

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

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In the Matter of :  
: ORDER  
NEXPUB, INC. :  
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on August 19, 2005. The OIP identifies NexPub, Inc. (NexPub), as a defunct Delaware corporation, formerly based in Fort Lauderdale, Florida. The Commission directed that the OIP be served on NexPub in accordance with Rule 141 of its Rules of Practice.

As currently written, Rule 141(a)(2)(ii) of the Commission's Rules of Practice authorizes service on corporations by delivering a copy of the OIP to an officer, managing or general agent, or authorized agent by personal service or by mail. Five months ago, the Commission proposed an amendment to Rule 141(a)(2)(ii) that would authorize service in a proceeding under Section 12(j) of the Securities Exchange Act of 1934 at the most recent address set forth in the issuer's most recent filing with the Commission, together with obtaining confirmation of attempted delivery. Proposed Amendments to the Rules of Practice and Related Provisions, 70 Fed. Reg. 22224 (Proposal, Apr. 28, 2005). The Commission has not yet adopted a final rule.

By Order dated September 9, 2005, I required the Division of Enforcement (Division) to file a statement demonstrating compliance with the Commission's directive to serve the OIP on NexPub in accordance with Rule 141. The Division has now filed the required statement, but it has failed to demonstrate proper service of the OIP on NexPub.


Service of the OIP on Neal Polan (Polan), NexPub's former chief executive officer, is not valid service of the OIP on NexPub. The Division acknowledges that Polan resigned as an officer of NexPub in March 2002. Service of the OIP on Robert Edgman (Edgman), NexPub's former vice president, is not valid service of the OIP on NexPub, either. The Division fails to demonstrate that Edgman was an officer of NexPub when he received the OIP. Service of the OIP on Donald Kaplan (Kaplan), an individual who purchased certain of NexPub's assets, is not valid service of the OIP on NexPub. Kaplan has never been a NexPub officer or agent. As a result, I find that the 120-day deadline for issuing an Initial Decision has not yet started to run.

The Division states that it is now attempting to serve NexPub through the Delaware Secretary of State. However, under 8 Del. Code § 321(b), the Secretary of State, Division of Corporations, may accept service of process for Delaware corporations only when a party cannot, by due diligence, serve the corporation's registered agent or other specified individuals or entities pursuant to 8 Del. Code § 321(a).

The Division has twice represented that NexPub lacks a registered agent. The Division's statements are perplexing, because they are at odds with current information from the official Web site of the State of Delaware, Department of State, Division of Corporations (copy attached) (official notice). If the Division is correct that NexPub lacks a registered agent, then service of the OIP on the Delaware Secretary of State would be appropriate. However, if the official Web site of the State of Delaware is correct, then the Division may not omit service on NexPub's registered agent, and serve NexPub through the Secretary of State.

The Division shall offer proof to support its prior statements about NexPub's purported lack of a registered agent. That filing shall be made by October 12, 2005. If NexPub has a registered agent, then the Division shall serve the OIP on the registered agent promptly. Once the Division has made its filing, I will determine whether NexPub has been served with the OIP and, if so, the due date for its Answer.

SO ORDERED.

  
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James T. Kelly  
Administrative Law Judge