

INITIAL DECISION RELEASE NO. 453  
ADMINISTRATIVE PROCEEDING  
File No. 3-14587

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

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In the Matter of	:	
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ABLEST INC.,	:	INITIAL DECISION AS TO
ABSOLUTE POTENTIAL, INC.	:	ABSOLUTE POTENTIAL, INC.
(f/k/a ABSOLUTE WASTE SERVICES, INC.),	:	(f/k/a ABSOLUTE WASTE SERVICES,
INC.) <sup>1</sup>	:	
ALPHA PETROLEUM EXPLORATION CORP.,	:	February 15, 2012
AMCV CAPITAL TRUST I,	:	
AMERICAN HEALTH, INC.,	:	
AVID SPORTSWEAR & GOLF CORP.	:	
(n/k/a MERGER CO., INC.), and	:	
THE BIGHUB.COM, INC.	:	
(n/k/a CAPITAL CONSULTANTS FUNDING, INC.):	:	

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APPEARANCES: Neil J. Welch, Jr., and Mark D. Lanpher for the  
Division of Enforcement, Securities and Exchange Commission

Randall D. Lehner and Kasey M. Folk of Ulmer & Berne LLP for  
Respondent Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)

BEFORE: Carol Fox Foelak, Administrative Law Judge

**SUMMARY**

This Initial Decision revokes the registration of the registered securities of Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.) (Absolute Potential). The revocation is based on Absolute Potential's failure to file required periodic reports with the Securities and Exchange Commission (Commission). The company maintained delinquency for several years despite warnings from Commission staff and only filed past-due reports after this proceeding was instituted.

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<sup>1</sup> The proceeding has ended as to the other six captioned Respondents. Ablest Inc., Exchange Act Release Nos. 65675 (Nov. 3, 2011), 65740 (A.L.J. Nov. 14, 2011).

## I. INTRODUCTION

### A. Procedural Background

The Commission initiated this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act), on October 14, 2011. At a November 18, 2011, prehearing conference, the parties requested leave to file motions for summary disposition and agreed to accept an initial decision based on the pleadings. Leave was granted, pursuant to 17 C.F.R. § 201.250(a); the due dates for the motions for summary disposition, oppositions, and replies were January 9, 19, and 26, 2012, respectively. Ablest, Inc., Admin. Proc. No. 3-14587 (A.L.J. Nov. 18, 2011) (unpublished). The pleadings were timely filed.

This Initial Decision is based on Absolute Potential's Answer to the OIP, the pleadings, and the Commission's public official records concerning Absolute Potential, of which official notice is taken pursuant to 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition, pursuant to 17 C.F.R. § 201.250. Any other facts in Absolute Potential's pleadings have been taken as true, in light of the Division of Enforcement's (Division) burden of proof and pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

### B. Allegations and Arguments of the Parties

The OIP alleges that Absolute Potential's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and that Absolute Potential had not filed any required periodic reports since filing a report for the quarter ended June 30, 2006. Absolute Potential argues that the proceeding should be dismissed since it has now filed past-due and current reports and intends to continue filing timely reports. The Division requests that the registration of Absolute Potential's securities be revoked, noting the company's lengthy period of delinquency and arguing, although the company has now filed all overdue reports – the last five on January 6, 2012 – it made no effort to do so until threatened with enforcement action.

### C. Exhibits Admitted into Evidence

The following item, attached to the Division's motion for summary disposition is admitted as Division Exhibit 2:

Letter from Marva D. Simpson, Special Counsel, Office of Enforcement Liaison, Division of Corporation Finance, to Thomas F. Duszynski, Chief Executive Officer, Absolute Potential, Inc., dated September 14, 2006 (Div. Ex. 2);

The following item, attached as Exhibit 1 to Absolute Potential's Response in Opposition, is admitted as Respondent Exhibit 1:

Declaration of Thomas F. Duszynski, dated January 19, 2012 (Resp. Ex. 1).

