

Initial Decision Release No. 1179
Administrative Proceeding
File No. 3-16604

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

In the Matter of

**BioCoral, Inc.,
GC China Turbine Corp.,
Race World International, Inc.,
and
Worldwide Biotech &
Pharmaceutical Co.**

**Initial Decision Dismissing
Proceeding Against GC China
Turbine Without Prejudice**
September 19, 2017

Appearance: Neil J. Welch, Jr., for the Division of Enforcement,
Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Background

The Securities and Exchange Commission instituted this proceeding on June 18, 2015. With the exception of respondent GC China Turbine Corp., the proceeding was resolved in 2015 by default or settlement. *BioCoral, Inc.*, Securities Exchange Act of 1934 Release No. 75728, 2015 SEC LEXIS 3452 (Aug. 19, 2015); *BioCoral, Inc.*, Initial Decision Release No. 832, 2015 SEC LEXIS 2922 (ALJ July 16, 2015), *finality order*, *Race World Int'l, Inc.*, Exchange Act Release No. 75779, 2015 SEC LEXIS 3530 (Aug. 28, 2015).

The Division of Enforcement has attempted to serve GC China Turbine in accordance with the Hague Convention. *See BioCoral, Inc.*, Admin. Proc. Rulings Release No. 3213, 2015 SEC LEXIS 4159 (ALJ Oct. 9, 2015). In October 2015, I directed the Division to update my office on its efforts to serve GC China Turbine “every three months ... until service is accomplished.” *Id.* The Division has complied with this directive but has been

unsuccessful in serving GC China Turbine. In June 2016, the Chinese Ministry of Justice reported to the Commission's Office of International Affairs that the case was in its court system being processed and that it would notify International Affairs with any updates. Since then, there have been no further updates.

On July 18, 2017, I held a prehearing conference to discuss the status of the proceeding. The Division explained that the Office of International Affairs twice attempted in July to obtain an update on the status of service from the Chinese Ministry of Justice, without success. At the Division's request, I granted an extension until September 18, 2017, to permit the Office of International Affairs to seek further information about the status of service. *BioCoral, Inc.*, Admin. Proc. Rulings Release No. 4919, 2017 SEC LEXIS 2118 (ALJ July 18, 2017). On September 18, the Division provided notice that, despite additional inquiries, the Office of International Affairs was unable to get a response from the Chinese Ministry of Justice.

Analysis

In *Richard Cannistraro*, an administrative law judge dismissed a proceeding without prejudice after the Division was unable for six months to serve the respondent. Exchange Act Release No. 39521, 1998 WL 2614, at *1 (Jan. 7, 1998). On review, after the Division appealed, the Commission held that although the respondent's efforts to evade service constituted "good cause" sufficient to justify initially postponing the hearing, "any postponement must be for a definite period of time and cannot be open-ended." *Id.* On this basis, the Commission summarily affirmed the administrative law judge and dismissed the proceeding without prejudice. *Id.* at *2.

In light of *Richard Cannistraro*, two rules are apparent. First, open-ended continuances are improper, even in the case of a respondent who attempts to evade service. Second, given that the Commission summarily affirmed, it is appropriate to dismiss a proceeding where it is evident that the Division cannot serve a respondent within a definite period of time.

This proceeding was instituted two years and three months ago. Despite repeated efforts to contact the appropriate officials in China for information on service under the Hague Convention, more than a year has passed since any information was received. There is no indication that GC China Turbine can be served within any definite period, if it can even be served at all. Under these circumstances, dismissal of the proceeding without prejudice is appropriate. *See Richard Cannistraro*, 1998 WL 2614, at *2.

Order

The proceeding against GC China Turbine Corp. is DISMISSED without prejudice.

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Under that rule, a party may file a petition for review of this initial decision within 21 days after service of the initial decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest error of fact within ten days of the initial decision. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have 21 days to file a petition for review from the date of the order resolving such motion to correct a manifest error of fact. This 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 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.

James E. Grimes
Administrative Law Judge