

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3505 / January 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

NICHOLAS ROWE

ORDER REGARDING TESTIMONIAL
SUBPOENAS

The hearing in this matter is scheduled to commence on February 1, 2016. I previously signed and issued testimonial subpoenas at the request of the Division of Enforcement and Nicholas Rowe. These subpoenas were issued to several potential witnesses, including Edward Duby, Jr., and Suzanne Duby, who appear on the witness lists of both parties. Rowe has been unsuccessful in his attempts to serve them with his testimonial subpoenas. The Division has represented to my office that it has not served the Dubys with its testimonial subpoenas.

According to counsel for the Dubys, the Dubys are currently residing in Florida, but they have not authorized him to receive the subpoenas on their behalf and have not disclosed their address. Counsel for the Dubys stated that he has informed them that I am prepared to allow them to testify by telephone. In a subsequent email to my office, Rowe expressed that he is “at a loss as to what to do at this time,” given his unsuccessful efforts to serve the Dubys. According to a public records search by Rowe, the Dubys appear to own a home in Rotonda West, Florida. Rowe requests guidance on whether he may serve the subpoenas on the Dubys at this address.

It is ORDERED that Rowe serve the testimonial subpoenas and this order on the Dubys at the Florida address and email electronic versions of the subpoenas to counsel for the Dubys, who is directed to forward the subpoenas and this order to the Dubys via email. I will deem such service sufficient. *See* 17 C.F.R. §§ 201.103(a), .111(b), .150(b)-(d), .232(c).

From the above circumstances, it appears that the Dubys are aware of Rowe’s testimonial subpoenas and are avoiding service. It is FURTHERED ORDERED that if the Dubys continue to avoid service or fail to comply with the subpoenas, they may be referred for subpoena enforcement proceedings in federal district court.

Jason S. Patil
Administrative Law Judge