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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11626

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 13, 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. :
:

In my Order of December 6, 2004, I stated that no Respondent had designated any expert witnesses and that the time for doing so had expired. As it turns out, Respondent Thomas A. Kaufmann (Kaufmann) wishes to designate two expert witnesses. Kaufmann's proposed designation bears a certificate of service dated December 1, 2004, but the document was not received by the Office of the Secretary until December 6, 2004. This Office did not receive the designation until after I had issued my Order. Kaufmann's untimely designation of expert witnesses will be accepted for filing. The parties are admonished that Rule 151(a) of the Rules of Practice of the Securities and Exchange Commission (Commission) provides that papers required to be filed with the Commission "must be received" within the time limit for filing.


The Division of Enforcement (Division) moves to strike Kaufmann's designation of proposed expert witness James L. Rothenberg (Rothenberg) on the grounds that the witness intends to offer opinions on issues of scienter and law. Kaufmann opposes the Division's motion, and offers some clarification of the topics that Rothenberg is likely to address. I decline to prohibit Rothenberg from offering any testimony at all. To that extent, the Division's motion to strike is denied. Before filing and serving Rothenberg's direct written testimony on December 23, 2004, however, Kaufmann shall carefully consider the Commission's admonition in Barry C. Scuttillo, 80 SEC Docket 2646, 2657-58 n.33 (July 28, 2003):

We have made it clear . . . that neither a law judge nor this Commission requires expert testimony on questions of law. See Robert D. Potts, CPA, 53 S.E.C. at 208 & n.56; Pagel, Inc., 48 S.E.C. 223, 230 (1985), aff'd, 803 F.2d 942 (8th Cir. 1986). Thus, we have not deemed it necessary to rely on the experts' opinions as to whether [respondent] was reckless.

The Division is free to renew its motion to strike, if necessary, after Kaufmann files and serves the direct written testimony of Rothenberg on December 23, 2004.

On December 3, 2004, Respondents Edward H. Price (Price) and Spencer Edwards, Inc. (Spencer Edwards), requested leave to file motions for summary disposition. This filing was expected in light of previous litigation in which Price prevailed against the Division on an arguably similar issue (Prehearing Conference of Oct. 12, 2004, at 40-41). On December 10, 2004, the Division submitted a response stating only that leave to file requires the approval of the hearing officer under Rule 250 of the Commission's Rules of Practice. The Division's response is of little assistance. Price has presented an affirmative defense of res judicata. To date, the Division has not demonstrated why that defense lacks merit. On or before December 16, 2004, the Division shall show cause why I should not grant leave to Price and Spencer Edwards to file motions for summary disposition. I do not expect the Division to submit a full-blown opposition to the motions for summary disposition, but rather, to explain why it believes that leave to file is inappropriate here.

SO ORDERED.



James T. Kelly
Administrative Law Judge