

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER:)
)
ALLIED CAPITAL GROUP, INC.,)
FLOYD J. STUMPF,) CASE NO. 89-02-04
)
Respondents.)

OPINION AND ORDER

At the hearing on June 21, 1989, it was agreed by all parties that subpoena requests by respondents would be submitted to the Commissioner's office by the close of business on June 29, 1989.

On June 26, 1989, the subpoena requests on behalf of Mr. Stumpf were received by FAX machine. By letter dated June 27, 1989, delivered by hand to the Commissioner's office, Mr. Wilson objected to Mr. Stumpf's requests as follows:

- (1) The State objects to documents other than signed complaints being produced from the Securities Division's investigative file.
- (2) The State objects to the witnesses' production of documents that may be protected by the attorney-client privilege.
- (3) Objection to requested tax records of witnesses for the previous four years. The State seeks to limit the request to three years.

Because of an apparent misunderstanding as to the due date for subpoena requests, I did not receive the requests of Allied

Capital Group, Inc. ("Allied") until the morning of July 3. Along with its requests for the issuance of subpoenas, Allied filed objections to Mr. Stumpf's requests on the following grounds:

(1) Objection to request for issuance of subpoena to Fred Borland, compliance officer at Allied, on the basis that he was not employed by Allied until mid-January, 1989.

(2) Objection to request for documents pertaining to any relationship between Allied and Power Securities Company because no foundation has been established.

I will now rule on the requests and the objections.

First, as to the request for tax records and loan applications, I will narrow the subpoenas to a three-year period: 1986, 1987 and 1988. Further, because these are confidential records, I will allow counsel for respondents to inspect them on July 11 and 12 at the offices of the Department of Justice, but counsel may not copy them. I am informing the witnesses of this fact in a memorandum that will accompany the subpoenas. (Copy of memorandum is attached to this order).

Second, as to the Securities Division's investigative records, I will abide by my earlier ruling that these records are privileged. I do not understand Mr. Stumpf to be requesting such records other than statements of the witnesses. As I indicated at the hearing on June 20-21, I will order that any signed statements of the witnesses be produced. However,

narratives or summaries of interviews by investigators need not be produced. My understanding is that there are complaint forms that were completed by the witnesses, which forms Mr. Wilson will produce.

Third, witnesses may claim the attorney-client privilege as to any documents for which they or their attorneys can establish a proper foundation for application of the privilege. This fact will also be communicated to the witnesses in my memorandum that will accompany the subpoenas.

Fourth, Mr. Stumpf's request at item XIV of Exhibit A is denied for overbreadth.

Fifth, Allied's objection to the issuance of a subpoena to Fred Borries, compliance officer at Allied, is denied. As compliance officer, Mr. Borries may have relevant testimony as to Allied's procedures and records reflecting prior events.

Sixth, Allied's objection to the issuance of a subpoena for records concerning the relationship between Allied and Power Securities Company is denied. Such documents may be relevant to Mr. Stumpf's defense. Allied will have an

opportunity to object during the hearing if Mr. Stumpf seeks to have any such documents admitted into evidence.

SO ORDERED.



RICHARD W. HUBBARD
Securities Commissioner

Date: July 3, 1989