

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

Administrative Proceedings Rulings
Release No. 6255 / October 25, 2018

Administrative Proceeding
File No. 3-18176

In the Matter of
ANV Security Group, Inc.

**Order Finding Service and
Directing the Submission of
Proposals**

The Securities and Exchange Commission instituted this proceeding on September 13, 2017, when it issued an order instituting proceedings (OIP) under Section 12(j) of the Securities Exchange Act of 1934 alleging that Respondent is a revoked Nevada corporation located in Nanshan District, Shenzhen, People's Republic of China, with a class of securities registered with the Commission and that it has violated provisions of the Exchange Act by failing to file its required periodic reports.

The proceeding was assigned to me following the Commission's August 22, 2018, order lifting a stay in all proceedings and allowing respondents in pending and remanded proceedings the opportunity for a new hearing before a different administrative law judge. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058; *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (ALJ Sept. 12, 2018).

Service has been pending in this proceeding since its inception. Because Respondent is located in China, in October 2017, the Division of Enforcement attempted to serve the OIP pursuant to Rule of Practice 141(a)(2)(iv)—which governs service “upon persons in a foreign country”—via the Hague Convention, but China requires service via its designated Central Authority, and there is still no evidence that the Central Authority has served Respondent. *See* Second Suppl. Decl. of David S. Frye (Decl.) Ex. 1 at 3-4, 22-

43.¹ Because Respondent is a corporation, service could also be accomplished through Rule 141(a)(2)(ii), and on October 4, 2018, the Division filed a declaration with six exhibits describing the Division's efforts to serve the OIP on Respondent under Nevada Revised Statutes Sections 78.090.4 and 14.030.²

Ruling

I accept all the exhibits into evidence, which were submitted as part of a sworn declaration, and find that Respondent has been served with the OIP under Nevada Revised Statutes Section 14.030. *See also* 17 C.F.R. § 201.323.

Rule 141(a)(2)(ii) of the Commission's Rules of Practice provides that service can be accomplished on corporations or entities by, among other methods, delivering a copy of the OIP to an "agent authorized by appointment or law to receive such notice." 17 C.F.R. § 201.141(a)(2)(ii). Typically, such service can be made on a corporation's registered agent. And although Respondent is a revoked Nevada corporation, Decl. Ex. 1 at 6, Nevada Revised Statutes Section 78.750(2) provides as follows:

Service of process on a corporation whose charter has been revoked or which has been continued as a body corporate pursuant to NRS 78.585 may be made by mailing copies of the process and any associated records by certified mail, with return receipt requested, to:

(a) The registered agent of the corporation, if there is one;
and

¹ Exhibit 1 to the declaration contains several numbered exhibits. I will refer to it by the running pagination and not by its nested exhibit numbers.

² Exhibit 1 to the declaration is the affidavit of David S. Frye signed June 15, 2018, which includes eleven exhibits supporting service on Respondent via the Nevada Secretary of State; Exhibit 2, dated June 14, 2018, contains the thirteen documents served on the Nevada Secretary of State; Exhibit 3 is the process server's declaration that she served Respondent via the Nevada Secretary of State with the materials in Exhibit 2; Exhibits 4 and 5 are the priority mail express envelopes containing the materials in Exhibit 2 that were sent to Respondent's officers at the address shown on the Nevada Secretary of State website and were returned to the Commission after their attempted delivery; and Exhibit 6 is a record of attempted deliveries of the documents in Exhibit 2 that the Division sent by mail to the address in China on Respondent's last filing with the Commission taken from the China Post Tracking System.

(b) Each officer and director of the corporation as named in the list last filed with the Secretary of State before the dissolution or expiration of the corporation or the forfeiture of its charter.

However, in this instance I cannot find that service was accomplished by mailing the OIP to Respondent's registered agent because the agent has resigned, which means that Section 78.750(2)(a)—requiring mailing to the registered agent—cannot be satisfied. Decl. Ex. 1 at 7, 9.

