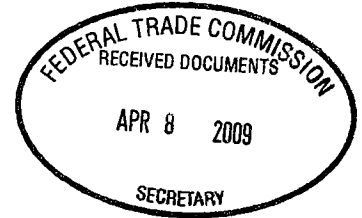


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

DANIEL CHAPTER ONE,)
a corporation, and)

JAMES FEIJO,)
Respondents.)
_____)

DOCKET NO. 9329

ORDER GRANTING MOTION TO MODIFY FINAL EXHIBIT LIST

I.

On April 3, 2009, Complaint Counsel submitted a Motion and Memorandum to Modify Complaint Counsel's Final Exhibit List and to Introduce New Evidence to the Court on the Issue of Respondents' Financial Condition ("Motion") at the April 21, 2009 hearing on jurisdiction in this matter ("Jurisdictional Hearing"). On the same date, Respondents submitted a Reply, objecting to the Motion ("Opposition").

Having fully considered all the arguments in the Motion and Opposition, and as further discussed below, the Motion is hereby GRANTED.

II.

Complaint Counsel seeks to modify its final exhibit list and to introduce at the Jurisdictional Hearing financial documentation pertaining to Respondents, which Complaint Counsel states it is in the process of obtaining pursuant to subpoenas issued to American Express and Citizens Bank. The subpoenas were issued on March 25, 2009, and the date of production under each of the subpoenas is April 7, 2009. Pursuant to the Scheduling Order in this case, Complaint Counsel's final exhibit list was provided to Respondents on February 24, 2009.

Complaint Counsel argues that information regarding Respondents' financial condition is relevant to show that, contrary to Respondents' assertions, Respondents are engaged in a for-profit enterprise. Complaint Counsel further contends that, pursuant to Additional Provision No. 15 of the Scheduling Order, there is good cause to modify the final exhibit list and permit the additional evidence because Respondents did not cooperate in producing their financial information during discovery. Finally, Complaint

Counsel argues that allowing it to modify the exhibit list and introduce the evidence at the Jurisdictional Hearing will not prejudice Respondents because (1) Complaint Counsel will share the documentation with Respondents when received and revisit any objections they have; and (2) the “documents are -- or should be -- in the custody, possession, or control of Respondents, and should have been produced . . .”

Specifically, Complaint Counsel states that Respondents have failed to produce documents responsive to Request Numbers 22 and 23 of Complaint Counsel’s First Request for Production of Documents, in violation of the January 9, 2009 Order granting Complaint Counsel’s Motion to Compel such production. Those document requests sought:

22. Documents sufficient to identify all bank accounts or other financial institution destinations into which any proceeds of sales of the Challenged Products were directed, placed or transferred.

23. All documents concerning any third party checks, cashier’s checks, money orders or other financial instruments endorsed to the Respondents or deposited into any checking or savings account maintained by the Respondents, on behalf of the Respondents, or for the benefit of the Respondents relating to monies received in exchange for the Challenged Products or to the sales or proceeds of sales of the Challenged Products.

Motion, p. 2.

Complaint Counsel further asserts that Respondents have failed to produce the following specific financial documents requested at the deposition of Respondent Feijo on January 13, 2009, and again in a confirming letter to Respondents’ counsel:

- Daniel Chapter One corporation sole bank account statements from Citizens Bank;
- Messiah Y’Shua Shalom corporation sole bank account statements from Citizens Bank;
- American Express account (under Daniel Chapter One’s name) statements; and
- Statements, if any, from Citizens Bank account in the name of James Feijo (account may be closed).

Motion, p. 3 and Exhibit 1.

In addition, Complaint Counsel states that Respondents have failed to provide financial information and documents in response to Interrogatory Numbers 8-14 of its Second Set of Interrogatories, and Document Request Numbers 7-12, and 14 of its Second Request for Production of Documents, despite the February 11, 2009 Order granting Complaint Counsel’s Motion to Compel such discovery. According to Complaint Counsel, Respondents have produced only non-responsive, incomplete and evasive responses. As examples, Complaint Counsel cites:

- Respondents' assertion in written discovery responses that bank account records were "not accessible to Respondent at this time, but oral information of what is known was provided at James Feijo's deposition";
- Respondent Feijo's deposition testimony that he "has no idea", and could not venture a guess, how much money is in one of the Daniel Chapter One bank accounts;
- Respondents' assertion in written discovery responses that "no. . . documents exist" regarding alleged donations made by, or to, Respondents Daniel Chapter One or James Feijo; and
- Respondents' assertion in written discovery responses that they "do not have . . . documents" relating to money received by Respondent Feijo from Daniel Chapter One.

Motion, pp. 4-5. Complaint Counsel states that as a result of Respondents' conduct in discovery regarding their financial information, Complaint Counsel undertook to subpoena the financial information from American Express and Citizens Bank directly.

Respondents oppose the Motion on the grounds that they have not had a chance to review the evidence and that the Motion is untimely. They assert that the proper course is for Complaint Counsel to withdraw the motion and "re-make it, if necessary when they have the documents they wish to include in evidence." Opposition, p. 2. Respondents contend that they cannot assess the relevance of the evidence at this time; that they have not refused to produce evidence, but rather Respondent Feijo has "made repeatedly clear verbally and in writing . . . that as a matter of religious conviction he does not retain financial records for Daniel Chapter One," Opposition, pp. 2, 3-4; and that it is unfair and prejudicial to require Respondents to respond to new evidence "on the eve of the hearing" when Complaint Counsel knew about American Express and Citizens Bank since the January 13, 2009 deposition, and could have obtained and provided the financial evidence previously "with further diligence," Opposition, p. 3.

III.

Additional Provision Number 15 of the Scheduling Order states:

The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

See also Commission Rule of Practice § 3.21(c)(2), 16 C.F.R. § 3.21(c)(2) ("Administrative Law Judge may grant a motion to extend any deadline or time specified in this scheduling order only upon a showing of good cause. . .").

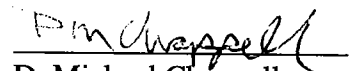
Complaint Counsel has demonstrated good cause to allow its final exhibit list to be modified to add the financial documents described above. Respondents have asserted non-profit status as a challenge to the exercise of jurisdiction in this case. Thus, Respondents' finances and financial related documents are a material issue. In addition, Respondents have not produced financial related documents and information in compliance with the January 9, 2009 and February 11, 2009 Orders granting Complaint Counsel's Motions to Compel. Moreover, Respondents are not prejudiced by allowing Complaint Counsel to designate additional exhibits which, even if not comprising documents currently in Respondents' possession, reflect financial transactions that are, or should be, within Respondents' knowledge.

Nothing herein shall be construed as a preliminary ruling on the substantive admissibility of such additional exhibits, or any exhibits contained on an exhibit list. Respondents may object to the admission of the additional exhibits into evidence at the Jurisdictional Hearing, except on any ground related to the additional exhibits not being included on Complaint Counsel's February 24, 2009 final exhibit list.

IV.

Having fully considered all the arguments in the Motion and Opposition, Complaint Counsel's Motion to Modify Final Exhibit List and to Introduce New Evidence Regarding Financial Condition is hereby GRANTED.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Dated: April 8, 2009