

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEALTA MEDIA, INC., AND LEALTA
HOLDINGS, LLC,

Petitioners,

v.

MELVIN LENKIN and TOM BOWERSOX,

Respondents.

TM INVESTMENTS, LP,

Plaintiff in
Intervention,

v.

LEALTA MEDIA, INC.,

Defendant in
Intervention.

No.: 3:14-CV-05720-RJB

ORDER GRANTING JOINT MOTION
FOR SUMMARY JUDGMENT OF TOM
BOWERSOX AND TM INVESTMENTS,
LP

This matter comes before the Court on the Joint Motion for Summary Judgment of Tom Bowersox, respondent, and TM Investments, LP, plaintiff in intervention. Dkt. 32. Petitioners, Lealta Media Inc. and Lealta Holdings, LLC, did not file responses to the motion. *See docket generally.* The Court has considered the motion and the remainder of the file therein, and the motion should be granted.

1 As substantiated by Mr. Bowersox and TM Investments, the record remains
2 unrefuted as follows:

3 Lealta Media, Inc. (“Lealta”) notified its shareholders on January 14, 2014 of its
4 proposed corporate reorganization that would culminate in a newly-organized Lealta
5 Holdings, LLC. Dkt. 33-1, at 1. Lealta notified its shareholders that, should they choose to
6 dissent from the proposed reorganization, they must properly submit a Demand for Payment
7 of Dissenting Shares before March 14, 2014. *Id.* Of relevance to this case, two shareholders
8 timely submitted their written dissents, Mr. Bowersox and TM Investments, through its
9 president, Melvin Lenkin. *Id.*, at 1, 2, 7, 8.

10 On April 10, 2014, Lealta notified Mr. Bowersox and Mr. Lenkin (and not TM
11 Investments) of the Lealta stock valuation of \$0.00 per share. *Id.*, at 31, 39. Mr. Bowersox
12 and TM Investments objected to the valuation, demanding \$0.55 per share, a figure based on
13 Lealta’s self-valuation of \$12 million. *Id.*, at 26, 47, 48.

14 On Jul 7, 2014, Lealta filed a petition in Thurston County Superior Court against Mr.
15 Bowersox and Mr. Lentin (and not TM Investments), seeking a judicial determination of the
16 fair value of Lealta’s shares. Thurston Cty. Sup. Ct. Case No. 14-2-01314-8. The petition
17 was later removed to this Court, and TM Investments intervened. Dkt. 1, 30. According to
18 counsel for Mr. Bowersox, Lealta has not responded to requests for production, requests for
19 interrogatories, and requests for admission, despite an order on March 19, 2015 compelling
20 Lealta’s discovery. *Id.*, at 2,3. *See* Dkt. 25.

21 Mr. Bowersox and TM Investments seek a court determination valuing their
22 respective stocks at \$0.55 per share, accrued statutory interest on their stocks, and reasonable
23 costs and attorneys fees.

24 Based on the evidence submitted, the Court finds that the fair value of Lealta’s stock
25 is \$0.55 per share. Lealta did not object or otherwise provide any contrary evidence. *See* Fed.
26 R. Civ. P. 36(b).

1 The Court finds 12% interest from the date of this judgment to be appropriate. RCW
2 4.56.110; RCW 19.52.020.

3 In exercising its discretion to award attorneys fees, the Court finds that, although
4 Lealta initially made substantial efforts to meet its statutory obligations to its dissenters,
5 since filing the Thurston County petition, Lealta has not proceeded in good faith in pursuit of
6 its judicial determination against the dissenters. *See* RCW 23B.13.310(2)(b). Most
7 poignantly, in contravention of the Court's order, Lealta failed to respond to discovery
8 requests, even though Lealta initiated this case. *See* Dkt. 25. An awarding of attorneys fees
9 and costs is appropriate.

10 * * *

11 THEREFORE, having reviewed the record, the Court hereby GRANTS the Motion
12 for Summary Judgment (Dkt. 32) and ORDERS judgment against Lealta Media, Inc. and
13 favor of:

- 14 1. Tom Bowersox, for \$8,245.65, plus interest accrued at 12% from the
15 date of this order;
- 16 2. TM Investments, LP, for \$443,798.18, plus interest accrued at 12%
17 from the date of this order; and
- 18 3. Reasonable attorneys fees and costs. Mr. Bowersox and TM
19 Investments may move the Court for said fees and costs within 15 days
20 of this order.

21 Dated this 27th day of May, 2015.

22 

23 ROBERT J. BRYAN
24 United States District Judge
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