## II. FINDINGS OF FACT

Absolute Potential (CIK No. 1002360)<sup>2</sup> is a Florida corporation located in Chicago, Illinois, with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Answer at 2; official notice. The Commission's public official records contained in EDGAR<sup>3</sup> show that, at the time this proceeding was initiated, Absolute Potential was delinquent in its periodic filings with the Commission, having not filed any periodic reports since its delinquent filing, on September 19, 2008, of Forms 10-QSB<sup>4</sup> for the quarters ended December 31, 2005, March 31, 2006, and June 30, 2006. Previous filings were also delinquent: Form 10-KSB for the year ended September 30, 2005, was filed May 29, 2007, and the Commission's public official records contained in EDGAR show many previous delinquent filings. The company did not file any Forms 12b-25 (Notification of Late Filing) during the years of its delinquency to state the reasons for its failure to file timely periodic reports. On September 14, 2006, Commission staff sent Absolute Potential a letter that addressed its non-compliance with the reporting requirements and advised that the required reports should be filed within fifteen days of the letter. Div. Ex. 2. However, Absolute Potential did not respond, and it was not until after this proceeding was initiated that Absolute Potential began to file past-due reports, starting on December 16, 2011. As of January 6, 2012, Absolute Potential had filed all past-due reports, including its Form 10-K for the year ended September 30, 2011, which had not yet become overdue at the time of the OIP.<sup>5</sup>

Absolute Potential is a shell corporation: its annual reports for the period at issue consistently state: "We propose to seek, investigate, and, if warranted, acquire an interest in one or more business opportunity ventures. As of the date hereof, we have no business opportunities or ventures under contemplation for acquisition or merger . . . ." The reports show that, throughout the period, Thomas F. Duszynski has been the corporation's sole employee, director, and officer and has owned, directly or indirectly, more than 85% of its stock.

Absolute Potential's annual reports for the years ended September 30, 2005 through 2011, show that the company had zero revenues each year for the years 2004 through 2011, limited assets, and mounting liabilities. (The reports also show mounting "Long-term advances from related

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<sup>2</sup> The CIK number is a unique identifier for each corporation in EDGAR. The user can retrieve filings of a corporation by using its CIK number.

<sup>3</sup> Reference to any required filings of Absolute is supported by the Commission's public official records contained in EDGAR, of which official notice is taken pursuant to 17 C.F.R. § 201.323.

<sup>4</sup> Forms 10-KSB and 10-QSB could be filed, in lieu of Forms 10-K and 10-Q, by a "small business issuer," pursuant to 17 C.F.R. §§ 228.10-.703 (Regulation S-B). These "SB" forms are no longer in use. See Smaller Reporting Company Regulatory Relief and Simplification, 73 Fed. Reg. 934 (Jan. 4, 2008) (eliminating Regulation S-B and phasing out the forms associated with it).

<sup>5</sup> Absolute Potential filed the report for the quarter ended December 31, 2011, on the due date, February 14, 2012.

party.”) As of September 30, 2011, the company reported total assets of \$147, an accumulated deficit of \$1,755,755, and negative shareholder equity. The audit report for each year contains a going concern statement.

According to Absolute Potential’s annual reports, its common stock was delisted on August 11, 2003, from the OTC Bulletin Board, where it previously traded, and there was no public trading market for the stock during the years of its delinquency and no bid price since at least December 30, 2006. Starting in November 2011, Absolute Potential worked diligently to bring current all of its periodic filings with the Commission. Resp. Ex. 1 at 1. In doing so, it engaged new accountants and auditors.<sup>6</sup> Resp. Ex. 1 at 1-2. The accountants and auditors expended approximately 285 hours in preparing the filings, and Absolute Potential incurred fees for these services of approximately \$62,000. Resp. Ex. 1 at 2. Absolute Potential intends to remain current in the future. Resp. Ex. 1 at 2.

### III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require public corporations to file annual and quarterly reports with the Commission. “Compliance with those requirements is mandatory and may not be subject to conditions from the registrant.” America’s Sports Voice, Inc., Exchange Act Release No. 55511 (Mar. 22, 2007), 90 SEC Docket 879, 885, recon. denied, Exchange Act Release No. 55867 (June 6, 2007), 90 SEC Docket 2419. Scienter, 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. 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). It is undisputed that Absolute Potential failed to timely file its required periodic reports for any period after the quarter ended June 30, 2006 (late-filed on September 19, 2008), and remained delinquent until it started filing past-due reports in December 2011.

