

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

Administrative Proceedings Rulings
Release No. 4983 / August 18, 2017

Administrative Proceeding
File No. 3-18095

In the Matter of

**AV Therapeutics, Inc.,
Balqon Corporation,
Empress Mining Inc. (f/k/a
Penola, Inc.), and
Passport Potash, Inc.**

**Order Postponing Hearing and
Scheduling Prehearing
Conference**

On August 2, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 12(j) of the Securities Exchange Act of 1934, alleging that Respondents have securities registered with the Commission and are delinquent in their periodic filings. AV Therapeutics, Inc., has settled with the Commission and is no longer a respondent. *AV Therapeutics, Inc.*, Exchange Act Release No. 81378, 2017 SEC LEXIS 2461 (Aug. 10, 2017).

On August 15, 2017, the Division of Enforcement filed a declaration of service. The declaration, along with U.S. Postal Service tracking information, shows that Respondent Balqon Corporation was served on August 5, 2017, by U.S. priority mail express attempted delivery to the most recent address shown on its most recent filing with the Commission. 17 C.F.R. § 201.141(a)(2)(ii). Accordingly, Balqon must file its answer to the OIP by August 28, 2017. *See* OIP at 3; 17 C.F.R. §§ 201.160(b), .220(b).

The declaration and tracking information also establish that the OIP was *delivered* to Respondent Empress Mining Inc. (f/k/a/ Penola, Inc.) in West Preston, Victoria, Australia, on August 16, 2017, also by U.S. priority mail express to the most recent address shown on its most recent filing with the Commission. However, the declaration does not establish service of the OIP under the Commission's Rules of Practice. Rule 141 allows service by mail in a foreign country if it is "not prohibited by the law of the foreign country." 17

C.F.R. § 201.141(a)(2)(iv)(A). Australia is a signatory to the Hague convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *done* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (Hague Service Convention). It does not object to service by postal channels under Article 10(a) “where it is permitted in the jurisdiction in which the process is to be served.” Declaration/Reservation/Notification, <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1062&disp=resdn>; see Table Reflecting Applicability of Articles 8(2), 10(a)(b) and (c), 15(2) and 16(3) of the Hague Service Convention (Dec. 2015), <https://assets.hcch.net/docs/6365f76b-22b3-4bac-82ea-395bf75b2254.pdf>. The Division’s declaration does not indicate whether the state of Victoria or West Preston, Victoria permit service by mail. See *Shoham v. Islamic Republic of Iran*, 922 F. Supp. 2d 44, 50 (D.D.C. 2013) (A “partial exception [to no objection to service via international mail] appears to be Australia [Plaintiff] seeks to effect service via international mail . . . in Sydney, Australia, but did not provide any information indicating that this jurisdiction in Australia permits service by mail.”).

Finally, the Division’s declaration states that it is still attempting to perfect service on Respondent Passport Potash, Inc.

I ORDER the Division to file by September 6, 2017, an updated declaration concerning the status of service on Respondents Empress Mining and Passport Potash. Further, I POSTPONE the hearing currently scheduled for August 22, 2017, and ORDER that a telephonic prehearing conference shall be held at 2:00 p.m. Eastern on October 18, 2017, if the proceeding has not been resolved by then.

Cameron Elliot
Administrative Law Judge