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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11626

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 14, 2004

In the Matter of :
:
JOHN A. CARLEY, :
MARK N. DOHLEN, :
EUGENE C. GEIGER, :
PAUL A. GILES, : ORDER
ROY E. GOULD, :
THOMAS A KAUFMANN, :
ALFRED PEEPER, :
EDWARD H. PRICE, :
CHRISTOPHER H. ZACHARIAS, :
LE FOND MONDIAL :
D'INVESTISSEMENT S.A., :
and SPENCER EDWARDS, INC. :
:

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE
OCT 15 2004
FIRST CLASS

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on September 1, 2004. The OIP has been properly served on eight of the eleven Respondents. This Order discusses the status of service as to the remaining three Respondents.

Alfred Peeper

The Division of Enforcement (Division) has filed a Motion for Alternate Service of the OIP upon Respondent Alfred Peeper (Peeper), whom the OIP identifies as a resident of Spain and a citizen of the Netherlands (OIP ¶ II.A.5). The Division has also filed a Supplemental Brief, addressing certain matters at my request (Order of Sept. 23, 2004).

The Division seeks an Order "directing" it to serve the OIP upon Peeper by three alternative methods: (1) mailing the OIP to a Colorado attorney who represents Peeper in an ongoing (but unrelated) federal district court action; (2) publishing a notice concerning the OIP in the International Herald Tribune; and (3) mailing the OIP by first class international mail, without confirmation of receipt, to the address in Spain that Peeper identified as his business and residence address in August 2001. The Division asserts that these procedures meet the requirements of Rule 141 of the Commission's Rules of Practice and will ensure that Peeper receives actual notice of the OIP.

The Division's request is not based on any difficulties it has encountered in this proceeding, but rather, on difficulties that another one of the Division's Regional Offices encountered in serving Peeper with the complaint in SEC v. WAMEX Holdings, Inc., No. 01-CV-9056 (S.D.N.Y. 2001) between October 2001 and February 2002. The Division anticipates that there is a "substantial likelihood" that attempts to serve Peeper at his Spanish address in this administrative proceeding "would not be successful." The Division also advises that the Colorado attorney who represents Peeper in the ongoing WAMEX Holdings litigation, and who represented Peeper during the staff's investigation leading to the present OIP, will not voluntarily accept service of the OIP on behalf of Peeper.

I decline to issue an order directing the Division to serve the OIP in the manner it proposes. In Paragraph IV of the OIP, the Commission stated: "This Order shall be served forthwith upon Respondents personally or by certified mail." In this regard, the wording of the present OIP is narrower than the full reach of Rule 141 of the Commission's Rules of Practice.¹ It is also quite different from the wording of other recent OIPs involving individuals who reside abroad.² If the Division seeks relief from the unambiguous terms of the OIP, it must ask the Commission to grant it. See Rule 100(c) of the Commission's Rules of Practice. Until the Commission rules on any such request, the Division is strongly encouraged to attempt to serve the OIP in the manner that the Commission directed on September 1, 2004.

Mark N. Dohlen
and Paul A. Giles

The OIP identifies Respondent Mark N. Dohlen (Dohlen) as a resident of Canada (OIP ¶ II.A.1).³ It also identifies Respondent Paul A. Giles (Giles) as a citizen of Canada who is "believed to currently be a resident of Florida" (OIP ¶ II.A.2). Efforts to serve the OIP on these

¹ Most OIPs use standard language that permits service by any means that is allowed under Rule 141 of the Commission's Rules of Practice. See, e.g., Harrison Secs., Inc., Admin. Pro. No. 3-11084 (Apr. 7, 2003) (directing service of the OIP "in accordance with Rule 141 of the Commission's Rules of Practice"). Because the wording of the present OIP is narrower, the Division's argument that it seeks to effectuate service by methods that are permitted under Rule 141(a)(2)(iv) is unavailing. The language of the OIP, not the Rule, is controlling here.

² See, e.g., Donald L. Knight, Admin. Pro. No. 3-11684 (Sept. 24, 2004) (directing service of the OIP upon a respondent residing in Costa Rica "personally or by International Registered Mail"); Michael Sydney Newman, Admin. Pro. No. 3-11630 (Sept. 3, 2004) (directing service of the OIP upon a respondent residing in Laos "by Federal Express and facsimile"). Clearly, when the Commission wishes to permit alternative methods of service, it knows how to do so. I decline to assume that its decision not to permit alternative methods of service in the present case was inadvertent.

³ One of the Respondents in this matter disputes that Dohlen is a resident of Canada (Answer of Christopher H. Zacharias, dated Oct. 11, 2004). Division counsel shall consult with counsel for Zacharias to attempt to resolve this dispute.

two Respondents by certified mail at their last known addresses have been unsuccessful. Efforts to serve the OIP by personal service have also been unsuccessful, but are ongoing.


Periodic Status Reports

At a prehearing conference on October 12, 2004, the Division suggested that it might ask the Commission to sever Peeper, Dohlen, and Giles from the other eight Respondents, if its efforts to effectuate service of the OIP are not successful within the next thirty days. Under the terms of Rule 201(b) of the Commission's Rules of Practice, severance requires a showing of good cause. For that reason, I will require the Division to file periodic status reports describing the efforts it is making to effectuate service of the OIP as to Peeper, Dohlen, and Giles.

ORDER

IT IS ORDERED THAT the Division of Enforcement's Motion for Alternate Service on Alfred Peepers is denied, without prejudice to seeking relief from the Commission; and

IT IS FURTHER ORDERED THAT the Division of Enforcement shall file periodic status reports, updating its efforts to effectuate service of the Order Instituting Proceedings upon Alfred Peeper, Mark N. Dohlen, and Paul A. Giles. The first such status report will be due on October 22, 2004. Additional status reports will be due every seven days thereafter.



James T. Kelly
Administrative Law Judge