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

ADMINISTRATIVE PROCEEDINGS RULINGS Release No. 1056/November 20, 2013

ADMINISTRATIVE PROCEEDING File No. 3-15443

In the Matter of : ORDER ALLOWING SERVICE BY PUBLICA-

TION AND POSTPONING PREHEARING

ALAN SMITH : CONFERENCE

Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on August 27, 2013, alleging that on June 27, 2013, Alan Smith (Smith) was enjoined from violating Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rule 10b-5, and from aiding and abetting future violations of Section 15(a) of the Exchange Act in <u>SEC v. Secure Capital Funding Corp.</u>, No. 3:11-cv-00916 (D.N.J.). The OIP directs an Initial Decision no later than 210 days from the date the OIP is served on Smith. OIP at 3.

In a Motion for Adjournment of Hearing filed on September 17, 2013, the Division of Enforcement (Division) acknowledged lack of evidence of service, and stated it had transmitted a copy of the OIP to Smith using an e-mail address that it had used for him in the past, but it did not receive an acknowledgement.

On November 15, 2013, the Division filed a Motion for Leave to Serve the OIP on Respondent Smith by Publication (Motion), a Brief in Support (Brief), and the Declaration of Duane K. Thompson (Declaration). There are four exhibits attached to the Declaration. Exhibit A is an Order issued in <u>Secure Capital Funding Corp.</u> on August 3, 2011; Exhibit B is a Status Conference Report filed by H. Draudins in <u>Secure Capital Funding Corp.</u> on November 18, 2011; Exhibit C is a letter filed by Harry Draudins in <u>Secure Capital Funding Corp.</u> on February 19, 2013; Exhibit D is an Order entered in <u>Secure Capital Funding Corp.</u> on February 21, 2013; and Exhibit E is an e-mail to Smith, a.k.a. H. Draudins, from the Division on September 12, 2013.

The Motion, pursuant to Rule 141(a)(2)(iv) of the Commission's Rules of Practice, requests leave to serve Smith by publishing the OIP in both English and Latvian once a week for

three consecutive weeks in Latvijas Vestnesis, which the Division represents is the official journal for legal notices in the Republic of Latvia (Latvia), and once a week for three weeks in English in the International Herald Tribune. Smith has claimed to live at Ganibu dambis 15-13, Riga, LV-1045, Latvia. Declaration, Exhibit C. The Division notes that the Commission's Secretary sent the OIP to Smith on August 28, 2013, by International Registered Mail to that address and the U.S. Postal Service returned the package to the Commission undelivered. Brief at 2.

In <u>Secure Capital Funding Corp.</u>, Smith was served by electronic mail and by publication of a notice in the International Herald Tribune (the Global Edition of the New York Times). Brief at 2. The District Court's Order allowing service of the first Amended Complaint by alternative means described Smith's refusal to provide contact information to the Commission and stated:

[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" such that "notice must be of such nature as reasonably to convey the required information, . . . and it must afford a reasonable time for those interested to make their appearance."

Declaration, Exhibit A at 4 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

The Division further believes that Smith has already received the OIP by e-mail. Brief at 3 n.1.

Legal Conclusions

Commission Rule of Practice 141(a)(2)(iv) authorizes service on persons in a foreign country by several means, including any method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country. I accept the Division's representation that service by publication is not prohibited by Latvian law. Brief at 4 & n.2. The evidence shows that Smith is avoiding service, the Division has made reasonable efforts to accomplish service, publication in newspapers available where Smith claims to reside is a means reasonably calculated to give him notice of this proceeding, and that publication as proposed by the Division is allowed by Commission Rule of Practice 141(a)(2)(iv).

http://www.npr.org/2013/10/14/233772676/readers-lament-international-herald-tribune-name-change.

2

¹ As of October 15, 2013, the International Herald Tribune is no longer published under that name. It is now named The International New York Times. <u>See</u> Eleanor Beardsley, <u>Readers Lament 'International Herald Tribune' Name Change</u>, NPR (Oct. 14, 2013),

Order

I ORDER that the Motion is granted. The Division shall file with the Commission's Secretary an affidavit showing that something substantially similar to the language in the Notice attached as Exhibit 1 to the Motion appeared in both Latvijas Vestnesis and the International New York Times once a week for three consecutive weeks.

I POSTPONE the prehearing conference scheduled for Thursday, November 21, 2013, and ORDER a telephonic prehearing conference at 2:00 p.m. EST on Tuesday, January 21, 2014. I will hold Smith in default and grant the relief requested by the Division if there is evidence he has been served with the OIP, and he does not file an Answer, participate in the prehearing conference, or otherwise defend the proceeding. See OIP at 2; 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

Brenda P. Murray Chief Administrative Law Judge