

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1091 / December 6, 2013

ADMINISTRATIVE PROCEEDING
File Nos. 3-14872, 3-15116

In the Matter of	:	
	:	
BDO CHINA DAHUA CPA CO., LTD.,	:	
ERNST & YOUNG HUA MING LLP,	:	
KPMG HUAZHEN (SPECIAL GENERAL	:	ORDER DENYING
PARTNERSHIP),	:	RESPONDENTS' POST-
DELOITTE TOUCHE TOHMATSU CERTIFIED	:	HEARING MOTIONS FOR
PUBLIC ACCOUNTANTS LTD., and	:	SUMMARY DISPOSITION
PRICEWATERHOUSECOOPERS ZHONG	:	
TIAN CPAs LIMITED	:	

The Securities and Exchange Commission (Commission) instituted these proceedings on May 9, 2012, and December 3, 2012, pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice (Commission Rule). The two proceedings were consolidated on December 20, 2012, pursuant to Commission Rule 201(a). The Orders Instituting Proceedings (OIP) allege that Respondents willfully refused to provide the Commission with audit workpapers and other materials relating to their audit or interim review work for certain clients, in violation of Section 106 of the Sarbanes-Oxley Act of 2002 and the Securities Exchange Act of 1934. The hearing took place between July 8 and July 31, 2013, in Washington, D.C.

On September 18, 2013, I issued an Order closing the record. BDO China Dahua CPA Co., Ltd., Admin. Proc. Rulings Release No. 882, 2013 SEC LEXIS 2769 (Sept. 18, 2013). On November 21, 2013, Respondents filed a Motion to Supplement the Record, which I will rule on shortly.

On December 3, 2013, Respondent Deloitte Touche Tohmatsu Certified Public Accountants Ltd. (DTTC) submitted a Post-Hearing Motion for Summary Disposition and Memorandum in Support (Motion), and the other named Respondents submitted the Non-DTTC Respondents' Joinder in DTTC's Motion and Supplemental Post-Hearing Motion for Summary Disposition Dismissing the Proceeding as to All Respondents or, Alternatively, for a Postponement (Supplemental Motion), pursuant to Commission Rule 250. See 17 C.F.R. § 201.250.

The Motion argues that DTTC is entitled to summary disposition because the China Securities Regulatory Commission (CSRC) has produced workpapers and related documents for DTTC Client A and Client G, as identified in the OIPs, to the Commission, that DTTC asserts constitutes the entirety of its workpapers at issue in this proceeding. Motion at 2. The Motion contends that these productions dispose of the entire action against DTTC. Id. Similarly, the Supplemental Motion argues that the Non-DTTC Respondents are entitled to summary disposition. Supplemental Motion at 1-3. In the alternative, the Supplemental Motion requests that the proceeding be postponed pursuant to Commission Rule 161 in light of what it contends is a viable alternative for the complete production of the workpapers at issue through the CSRC. Id. at 11-12.

There is no permissible basis for filing the Motion and Supplemental Motion (to the extent it seeks summary disposition). The purpose of Commission Rule 250 is to allow resolution of administrative proceedings without a hearing. 17 C.F.R. § 201.250(a); Kornman v. SEC, 592 F.3d 173, 182-83 (D.C. Cir. 2010). Because I have heard the parties' evidence, Commission Rule 250 is inapplicable.

To be sure, Commission Rule 250(a) states: "If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer." 17 C.F.R. § 201.250(a) (emphasis added). In normal usage, a party's "case in chief" is presented only at a hearing, so this sentence could be read to suggest that Respondents have a right to move for summary disposition as if they were moving for judgment as a matter of law at the close of the Division of Enforcement's (Division's) case. This reading is erroneous; "absent extraordinary circumstances," the Commission "do[es] not favor" such a procedure. Rita Villa, 53 S.E.C. 399, 404 (1998). The better reading of this sentence is simply that once the Division has filed a motion for summary disposition, a Respondent may file a cross-motion for summary disposition as of right. To the extent that language in Commission releases regarding proposed and final changes to the Commission's Rules of Practice may be read to suggest that motions for summary disposition may be filed after the hearing has concluded, that reading conflicts with the Commission's opinion in Rita Villa, which I find to be controlling in this situation. See Rules of Practice, 58 Fed. Reg. 61732, 61745-46 (Nov. 22, 1993); 60 Fed. Reg. 32738, 32767-68 (June 23, 1995).

The Commission's Rules of Practice do not explicitly provide for a directed verdict or judgment as a matter of law – in essence, what Respondents request in the Motion and Supplemental Motion – and I do not entertain motions seeking them. Respondents are apparently asking me to ignore the extensive record that has been developed in this case. That procedure may very well lead to a situation where my ruling on the motion for summary disposition is appealed to the Commission and is subsequently reversed and remanded for the issuance of an Initial Decision based on the full record. That was precisely the procedure criticized by the Commission in Rita Villa.

The Supplemental Motion, to the extent it seeks a postponement, is meritless. I have approximately six weeks within which to file an Initial Decision. Under Commission Rule 161(b)(1), every factor, particularly the third (the stage of the proceedings at the time of the request) and fourth (the impact of the requested postponement on the hearing officer's ability to

complete the proceeding in the time specified by the Commission), weighs in favor of not postponing this proceeding yet again. See 17 C.F.R. § 201.161(b)(1).

I have not addressed the merits of the Motion or Supplemental Motion (to the extent it seeks summary disposition), nor do I intend to consider them in issuing the Initial Decision. There is therefore no need for the Division of Enforcement to file a response to either motion. See 17 C.F.R. §§ 201.111(d), .154(b), .161(a).

Accordingly, it is ORDERED that the Motion and Supplemental Motion are DENIED in their entirety.

Cameron Elliot
Administrative Law Judge