

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3397/December 14, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16590

In the Matter of

BRIAN J. OURAND

:
:

ORDER

The hearing in this proceeding commenced on December 14, 2015. Previous orders addressed Brian J. Ourand's request, pursuant to 17 C.F.R. § 201.232 (Rule 232), for subpoenas seeking the attendance of witnesses to testify at the hearing. *Brian J. Ourand*, Admin. Proc. Rulings Release Nos. 3257, 2015 SEC LEXIS 4391 (A.L.J. Oct. 26, 2015); 3287, 2015 SEC LEXIS 4523 (A.L.J. Nov. 3, 2015); 3350, 2015 SEC LEXIS 4874 (A.L.J. Nov. 24, 2015). Under consideration is a motion to quash a subpoena directed to Rose Mutombo, filed on her behalf by counsel.¹ The motion notes that she received the subpoena by mail on December 9, 2015, without any tender of fees and mileage for a requested appearance in Washington, D.C., at 9:00 a.m. on December 14, 2015. The motion represents that this is an unreasonably short period of time for Ms. Mutombo to try to arrange for child care, thus creating a situation where compliance would be "unreasonable, oppressive or unduly burdensome" within the meaning of Rule 232(e)(2). Further, the motion represents that she has no knowledge of the events at issue in this proceeding and that her husband, Dikembe Mutombo, has knowledge of the events and will testify.

The subpoena will be quashed in light of the defects enumerated. It is noted that previous orders referenced above reminded Ourand of the requirement that he tender fees.²

IT IS SO ORDERED.

/S/ Carol Fox Foelak

Carol Fox Foelak

Administrative Law Judge

¹ Pursuant to Rule 232(e), "any person to whom a subpoena is directed . . . may . . . request that the subpoena be quashed."

² Rule 232(d) provides: "*Tender of Fees Required.* When a subpoena compelling the attendance of a person at a hearing . . . is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by [Rule 232(f)]."