

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
August 5, 2005

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In the Matter of :  
: ORDER  
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PHLO CORPORATION, :  
JAMES B. HOVIS, and :  
ANNE P. HOVIS :

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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on April 21, 2005. A public hearing is scheduled to commence on August 8, 2005, at 9:30 a.m. EDT in Hearing Room 2 at the Commission's Headquarters, 100 F Street, N.E., Washington, D.C. 20549.

Respondent James B. Hovis has failed to participate in any of the four telephonic prehearing conferences held to date. At the July 14, 2005, prehearing conference, Respondent Anne P. Hovis made certain representations about the health of her husband, James B. Hovis. The following exchange then occurred:

ALJ: I assume [Mr. Hovis] will be ready for hearing?  
Mrs. Hovis: I believe that by August 8th he will be in a condition that he can attend the hearing, yes.  
ALJ: I mean if there is a medical reason why he cannot, I would expect . . . medical documentation at the appropriate time.  
Mrs. Hovis: All right.

By letter dated July 25, 2005, Anne P. Hovis requested a postponement of the hearing on two grounds: (a) Respondents' inability to obtain substitute counsel after their first counsel told them he would be withdrawing from representation; and (b) the health of James B. Hovis. By Order dated July 27, 2005, I denied the requested postponement. The Order advised the parties that James B. Hovis could renew his request for a medical postponement if he promptly provided the supporting documentation discussed at the July 14, 2005, prehearing conference.

On August 1, 2005, I received a two-page letter from James B. Hovis. The information provided in the letter did not comply with the requirements of the July 27 Order. On August 2,

2005, the Division of Enforcement (Division) argued that I should deny the requested postponement.

On August 2, 2005, I received Respondents' motion for reconsideration. On August 3, 2005, I received the Division's response to the motion for reconsideration.

At 4:22 p.m. on August 4, 2005, James B. Hovis finally provided this Office with a facsimile copy of a five-page affidavit discussing his medical condition. The affidavit was accompanied by a radiologist's report, dated July 5, 2005; three pages of laboratory reports, dated July 6, 2005; and a letter from Saulius Naujokaitis, MD, dated August 4, 2005.

At 10:32 a.m. on August 5, 2005, the Division provided this Office with a facsimile copy of its three-page response. The Division opposes a medical postponement of the hearing. The Division expresses sympathy for Mr. Hovis's medical problems and does not dispute the legitimacy of those problems. However, the Division emphasizes that a postponement of the hearing will inconvenience witnesses, prejudice investors, and reward Respondents' dilatory litigation tactics.

### **DISCUSSION**

Respondents' inability to obtain substitute counsel does not warrant a postponement of the hearing. Respondents have known since May 25 or 26, 2005, that their previous attorney would be withdrawing from representation. They subsequently recommended the August 8 hearing date (Prehearing Conference of June 1, 2005, at 35-36). In addition, both of the individual Respondents identify themselves as law school graduates. This aspect of the motion for reconsideration of the July 27 Order is denied.

Mr. Hovis presents subjective complaints of pain (James B. Hovis Declaration ¶¶ 2, 6, 8, 9, 12). I find nothing in the laboratory reports, dated July 6, 2005, and little in the radiologist's report, dated July 5, 2005, to warrant a postponement of the hearing on medical grounds. The letter from Dr. Naujokaitis, the physician who has been treating Mr. Hovis for one month, is a different matter. Dr. Naujokaitis has prescribed two narcotic medications for Mr. Hovis's pain. Dr. Naujokaitis also recommends that Mr. Hovis be excused from the hearing until the latter part of September.

It is hard to disagree with the Division's claim that a postponement of the hearing will have several undesirable consequences. Nonetheless, on the basis of the treating physician's letter and the prescribed medications, I find that a brief postponement of the hearing is warranted.

### **ORDER**

A telephonic prehearing conference will be held on August 9, 2005, at 9:30 a.m. EDT. All parties, including Mr. Hovis, are expected to participate in that conference. The Division shall initiate the call and obtain a court reporter.

The hearing previously scheduled to begin on August 8, 2005, is postponed to a date to be determined at the telephonic prehearing conference.

  
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James T. Kelly  
Administrative Law Judge