

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
v. : Civil Action No. DKC 2003-3440
 :
VAUGHN CLARKE :
 :

ORDER DENYING STAY

On February 6, 2004, the court entered an order granting Petitioners' motion to enforce subpoena and directing Respondent to comply within 14 days. On February 10, 2004, Respondent noted an appeal to the United States Court of Appeals for the Fourth Circuit and requested a stay pending appeal. Petitioners responded on February 11, 2004. No hearing is deemed necessary. For the following reasons, the motion for a stay will be denied.

The parties agree that the standard to be applied comes from *Long v. Robinson*, 432 F. 2d 977, 979 (4th Cir. 1970):

[A] party seeking a stay must show (1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.

Like Judge Brinkema in the related case, the undersigned does not find that Respondent has met that burden. The length of the opinion disposing of his arguments does not necessarily

reflect likelihood of success on the merits--rather, it stems from the number of issues raised. After considering all of Respondent's arguments, the court ultimately found that Petitioners were clearly entitled to the relief requested and that discovery was unavailable. Second, while there may be some irreparable "harm" in the sense that testimony and documents will be provided, the appeal will not be rendered moot. Any documents provided can be returned and certainly reversal would affect the use of any resulting testimony. Third, the harm to OFHEO, which already has been delayed in its examination, would be in continued delay in completing that task. Fourth, and similarly, the public interest is best served by prompt compliance so that the examination may proceed.

Accordingly, it is this 12th day of February, 2004, by the United States District Court for the District of Maryland, ORDERED that the expedited motion for a stay BE, and the same hereby IS, DENIED.

_____/s/
DEBORAH K. CHASANOW
United States District Judge