

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 708/June 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14894

In the Matter of	:	ORDER ALLOWING
	:	SERVICE BY PUBLICATION
GREGORY D. TINDALL	:	AND E-MAIL
	:	
	:	

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act) and Notice of Hearing (OIP), on May 29, 2012. The OIP alleges that on May 8, 2012, the United States District Court for the Middle District of Florida entered a final judgment against Respondent, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled SEC v. Tindall, No.8:10-CV-02859-JDW-MAP. The Office of the Secretary sent Respondent Gregory D. Tindall (Tindall) a copy of the OIP by certified mail at his last known address in Alberta, Canada, but did not receive a return receipt.

The Division of Enforcement (Division) filed a June 15, 2012, Motion For Service by Publication and Email (Motion) and supporting Exhibits. The Division explains that Respondent's current address and whereabouts are unknown, and therefore he cannot be served by the means of personal service upon individuals provided for in Rule 141(a)(2)(i) of the Commission's Rules of Practice. Motion, p. 1; see 17 C.F.R. § 201.141(a)(2)(i). The Division requests authorization to notify and serve Tindall with the OIP by publication in two newspapers circulated in the area of his last known address and by e-mail. Motion, p. 1. Respondent's last known residential address was in Alberta, Canada, and at least two of his e-mail accounts appear to be active. Motion, p. 3. In the civil action, the District Court authorized service of the summons and complaint upon the Respondent through publication and e-mail. Motion, p. 1. This authorization was based, in part, on evidence that Respondent abandoned his residence shortly after the Commission filed its complaint. Exhibit 2, pp. 3-4.

The Division notes that Rule 141(a)(2)(iv) of the Commission's Rules of Practice provides that service upon a person in a foreign country may be made by "any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country." Motion, p. 2; see 17 C.F.R. § 201.141(a)(2)(iv). The Division argues that service by publication and service by e-mail are reasonably calculated to give notice, and neither is prohibited by Canadian law. Motion, p. 2. Indeed, the Alberta Securities Commission has ordered service both by publication and e-mail. Exhibits 3, 4, 5. Therefore, the Division requests authorization to notify Respondent of this proceeding by publishing a notice once a week, for four consecutive weeks, in the Calgary Sun and the Calgary Herald,¹ as well as serving him with the OIP at two of his e-mail addresses. Motion, pp. 3-4.

The Division's request is sound. Based on his last known address, it is reasonable to assume that Respondent is in a foreign country, and Rule 141(a)(2)(iv) applies. Service by publication is reasonably calculated to give notice, and is not prohibited by Canadian law. See BP Prods. N. Am., Inc. v. Dagra, 236 F.R.D. 270, 272 (E.D. Va. 2006) (authorizing service by publication in two newspapers circulated in area of defendant's last known address once a week for four consecutive weeks); Exhibits 3, 4. The same is true of service by e-mail. See Rio Prop., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1008 (9th Cir. 2002) (service by e-mail satisfied due process where defendant "embraced the modern e-business model" and "designated its e-mail address as its preferred contact information"); Chanel, Inc. v. Zhixian, No. 10-CV-60585, 2010 WL 1740695, at *3 (S.D. Fla., Apr. 29, 2010) (authorizing service by e-mail pursuant to Fed. R. Civ. Pro. 4(f)(3) where emails did not automatically bounce back); Exhibit 5. Finally, alternative methods of service are particularly appropriate where, as here, the Respondent is deliberately evading service.

Therefore, the Division's MOTION is GRANTED, and IT IS ORDERED that the Division is authorized to serve Respondent by publishing the notice below once a week, for four consecutive weeks, in the Calgary Sun and the Calgary Herald, as well as serving him with the OIP at his two active e-mail addresses:

NOTICE TO GREGORY D. TINDALL

Gregory D. Tindall, you are hereby notified that you have been named as a respondent in an administrative proceeding filed by the United States Securities and Exchange Commission (SEC) before the SEC Office of Administrative Law Judges, in Gregory D. Tindall, Administrative Proceeding File No. 3-14894.

On May 29, 2012, the SEC issued an Order Instituting Administrative Proceedings alleging that on May 8, 2012, the United States District Court for the Middle District of Florida entered a final judgment against you, permanently enjoining you from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4)

¹ Both are widely circulated in the Calgary, Alberta, area.

of the Investment Advisers Act of 1940 (Advisers Act) and Rule 206(4)-8 thereunder, in the civil action entitled SEC v. Tindall, No. 8:10-CV-02859-JDW-MAP. In this administrative proceeding against you, the SEC seeks appropriate sanctions pursuant to Section 203(f) of the Advisers Act.

You are directed to contact: **Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street, N.E. Washington, DC 20549; Phone: (202) 551-5400, Fax: (202) 772-9324**, and provide it with a valid address so they can send you the Order Instituting Proceeding in this administrative proceeding. If you fail to contact the Office of the Secretary within 20 days of publication of this notice, the SEC will be entitled to seek a default against you in this case pursuant to 17 C.F.R. §§ 201.155(a), .220(f).

IT IS FURTHER ORDERED that the Division shall submit a service status report upon completion of its service through publication and e-mail.

IT IS FURTHER ORDERED that the hearing scheduled for June 26, 2012, is POSTPONED, sine die, and a telephonic prehearing conference shall take place on August 22, 2012, at 11:00 a.m. EDT.

Cameron Elliot
Administrative Law Judge