

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12626

SECURITIES & EXCHANGE COMMISSION
FILED FOR DEPOSIT

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 6, 2007

In the Matter of :
: ORDER ON MOTION
THOMAS C. BRIDGE, :
JAMES D. EDGE, and :
JEFFREY K. ROBLES :
:

The Securities and Exchange Commission (Commission) instituted this proceeding on May 2, 2007. The hearing will begin on Monday, September 10, 2007, at 9:00 a.m. EDT in Courtroom Number 6, Massachusetts District Court, John Joseph Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts 02210-3002.

The Division of Enforcement (Division) expects to call thirty-eight witnesses, including two experts, as part of its direct case. Twenty-nine of these witnesses are located outside Boston. The Division is trying to negotiate a stipulation that would eliminate personal testimony from seventeen of the out-of-town witnesses who are custodians of records. According to the Division, the testimony from out-of-town witnesses will be brief. The Respondents expect to call twenty-three witnesses, including one expert. They also will call eleven custodians of records. There appear to be nine people who both the Division and the Respondents expect to call and five of these are custodians of records.

This order concerns a Division motion to allow direct testimony by telephone from all its non-party, out-of-town witnesses filed on August 31, 2007. Respondents are agreeable to telephonic testimony from most of the Division's out-of-town witnesses but not from:

Alexander Bigelow, Florida Regional Director of A.G. Edwards & Sons, Inc. (A.G. Edwards);

Michael Chitwood, Senior Branch Administrator at A.G. Edwards; and

Alan Herzog, Compliance Counsel at A.G. Edwards.

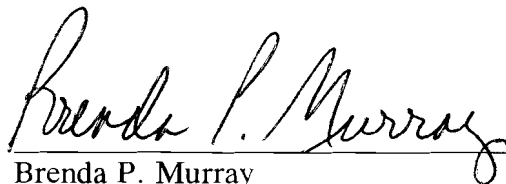
Respondents filed an Opposition to the Motion on September 6, 2007, stating that the testimony of each of the three witnesses is central to the Division's failure to supervise allegations and that effective cross-examination of each witness is essential to each Respondent's defense. (Opposition at 2-3.). Respondents consider it crucial that they be allowed to examine and confront these witnesses in person. (Opposition at 1.)

Ruling

I interpret the Commission's Rules of Practice to favor in-person testimony where the parties do not agree on an alternative. See 17 C.F.R § 201.235(a)(5). The Commission's Rules of Practice give a party the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. 17 C.F.R § 201.326. I defer to Respondents that having these three witnesses testify by telephone would not provide them with an opportunity to make a full and true disclosure of the facts. I know of no instance where telephonic or video testimony has been allowed in a Commission proceeding where a party has objected to its use. At least one other federal agency has faced the issue. Louthen v. United States Postal Service, EEOC Appeal No. 01A44521, 2006 EEOPUB LEXIS 2183 (May 17, 2006) held:

A telephonic hearing or testimony is permissible when the [Administrative Judge] determines that such exigent circumstances require it and the [Administrative Judge] documents these circumstances in the record. If exigent circumstances are not present, a telephonic hearing (or telephonic testimony) may be conducted only if the parties submit a joint request to the [Administrative Judge].

For the reasons stated, I GRANT the motion and allow telephonic testimony from those Division witnesses where Respondents do not object; I DENY the Division's motion and refuse to allow Alexander Bigelow, Michael Chitwood, and Alan Herzog to testify by telephone.



Brenda P. Murray
Chief Administrative Law Judge