

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11626

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 23, 2004

In the Matter of :
:
JOHN A. CARLEY, :
MARK N. DOHLEN, :
EUGENE C. GEIGER, :
PAUL A. GILES, : ORDER
ROY E. GOULD, :
THOMAS A KAUFMANN, :
ALFRED PEEPER, :
EDWARD H. PRICE, :
CHRISTOPHER H. ZACHARIAS, :
LE FOND MONDIAL :
D'INVESTISSEMENT S.A., :
and SPENCER EDWARDS, INC. :

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

SEP 23 2004

FIRST CLASS

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on September 1, 2004. The Chief Administrative Law Judge then assigned the matter to my docket and scheduled a hearing for October 12, 2004.

If the Division of Enforcement (Division) has not already done so, it shall provide each Respondent with written notice that its investigative file is now available for inspection and copying. See Rule 230 of the Commission's Rules of Practice. The Division shall also provide copies of its notification letters for the record.

By October 8, 2004, the Division shall file and serve a privilege log, identifying the items that it is withholding from inspection and copying. See Rule 230(c) of the Commission's Rules of Practice.

On September 10, 2004, the Division filed a Motion for Alternate Service on Respondent Alfred Peeper (Peeper), whom the OIP identifies as a resident of Spain and a citizen of the Netherlands. The Division states that Peeper is currently a defendant in a civil injunctive action brought by the Commission, and that it was unable over a period of months to serve Peeper in Spain in that proceeding. The Division also states that the Colorado attorney who represents Peeper in the ongoing civil injunctive action and during the investigation of the instant matter is not authorized to accept service of the OIP on behalf of Peeper.

The Division requests that I issue an order holding that (1) mailing a copy of the OIP to the Colorado attorney who represented Peeper during the underlying investigation and (2) publishing a notice concerning the OIP in the International Herald Tribune will constitute valid service of the OIP upon Peeper.

The Division's motion may be premature. The Office of the Secretary has provided evidence that the Colorado attorney received the OIP on September 13, 2004. By October 4, 2004, I expect to receive either an Answer from Peeper (if the attorney is going to represent him) or, at the very least, a letter from the Colorado attorney stating that he is not authorized to accept service of the OIP on behalf of Peeper. If the Colorado attorney accepts service of the OIP and files an Answer on behalf of Peeper, the Division's motion will be moot.

However, if the Division's pessimism turns out to be warranted, I will require the Division to address three issues before I rule on its pending Motion for Alternate Service.

First, Rule 141(a)(2)(iv) of the Commission's Rules of Practice governs service of an OIP upon persons in foreign countries. Among other things, the method of service used must not be prohibited by the law of the foreign country. The Division's Motion for Alternate Service makes no effort to show that the method of service it proposes is permissible as to residents of Spain or citizens of the Netherlands. The Division must show, by competent proof, that the proposed method of service is not prohibited by the law governing service of process on citizens of the Netherlands who reside in Spain.


Second, Comment (a) to Rule 141 of the Commission's Rules of Practice states: "Under Rule 141, alternative methods of service to persons located in the United States, such as service by publication, are not permitted." Although it is an open question as to whether the Comments to the Rules of Practice still offer up-to-date guidance, the Commission has never specifically disavowed the Comments. Accordingly, the Division shall explain its position as to why service abroad should be permitted by a method of service that is forbidden domestically.

Third, recently-adopted Rule 100(c) of the Commission's Rules of Practice permits the Commission to issue an order directing, in a particular proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable Rule of Practice is unnecessary. The Commission must determine that doing so would serve the interests of justice and not result in prejudice to the parties to the proceeding. If the proposed method of service is not permitted by the law of Spain, then the Division shall explain its position as to whether Rule 100(c) permits Administrative Law Judges, as well as the Commission, to issue orders permitting alternative procedures, or whether action under Rule 100(c) is reserved solely for the Commission. The Division should also explain why it did not ask the Commission to approve alternate service on Peeper when it urged the Commission to issue the OIP.

The Division shall file and serve a supplement to its Motion for Alternate Service, addressing these issues, by October 8, 2004.

As a final matter, the Division requests that the hearing scheduled for October 12, 2004, be postponed and that a telephonic prehearing conference be scheduled in its place. That request is granted. The telephonic prehearing conference will be held at 1:00 p.m. Eastern time on October 12, 2004. The Division shall initiate the call and obtain a court reporter. The scheduling of this prehearing conference does not delay the due date for each Respondent to file an Answer to the OIP. Answers must be filed (i.e., received by the Office of the Secretary and the undersigned in Washington, D.C.) within twenty days after receipt of the OIP.

SO ORDERED.



James T. Kelly
Administrative Law Judge