting aside a default judgment include: "(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . misrepresentation or other misconduct of an adverse party; (4) the judgment is void . . . or (6) any other reason justifying relief from the operation of judgment."

I agree with the State that the Superior Court Civil Rules, and indeed the Court of Chancery Rules as well, provide appropriate standards for deciding Respondent's motion. The Court of Chancery Rules, specifically Rule 60(b), provide essentially the same standards as those in the Superior Court Civil Rules. Any motion that would be deemed sufficiently meritorious to reopen a default judgment under those rules should be deemed "good cause" under Division of Securities Rule 232(b).

DISCUSSION

Respondent has presented no cognizable reason for setting aside the default order. The "Motion To Vacate Default Judgment" filed December 20, 2000, states only that it is Respondent's position the default order should be vacated, that Respondent was without counsel "by choice," and that Respondent "now believe[s] in exhaustion of judicial remedies and procedures." Respondent's reply to the State's brief appears to misconstrue Vice Chancellor Lamb's Memorandum Opinion as an order for the Division of Securities to set aside the default order. However, I read the Court of Chancery's Memorandum Opinion as a directive to Respondent to file the motion with the administrative agency for an administrative ruling prior to any appeal to the Court. The Memorandum Opinion provides no hint of the Court's view as to the merits of the motion.

Thus, no reason has been given to the Hearing Officer for Respondent's failure to appear at the hearing scheduled for February 18, 2000. I agree with the State that, despite the liberality allowed to litigants who default and later seek to reopen default judgments or orders, the complete absence here of any plausible reason for the default requires a denial of the Respondent's motion. Thomas v. Thomas, Del. Supr., 527 A.2d 1241, 1987 WL 37802, Horsey, J. (June 18, 1987) (unpublished Order); In re MCA Inc. Shareholders Litigation, Del. Ch., 2000 WL 1140749, Chandler, C. (Aug. 4, 2000) (Opinion); Phillips v. Siano, Del. Super., 1999 WL 1225245, Graves, J. (October 29, 1999) (Mem. Op.); Keith v. Melvin Joseph Construction Company, Del. Super., 451 A. 2d 842 (1982); Cohen v. Brandywine Raceway, Del. Super., 238 A. 2d 320, 325 (1968).

This ruling is made without prejudice to Respondent's right to renew the motion under Rule 232(b) of the Division of Securities Rules and Regulations.

Very truly yours,

Richard W. Hubbard
Hearing Officer

RWH:BMC