

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11909

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
May 24, 2005

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In the Matter of :  
: ORDER  
:  
PHLO CORPORATION, :  
JAMES B. HOVIS, and :  
ANNE P. HOVIS :

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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 21, 2005. The Chief Administrative Law Judge then assigned the matter to my docket and scheduled a hearing for June 1, 2005. The Office of the Secretary has provided evidence that an agent for all three Respondents received the OIP on April 29, 2005 (Postal Service Form 3811).

Respondents acknowledge that their Answers to the OIP were due on May 19, 2005. By Order dated May 20, 2005, I granted Respondents an enlargement of time, from May 19 to May 26, 2005, to file their Answers.

By letter dated May 23, 2005, counsel for Respondents seeks a further enlargement of time, until June 29, 2005, to file Answers. Counsel for Respondents also requests that the hearing date be continued until July 6, 2005. Counsel for Respondents states that the Division of Enforcement (Division) does not object to the relief sought.

The grounds identified for the requested enlargement of time lack merit. First, the Division notified Respondents on May 9, 2005, that its investigative file was available for inspection and copying at the Commission's Southeast Regional Office. Instead of promptly traveling to Miami, Florida, to inspect and copy the file, Respondents elected to wait until the Division transmitted the file to them—a process that is still not complete. The Commission's purpose in amending Rule 230(d) of the Commission's Rules of Practice was to provide for earlier production of the investigative record. Respondents have squandered that opportunity here, but that is hardly a reason for enlarging the time to file Answers. Second, the reported size of the Division's investigative file, one banker's box of materials, is not a valid reason for further enlarging the time to file Answers. In prior cases involving investigative files of thirty or more banker's boxes of investigative materials, other respondents have been able to file timely Answers. Third, preliminary settlement overtures are not a valid reason for delaying the due date of Answers. See Rule 161 of the Commission's Rules of Practice. I recognize that Respondents

did not retain their attorneys until shortly before Answers were due. Respondents have created this predicament for their attorneys.

I have given little weight to the Division's acquiescence in Respondents' request for additional time. When the Commission adopted decision-making deadlines in adjudicatory proceedings, it stated:

[T]he Commission has provided guidance to its staff that they should not seek or support extensions or stays not consistent with the standards set forth [in the revised Rules of Practice]. Similarly, staff have been instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process.

Rules of Practice, 80 SEC Docket 1463, 1464 (June 11, 2003).


Counsel for the Division and counsel for Respondents have not advised me of any preexisting conflicts that would interfere with their participation in a hearing at the time and place established by the Chief Administrative Law Judge (Order of April 28, 2005).

By June 1, 2005, the parties shall be prepared to discuss the following issues: expected length of the hearing, preferred location of the hearing, number of fact witnesses, summary witnesses, and expert witnesses, recommended hearing dates, and a prehearing schedule.

IT IS ORDERED THAT:

Respondents' motion for an additional enlargement of time to file their Answers to the OIP is denied. Respondents shall file and serve their Answers no later than May 26, 2005, as previously ordered;

If Answers to the OIP are received by May 26, 2005, then the parties may move to convert the June 1, 2005, hearing to a telephonic prehearing conference to be held at the same time that the Chief Administrative Law Judge scheduled the hearing to commence. Any such motion must also be filed by May 26, 2005. If the parties elect not to seek a telephonic prehearing conference, then the hearing will go forward at the time and place scheduled by the Chief Administrative Law Judge.

  
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James T. Kelly  
Administrative Law Judge