Another possible method of service under Section 78.750(2) does not work either. The Nevada Supreme Court has interpreted the “and” in Section 78.750(2) as an “or” and has permitted service on either the registered agent or each officer or director. *Canarelli v. Eighth Jud. Dist. Ct. of Nev.*, 265 P.3d 673, 675 n.2 (Nev. 2011). However, while the Division sent the OIP by Priority Mail Express to the last known address of Respondent's officers, Wilson Wang and Wilson Weixing Wang, and received notice of attempted delivery, Decl. Ex. 1 at 2-3, 13-20, Commission Rule 141(a)(2)(ii) requires, by reference to Rule 141(a)(2)(i), confirmation of receipt when service on a corporation is made by delivery to an officer or agent. There is no confirmation of receipt, thus, service cannot be based on Section 78.750(2)(b).

I can and do find that service was accomplished pursuant to Nevada Revised Statutes Section 14.030(1). The state of Nevada requires every business entity registered in the state to designate a registered agent residing in the state. Nev. Rev. Stat. § 78.090(1). If a corporation fails to appoint a registered agent or when the address of the registered agent is not staffed, Section 14.030(1) provides that the corporation can be served with legal process by delivering a copy of the service papers to the Secretary of State with a citation to Section 14.030 and a \$10 filing fee—essentially making the Secretary of State an “agent authorized by . . . law to receive” service for the purposes of Rule 141(a)(2)(ii). Before service is authorized, the person requesting service must file an affidavit setting forth facts showing the exercise of due diligence in ascertaining the whereabouts of the corporate officers to be served, and that it cannot accomplish “direct or personal service on, or notice to,” the corporation. Nev. Rev. Stat. § 14.030(3). If the affidavit reveals the last known address of the corporation or any officers, the person requesting service via the Secretary shall, after filing the affidavit and serving the Secretary, mail the material to the corporation or to the officer by registered or certified mail. Nev. Rev. Stat. § 14.030(4).

The Division's actions satisfy the requirements of Section 14.030. As noted, Respondent has no registered agent. Decl. Ex. 1 at 7, 9. The Division delivered the OIP and other papers to the Nevada Secretary of State and included the payment of \$10 on June 22, 2018. *Id.* Ex. 3 at 1-2. It also

provided an affidavit demonstrating that it could not, to date, accomplish “direct or personal service on, or notice to” the corporation at either the Nevada address of the corporation’s officers, its address in China, or under the Hague Convention. *Id.* Ex. 1 at 2-4. And, as required, the Division afterwards mailed the OIP to the last known address of Respondent’s officers in Nevada by Priority Mail Express. *Id.* at 1-2. On July 6, 2018, the packages were marked “return to sender, refused, unable to forward.” *Id.* Exs. 4-5.

Finally, even though it does not constitute service, it is significant that the Division acted in good faith and attempted to give Respondent notice of the OIP by sending it via mail directly to Respondent at the address in China listed on its last filing with the Commission. Decl. at 3. According to the China Post tracking system, ten unsuccessful delivery attempts were made between September 21 and October 3, 2018. *Id.* Ex. 6.

I find that Respondent was served with the OIP by July 6, 2018, at the latest.

The Commission’s August 22, 2018, order lifting the stay vacated all pending deadlines in the proceeding and directed the parties to submit proposals for the conduct of further proceedings. *Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *3-4. Now that service on Respondent has been established, I direct the parties to submit such proposals by November 12, 2018. Since Respondent’s ten-day deadline prescribed by the OIP to answer was vacated by the Commission’s order, Respondent shall also submit an answer by November 12.³ If Respondent fails to participate by not submitting a proposal or an answer, it may be subject to an initial decision of default. *See Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at *4; 17 C.F.R. §§ 201.155(a)(2), .220(f).

Brenda P. Murray
Chief Administrative Law Judge

³ Nevada Revised Statutes Section 14.030(2), (4) allows Respondent forty days from the filing with the Nevada Secretary of State and the mailing to the last known address of the officers to appear in the proceeding. Even accounting for the Commission’s stay of this proceeding, those forty days have now passed.