



Ckrush Recovers under a Watchful Eye

Sobel stands guard as new managers try to bring the company back into SEC compliance

By Martin C. Daks

PETER LEVY is an attorney and internal control partner at the Livingston accounting firm Sobel & Co., where he usually advises companies on how to meet regulatory mandates. But in December, Levy took on a different role—corporate lifeguard. He was named monitor for a scandal-plagued New York City entertainment company called Ckrush.

After Ckrush's top executives were charged with securities fraud, the Securities and Exchange Commission could have shut the firm down; instead it went with a program that booted management while giving the company a second chance.

"Sobel & Co. has been appointed as the independent consultant, or corporate monitor, to develop the accounting and financial reporting processes of Ckrush so they're compliant with the Sarbanes-Oxley Act of 2002 [which requires companies to take certain steps to enhance executive accountability]," he says. "Our engagement, which also calls for us to be sure the company has an effective system of internal

controls, runs until the firm files its 2006 10-K, or annual statement, with the SEC, which will probably be in early 2007."

In March 2004, the SEC filed a civil suit against Cedric Kushner and his company, then called Cedric Kushner Promotions, in federal district court for the Southern District of New York. Also accused were James DiLorenzo, the treasurer, and Steven Angel, a former Kushner consultant. The allegations included claims that the trio had violated securities laws and that the company's 2002 annual report "contained material misstatements and omissions."

In November 2005, Kushner settled with the SEC without admitting or denying the allegations. As part of the agreement, Kushner agreed to pay a \$60,000 fine and be permanently barred from serving as an officer or director of a public company.

"It's easy to see Ckrush as a kind of mini-Enron," says Levy. "But there's a crucial difference: When Enron's top officers went down, the entire company also fell and shareholders were left with worthless stock. In Ckrush's case, however, the executives stepped down but the SEC is giving the

company itself a chance at a makeover."

Levy calls this an innovative but infrequently used program. For one thing, it usually saddles the affected company with extra costs. SEC documents indicate that Ckrush had to place \$150,000 into an escrow account to fund Sobel's engagement. And there's always the chance the firm will fold anyway.

"The good thing is that fraud...is less likely to happen under an independent monitor," says Briance Mascarenhas, a professor at the Rutgers School of Business-Camden, "But hiring a monitor adds costs, and the central question is whether the additional trust the monitor delivers outweighs the cost."

Ckrush's most recent financial statement, for the nine months ended Sept. 30, 2005, shows the entertainment producer posting a \$5 million loss on \$400,000 of revenue. In the prior-year period it rang up \$9.7 million in losses on revenues of \$2.2 million in revenue. Last week, shares were



Levy

Robin Zielinski

trading at between 20¢ and 30¢ apiece.

The SEC doesn't track the frequency of independent consultant arrangements, but a review of the agency's Website indicates that the last time it was done in New Jersey was in

June 2004, when Kenilworth-based Schering-Plough settled SEC charges that a European subsidiary had bribed a Polish government official.

Besides paying a \$500,000 civil penalty, the drugmaker agreed to hire a consultant to review and evaluate its internal controls, record keeping, and financial reporting policies and procedures.

Levy says this engagement is a far cry from his usual duties. "As part of an audit, we'll review internal controls and other operations and make recommendations," he says. "But... we can't take on any management-type, or decision-making functions."

When it comes to Ckrush, however, Sobel won't be doing an audit, so the rules are different. "In this case, we're developing and overseeing the implementation of internal accounting and audit controls, then we'll analyze them to see if they're effective," says Levy. "For the most part, we're making decisions, not just advising the company on what to do." ♦

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