

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11909

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
August 5, 2005

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In the Matter of	:	
	:	ORDER DENYING MOTION TO
	:	WITHDRAW
PHLO CORPORATION,	:	
JAMES B. HOVIS, and	:	
ANNE P. HOVIS	:	

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By motion dated August 2, 2005, Respondents ask me to withdraw on the grounds of personal bias and prejudgment of the issues. By response dated August 3, 2005, the Division of Enforcement (Division) urges me to deny the motion to withdraw.

Under Rule 112(b) of the Rules of Practice of the Securities and Exchange Commission (Commission), any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion must be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification.

If the hearing officer believes himself to be disqualified from considering a matter, he shall issue a notice stating that he is withdrawing from the matter and setting forth the reasons therefore. See Rule 112(a) of the Commission's Rules of Practice. Conversely, if the hearing officer finds himself not disqualified, he shall so rule and shall continue to preside over the proceeding. See Rule 112(b) of the Commission's Rules of Practice.

The Division observes that Respondents have not provided an actual affidavit in support of their motion. The "affidavit" of Anne B. Hovis bears two dates: July 1, 2005 (page one), and August 2, 2005 (page twelve). The "affidavit" states only that Mrs. Hovis "swears" to the statements given. However, the Division notes that Mrs. Hovis did not sign under penalty of perjury, or in a form that substantially complied with 28 U.S.C. § 1746. See Keating v. Office of Thrift Supervision, 45 F.3d 322, 327 (9th Cir. 1995) (quoting Gibson v. FTC, 682 F.2d 554, 565 (5th Cir. 1982)). In the days since the Division brought this defect to Respondents' attention, Mrs. Hovis has elected not to correct her "affidavit."

In order for judicial conduct to be disqualifying, the alleged bias on the part of a hearing officer must stem from an extrajudicial source and must result in a decision on the merits based on matters other than those the judge gleaned from his participation in the case. United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). Adverse rulings are not enough to establish bias or

justify withdrawal or disqualification. Liteky v. United States, 510 U.S. 540, 555 (1994). In pages three and four of its response, the Division cites a wealth of case law on the subject of disqualifying bias. Respondents have expressed their dissatisfaction with certain of my rulings, but have not made the necessary showing that the alleged bias stems from an extrajudicial source.

In light of the foregoing, I believe that I am not disqualified. Accordingly, IT IS ORDERED THAT Respondents' motion to withdraw is DENIED.

  
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James T. Kelly  
Administrative Law Judge