

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

IN THE MATTER OF:)	
)	
ALLIED CAPITAL GROUP, INC.,)	
FLOYD J. STUMPF,)	Case No. 89-02-04
)	
Respondents.)	

ORDER

On July 27, 1989, my office received Mr. Wilson's request on behalf of the State for the issuance of subpoenas duces tecum. The next day, July 28, I received Allied's request for the issuance of subpoenas duces tecum and Allied's objection to the State's request. On August 2, 1989, I received the State's response to Allied's objection, and on August 9, 1989, I received Allied's reply to the State's response.

Addressing Allied's request first, I will direct that the requested subpoenas duces tecum be served. The loan applications produced pursuant to the subpoenas shall be provided to the Securities Division rather than to Allied's attorneys, however, as those documents are confidential in nature. Allied's attorneys may inspect the documents, and, if my office receives a signed written statement from counsel promising not to disclose the documents to anyone, then counsel may receive copies. If the documents are introduced into the record they shall be kept under seal.

Secondly, addressing the State's request, I will grant that request with one exception. Allied does not have standing to object to a request for the issuance of subpoenas to persons other than Allied. If the State seeks to introduce documents obtained pursuant to those subpoenas, Allied would then have standing and may renew its objection. My thinking at this time is that the documents and testimony sought from Michael Grove, Allied's former compliance officer, would be proper rebuttal in view of the fact that Allied has introduced its compliance manual into evidence and presumably will rely on that to argue that it met its obligation to supervise reasonably. RAF Financial Corporation may well object to the subpoena for order tickets and clearance activity reports, and if it does I will then consider the burdensomeness of the request in light of the State's need for the documents.

Incidentally, I am not sure that the interpretation of 6 Del. C. §7309(b)(13) by Allied's attorneys and my interpretation of that provision are the same. As I read that section, it allows an exemption for any sale to a Delaware resident by a registered broker-dealer if no benefit accrues to the issuer or to an owner of 10% or more of the outstanding voting shares. It is still unclear to me whether Allied owned 10% or more of the outstanding voting shares during the relevant time period. It is also possible that Allied's trades with Delaware residents were for the benefit of Power Securities Corporation, which may have owned more than 10%. So far, the documents introduced into evidence by Allied do not

answer this question, and the State is entitled to seek documents that may help to do so. I note that, under 6 Del. C. §7309(d), the burden of proving the availability of this exemption is on Allied.

With respect to the State's request for the issuance of subpoenas *duces tecum* to Peter Mercaldi and Allied, Allied's objection was directed primarily to paragraph 1(e), involving account statements of William Masucci. As to paragraph 1(e), I agree with Allied that for the purpose of this proceeding the requested documents would go beyond the scope of Allied's defense. The testimony of Mr. Masucci, consisting exclusively of invocations of the Fifth Amendment privilege against self-incrimination, has contributed nothing to Allied's defense. Therefore, there is no need to show bias on Masucci's part or otherwise to impeach his credibility.


Since a separate proceeding has been initiated against Mr. Masucci, and the State's investigation does not necessarily cease with the filing of charges, I would be willing to issue a subpoena *duces tecum* to Allied for his account records in connection with that matter. However, there is no point in making Masucci's account records part of the record here except perhaps to bolster the State's prima facie case. We are at a late stage in this hearing, however, and the State ought not to build on its prima facie case at this point.

As to paragraph 1(f), to which Allied objected on the grounds that the State should have called _____ during the presentation of its case-in-chief, I will grant the State's

request. The fact that the State could have called a witness does not mean that it should have, and, as previously mentioned, the testimony and records of Allied's former compliance officer constitute proper rebuttal of the point Allied presumably seeks to make by the introduction of its compliance manual.

Finally, Allied did not direct its objection to the other paragraphs of the State's request to Mercaldi and Allied, and therefore I will issue the subpoena duces tecum as to the items sought therein.

SO ORDERED.



RICHARD W. HUBBARD
Securities Commissioner

Date: August 11, 1989

AFFIDAVIT OF MAILING

STATE OF DELAWARE
NEW CASTLE COUNTY

)
) SS:
)

Cynthia K. Evans, being first duly sworn, deposes and says that:

1. She is a secretary with the Department of Justice.


2. That on August 11, 1989 she sent, either by facsimile transmission or hand-delivery, a copy of the foregoing document to the below-listed individuals:

Glenn C. Kenton, Esquire
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
FAX: 302-658-6548

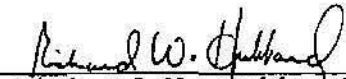
Harry Winderman, Esquire
Winderman, Selman & Claire, P.A.
Crocker Plaza
5355 Town Center Road
Suite 502
Boca Raton, Florida 33486
FAX: 407-395-5012

James L. Schwartz, Esquire
4643 South Ulster Street
Suite 1560
Denver, CO 80237
FAX: 303-771-6027

Gregg E. Wilson, Esquire
Deputy Attornet General
State Office Building
820 N. French Street
8th Floor
Wilmington, DE 19801


Cynthia K. Evans

SWORN TO AND SUBSCRIBED before me on this 11th day of August, 1989.


Richard W. Hubbard
Securities Commissioner

Pursuant to 29 Del. C. §2508