

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11346

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 21, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

JAN 22 2004

FIRST CLASS

In the Matter of :
:
STEVEN E. MUTH, : ORDER ON MOTION
RICHARD J. ROUSE, :
and BRUCE J. BATES :
:
:

The Securities and Exchange Commission ("Commission") initiated this proceeding pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, on November 26, 2003. All the Respondents have answered the allegations in the Order Instituting Proceedings ("OIP"). The hearing will begin in Denver, Colorado, on April 19, 2004. The Initial Decision must be issued no later than October 12, 2004.

Respondent Rouse filed a Motion For A More Definite Statement ("Motion") on January 2, 2004, claiming that the OIP is deficient for failing to identify:

- the relevant period referred to in Paragraph A.2;
- the identity of the customers, alleged misstatements, and any other sales practice violations referred to in Paragraph C.5;
- when, to whom, and details on each misrepresentation that Respondent Rouse allegedly made referred to in Paragraph C.6;
- the two securities and to whom and when were the representations made that are mentioned in Paragraph C.7;
- the customers referred to in Paragraph C.8; and
- the firm procedures and red flags referred to in Paragraph D.16.

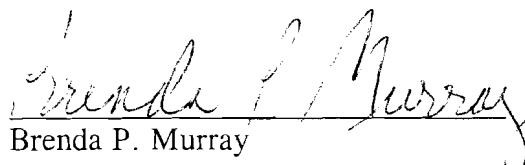
On January 15, 2004, the Division of Enforcement ("Division") filed a request for a time extension accompanied by a response to the Motion.¹ The Division represents that its response is late because it was busy with settlement discussions. The Division argues that the Motion should be denied because the OIP meets the pleading standard prescribed in the Commission's Rules of Practice, which follow the scope of the Federal Rules of Civil Procedure ("FRCP"), and Respondent Rouse is using an impermissible shortcut to discover the Division's factual evidence. In addition, the Division maintains that the Motion is moot because Respondents have available the Division's investigative record that contains all investor statements, transcripts and/or notes.

In a reply in support of the Motion filed on January 20, 2004, Respondent Rouse maintains that the FRCP are inapplicable to Commission proceedings and that the investigative record does not provide all the detail he seeks. Respondent Rouse does not object to receipt of the Division's late fielded response.

Ruling

A reasonable reading of the OIP is that the relevant period for Respondent Rouse referred to in Paragraph A.2. would be from September 2000 through February 2001, the period when Respondent Rouse allegedly committed the supervisory failures described in Paragraph D of the OIP. I will confirm that the Division agrees with my reading of the OIP at the hearing.

I GRANT the Division's request for an extension in which to file its response, and DENY the Motion. The OIP satisfies Rule of Practice 200(b)(3), which requires that the OIP "contain a short and plain statement of the matters of fact and law to be considered and determined." 17 C.F.R. § 201.200(b)(3). The case law on this subject does not require the specificity that Respondent Rouse claims is necessary. See M.J. Reiter Co., 39 S.E.C. 484 (1959); J. Logan & Co., 38 S.E.C. 827 (1959); Charles M. Weber, 35 S.E.C. 79 (1953).


Brenda P. Murray
Chief Administrative Law Judge

¹ Rule 154(b) of the Commission's Rules of Practice requires a response to a motion within five days after service of the motion. 17 C.F.R § 201.154(b). Respondent sent a copy by first class mail to the Division on January 2, 2004.