

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3208/October 7, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16594

In the Matter of

EQUITY TRUST COMPANY

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:

ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on June 16, 2015, pursuant to Section 8A of the Securities Act of 1933 (Securities Act). The hearing is scheduled to commence during the week of November 30, 2015, in Washington, D.C. The OIP alleges that Respondent Equity Trust Company was a cause of violations by Ephren Taylor and Randy Poulson of Sections 17(a)(2) and 17(a)(3) of the Securities Act.¹ Under consideration are Respondent's Motion to Quash the Division of Enforcement's subpoena dated September 9, 2015, and responsive pleadings. The subpoena seeks production of training manuals and training materials, exclusive of human resources topics, provided to audit, legal, compliance, or sales personnel during January 1, 2007, through December 31, 2009, and currently. Respondent moves to quash it, pursuant to 17 C.F.R. § 201.232(e), on the grounds that it is unreasonable, oppressive, and unduly burdensome; that it seeks matter that is irrelevant; and that it is essentially an investigative subpoena under the guise of a hearing subpoena.

The Division states, and the Respondent does not deny, that:

the Division first asked for the requested material in an October 2012 investigative subpoena during its investigation that led to the instant administrative proceeding;

on June 10, 2015, Respondent advised the Division that it was assembling its current training manuals and that it would update the Division shortly on when

¹ Taylor was convicted of attempt and conspiracy to commit mail fraud and was sentenced to 235 months of imprisonment and ordered to pay \$15,590,752.81 in restitution. *United States v. Taylor*, No. 1:14-cr-217 (N.D. Ga. Mar. 24, 2015), ECF No. 65. Poulson has entered a plea agreement to plead guilty to mail fraud and awaits acceptance of the plea and sentencing. *United States v. Poulson*, No. 1:14-cr-309 (D.N.J.), ECF Nos. 20, 21.

they could be produced and with further information regarding the extent to which it still had copies of training manuals for the prior periods; and

Respondent never produced the materials and informed the Division on August 18, 2015, that it objected to producing the materials.

Concerning the argument that the subpoena is unreasonable, oppressive, and unduly burdensome, Respondent had essentially completed compiling most of the requested material by June 10, 2015. Concerning relevance, the OIP specifically alleges that Respondent acted negligently in connection with the events at issue by, *inter alia*, “failing to properly *train* its personnel.” (emphasis added). *See* OIP ¶ 47. Concerning the argument that the subpoena is really an investigative subpoena masquerading as a hearing subpoena, the Commission’s rules do not specifically forbid the Division from seeking subpoenas *duces tecum* directed to a Respondent in an administrative proceeding.² *See* 17 C.F.R. § 201.232. Accordingly, the subpoena will not be quashed.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

² However, the Commission has frowned on the use of investigative subpoenas during an administrative proceeding “for the purpose of gathering information for use in the proceeding. *See* Rules of Practice, 60 Fed. Reg. 32738, 32762 at *Comment (g)* (June 23, 1995). *See also Enforcement Manual*, available at <http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>, pp. 22 (the action memo the Division submits to the Commission recommending an administrative proceeding “provides a comprehensive explanation of the recommendation’s *factual* and legal foundation” (emphasis added); 32 (listing factors that may indicate an independent, good-faith basis for continuing an investigation during ongoing litigation).