

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 DENYING RESPONDENTS'
MOTION TO ALLOW ADDITIONAL WITNESSES**

I.

On March 11, 2009, Respondents submitted a Motion to Allow Additional Witnesses During Respondents' Case-In-Chief ("Motion"). Complaint Counsel submitted its Memorandum in Opposition to the Motion on March 23, 2009 ("Opposition").

Upon consideration of the arguments raised in Respondents' Motion and Complaint Counsel's Opposition thereto, Respondents' Motion is DENIED.

II.

Respondents seek an order allowing them to call Richard L. Cleland and Lynn J. Colbert as witnesses during their case-in-chief at the hearing of this action. Respondents state that Cleland and Colbert are believed to be employees of the Federal Trade Commission. Respondents further state that Cleland and Colbert were deposed on January 22, 2009, which was after the January 13, 2009 deadline for submitting revised witness lists. Respondents assert that good cause exists for adding these witnesses after the deadline because Respondents could not determine whether Cleland and Colbert had relevant information until after the depositions.

In Respondents' Final Proposed Witness List, Respondents state that they anticipate Cleland will "testify to the details of the process by which the FTC organized its case against Respondents" and that they anticipate Colbert will "testify about the organization, conduct and review of the FTC cancer cure internet 'surf' that provided the basis for the allegations made against Daniel Chapter One." Respondents' Final Proposed Witness List, p. 5.

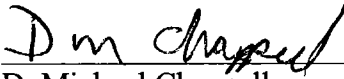
Complaint Counsel opposes Respondents' request on the grounds that Respondents have failed to demonstrate good cause for their delay in adding these proposed witnesses. Complaint Counsel further argues that the testimony to be elicited from these individuals is irrelevant.

III.

Based on Respondents' description of the anticipated testimony from Cleland and Colbert, Respondents seek to elicit evidence regarding the FTC's investigation prior to the issuance of the Complaint. "Once the Commission has . . . issued a complaint, the issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the material in question but whether the alleged violation has in fact occurred." *In re Exxon Corp.*, 83 F.T.C. 1759, 1760 (1974). *See also School Services, Inc.*, 71 F.T.C. 1703, 1705 (1967) (denying request for deposition testimony on the investigation of respondents prior to the filing of the complaint and stating that an attempt to probe the mental processes of the agency in investigating respondents and the decision leading up to the complaint is ordinarily privileged, as they relate to an integral part of the decision-making process of the agency). Therefore, the anticipated testimony of Cleland and Colbert, as described by Respondents, is not relevant to whether Respondents violated the Act. Under Rule 3.43 of the Commission's Rules of Practice, testimony that is not relevant is not admissible. 16 C.F.R. § 3.43. Because the anticipated testimony would be inadmissible, a determination of whether good cause exists to add additional witnesses is unnecessary.

For the above stated reasons, Respondents' Motion is DENIED.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: March 31, 2009