

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 20, 2005


In the Matter of :
: GREGORY M. DEARLOVE, CPA : ORDER ON SUBPOENA
: : DUCES TECUM
: :

On December 7, 2005, the Division of Enforcement (Division) applied for the issuance of a subpoena duces tecum directed to Respondent Gregory M. Dearlove, CPA (Dearlove). In the ordinary course, I would have authorized the subpoena and waited for Dearlove to file a motion to quash. However, in order to save time, it was agreed that the parties would state their respective positions on the subpoena application before I decided whether to authorize it (Prehearing Conference of Dec. 7, 2005, at 42-45). Dearlove has now moved to deny issuance of the subpoena. In opposition, the Division argues that Dearlove's motion lacks merit.

I agree with Dearlove that the subpoena, as currently worded, is unreasonable, oppressive, excessive in scope, and unduly burdensome. See Rule 232(b) of the Rules of Practice of the Securities and Exchange Commission (Commission). I also agree with Dearlove that the Division enjoys no reciprocal rights under the Jencks Act, 18 U.S.C. § 3500. See Rule 231(a) of the Commission's Rules of Practice. The Jencks Act requires the government to turn over to the defense prior statements of government witnesses. By its express terms, the Jencks Act has no application whatsoever to defense witnesses and statements in the possession of the defense. See United States v. Wright, 489 F.2d 1181, 1189-90 (D.C. Cir. 1973).

The Division's application for a subpoena duces tecum directed to Dearlove is denied.

SO ORDERED.



James T. Kelly
Administrative Law Judge