

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

Administrative Proceedings Rulings  
Release No. 6188 / October 15, 2018

Administrative Proceeding  
File No. 3-17621

In the Matter of  
**Andrew Stitt**

**Order Finding Service,  
to Show Cause, and  
Scheduling Prehearing  
Conference**

This proceeding was previously assigned to Administrative Law Judge Carol Fox Foelak. In the course of adjudicating the proceeding, she granted a motion filed by the Division of Enforcement to serve Respondent Andrew Stitt in Jamaica by publication and by email. *Andrew Stitt*, Admin. Proc. Rulings Release No. 5225, 2017 SEC LEXIS 3572 (ALJ Nov. 13, 2017). The Division submitted evidence that it completed service by email and publication by December 12, 2017. *See* Division of Enforcement's Notice of Service on Respondent Stitt, Exs. A–C (Dec. 21, 2017).

Judge Foelak later entered an initial decision by default after Stitt failed to answer the order instituting proceedings (OIP), respond to an order to show cause, or otherwise participate in this proceeding. *Andrew Stitt*, Initial Decision Release No. 1231, 2018 WL 637806 (ALJ Jan. 30, 2018). In August 2018, the Securities and Exchange Commission vacated its finality order and remanded this proceeding and directed that it be reassigned for a new hearing. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 WL 4003609, at \*1 (Aug. 22, 2018).

In September, this proceeding was assigned to me and “I direct[ed] the parties to submit proposals for the conduct of further proceedings by October 9, 2018.” *Andrew Stitt*, Admin. Proc. Rulings Release No. 5992, 2018 SEC LEXIS 2410, at \*1 (ALJ Sept. 18, 2018). The Division submitted a proposal but Stitt did not. In its submission, the Division explains that although it has communicated with Stitt in past by phone and e-mail, he has not responded to calls to his phone number or e-mails sent to his e-mail address.

Before considering the Division’s proposal, I must determine whether Stitt was served with the OIP. Service by publication or by email requires, as a predicate, an order from the Commission or the presiding administrative law judge. *See* 17 C.F.R. § 201.141(a)(2)(iv)(D). At the time Judge Foelak issued the order on service, her appointment was subject to constitutional challenge. *See Lucia v. SEC*, 138 S. Ct. 2044 (2018). Regardless of the validity of Judge Foelak’s order, however, the fact remains that the Division actually served Stitt in a manner that complies with the requirements of due process and Jamaican law. *See SEC v. Tome*, 833 F.2d 1086, 1094 (2d Cir. 1987) (allowing service by publication); *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1017-19 (9th Cir. 2002) (allowing service by email); Sup. Ct. of Jamaica Civil Procedure Rules 2002, Revised as of Sept. 18, 2006, Rules 5.13-5.14, <http://moj.gov.jm/sites/default/files/docs/Civil%20Procedure%20Rules%202006.pdf>. Ordering the Division to serve Stitt by publication and by email a second time—to do the exact same thing it has already done all over again—would serve no purpose. I therefore find that Stitt was served with the OIP by December 12, 2017. Although his answer was due January 2, 2018, OIP at 3, Stitt never filed an answer.

In light of the above, I ORDER Stitt to SHOW CAUSE by October 25, 2018, why should not be found default due to his failure to file an answer or otherwise defend this proceeding. *See Pending Admin. Proc.*, 2018 WL 4003609, at \*1 (“if a party fails to submit a proposal, the ALJ may enter a default against that party”); 17 C.F.R. §§ 201.155(a)(2), .220(f).

In the event that Stitt fails to respond to this order, the Division should file a notice by October 31, 2018, stating whether it intends to rely on the existing record or to supplement or substitute its previous filings. I ORDER that a telephonic prehearing conference will take place on November 2, 2018, at 2:00 p.m. EDT.

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James E. Grimes  
Administrative Law Judge