Accordingly, Absolute Potential violated Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13.

### IV. SANCTION

The Division requests that the registration of Absolute Potential’s securities be revoked.<sup>7</sup> In proceedings pursuant to Section 12(j) of the Exchange Act against issuers that violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder, the determination “of what sanctions will ensure that investors will be adequately protected . . . turns on the effect on the investing public, including both current and prospective investors, of the issuer’s violations, on the one hand, and the

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<sup>6</sup> Absolute Potential did not file Form 8-K reporting this, as specified in Item 4.01, and as required by 17 C.F.R. § 229.304(a)(2).

<sup>7</sup> The only remedies available in this proceeding, pursuant to Section 12(j) of the Exchange Act, to address the company’s reporting violations are revocation or suspension of registration of its securities.

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 (citing Steadman v. SEC, 603 F.2d 1126, 1139-40 (5th Cir. 1979)). The Commission “consider[s], among other things, 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.” Id. at 439.

The violations were serious in that failure to file periodic reports violates 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.

Absolute Potential’s violations are recurrent in that it has repeatedly failed to file periodic reports and did not attempt to return to compliance until it was charged in this proceeding. Absolute Potential failed to notify the Commission and its investors of its inability to timely file Forms 10-K and 10-Q on Forms 12b-25, in violation of 17 C.F.R. § 240.12b-25.<sup>8</sup> A mitigating factor is that Absolute Potential has now filed all past-due reports and has a present intention to remain current. See e-Smart Techs., Inc., Exchange Act Release No. 50514 (Oct. 12, 2004), 57 S.E.C. 964, 969-70.<sup>9</sup> However, it is unlikely that the company will avoid future violations. Absolute Potential has demonstrated a pattern of delinquency, followed by filing a batch of past-due reports. Further, the fact that the company has no revenue bodes ill for its future compliance; without a revenue source to fund the expenses of auditing or reviewing its financial statements and filing periodic reports in the future, compliance is unlikely. Concerning culpability, the record shows that Absolute Potential knew of its reporting obligations but failed to comply with them.

Absolute Potential urges that the potential for any harm to investors was lacking because there was no public market for its stock during its years of delinquency. However, Congress has mandated a different test, without any qualification: “the prompt provision to investors of current,

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<sup>8</sup> Although the OIP does not allege violations based upon the Company’s failure to file Forms 12b-25, “we may consider those failures, as well as other matters outside the OIP, in assessing appropriate sanctions.” Gateway, 88 SEC Docket at 440 n.30.

<sup>9</sup> The Commission noted that the issuer’s failure to file periodic reports for over two years was a serious violation but that “the Company’s subsequent filing history is an important factor to be considered in determining whether revocation is ‘necessary or appropriate for the protection of investors.’” Ibid.

periodic, audited financial statements.” Impax Labs., Inc., Exchange Act Release No. 57864 (May 23, 2008), 93 SEC Docket 6241, 6255.

In sum, neither dismissal of the proceeding, as requested by Absolute Potential, nor a suspension of registration for a period of twelve months or less is an appropriate disposition because Absolute Potential’s assurances against further violations are not credible in light of its history and its utter lack of resources with which to pay for compiling and auditing or reviewing its financial statements. Further, dismissal or a lesser sanction would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors. Rather, revocation of the registration of Absolute Potential’s registered securities will serve the public interest and the protection of investors, pursuant to Section 12(j) of the Exchange Act. Of course, at any time following the revocation, Absolute Potential may re-register its securities under Exchange Act Section 12(g) by filing a Form 10 with the Commission, using the audited financial statements.<sup>10</sup>

## V. ORDER

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 the registered securities of Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.), IS 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, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial 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, 17 C.F.R. § 201.111. 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 the undersigned’s order resolving such 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 the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak  
Administrative Law Judge

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<sup>10</sup> Absolute Potential contends that re-filing after revocation means that the funds it expended on compiling and auditing its past-due reports will be wasted. However, in filing a new Form 10 registration statement, Absolute Potential could use the financial statements that it recently had audited, requiring little, if any, additional expense.