

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



_____)
In the Matter of)
)
Cabell Huntington Hospital, Inc.)
a corporation,)
)
Pallottine Health Services, Inc.)
a corporation, and)
)
St. Mary's Medical Center, Inc.)
a corporation,)
)
Respondents.)
_____)

DOCKET NO. 9366

**ORDER ON UNOPPOSED MOTIONS OF RESPONDENT
CABELL HUNTINGTON HOSPITAL FOR ISSUANCE OF SUBPOENAS**

I.

On January 5, 2016, Respondent Cabell Huntington Hospital, Inc. ("Cabell") filed two motions for the issuance of subpoenas pursuant to Federal Trade Commission ("FTC") Rule 3.36, 16 C.F.R. § 3.36. Through one motion, Cabell requests the issuance of a subpoena for the production of documents directed towards Marshall University ("Marshall"), a public university in West Virginia. In its second motion, Cabell requests the issuance of (1) a subpoena for the production of documents directed towards West Virginia Health Care Authority ("WVHCA"), an agency of the State of West Virginia; and (2) a deposition subpoena directed towards Mr. James Pitrolo, Chairman of the WVHCA (collectively, "Motions").

Rule 3.36(b) requires the party seeking issuance of a subpoena to an official or employee of another government agency for the production of documents or requiring the appearance of an official or employee of another governmental agency to make a showing that: the material sought is reasonable in scope; the material is within the limits of discovery under Rule 3.31(c)(1); the information or material sought cannot reasonably be obtained by other means; and the subpoena meets the requirements of Rule 3.37. Cabell recites that FTC Complaint Counsel does not oppose the Motions. For the reasons set forth below, both Motions are GRANTED IN PART AND DENIED IN PART.

II.

Cabell's proposed document subpoenas to Marshall and WVHCA contain two specifications. Specification number one seeks: "All documents responsive to the Federal Trade Commission's Subpoena *Duces Tecum*" ("Specification One"). On December 17, 2015, an order was issued granting Complaint Counsel's unopposed motion for a document subpoena directed to WVHCA, and on January 5, 2016, an order was issued granting Complaint Counsel's unopposed motion for a document subpoena directed to Marshall, both pursuant to Rule 3.36.

As noted above, Rule 3.36(b) requires a demonstration that "the information or material sought cannot reasonably be obtained by other means." As explained below, Cabell has failed to make this showing with regard to Specification One of the requested subpoenas.

Pursuant to Additional Provision 14 of the Scheduling Order issued in this case: "The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents." Scheduling Order, December 4, 2015, Additional Provision 14. Because Cabell will promptly receive the documents subpoenaed by Complaint Counsel, without resort to subpoena, Respondent has failed to establish that "the information or material sought cannot reasonably be obtained by other means," as required by Rule 3.36(b).

Cabell contends that it is "entitled to receive directly" from the subpoenaed entity "any materials it might provide to Complaint Counsel" pursuant to Complaint Counsel's subpoena. Cabell cites no authority for this proposition. Similarly, Cabell asserts, with no supporting facts, that Cabell "would be prejudiced" if required to wait three business days for Complaint Counsel to provide copies of documents that Complaint Counsel receives pursuant to its subpoenas to Marshall and WVHCA. Nor does Cabell demonstrate that any such prejudice outweighs the burden to Marshall and WVHCA, both non-parties to this action, were they to be required to make the duplicate document production that Cabell requests. Accordingly, Cabell's Motions are DENIED with respect to Specification One of the requested document subpoenas to Marshall and WVHCA.

As to the second specification of Cabell's requested document subpoenas to Marshall and WVHCA, seeking "all documents relating to any internal communications or communications between" the subpoenaed entities and the FTC regarding the proposed acquisition at issue in this proceeding, and as to the requested deposition subpoena to Mr. Pitrolo of WVHCA, the motions meet the requirements of Rule 3.36 and are therefore GRANTED.

III.

For the reasons set forth above, Cabell's Motions for the issuance of subpoenas under Rule 3.36 are DENIED with respect to Specification One of both requested document subpoenas. The Motions are otherwise GRANTED.

Pursuant to Rule 3.34, in the event that Marshall, WVHCA, or Mr. Pitrolo seek to limit or quash the subpoenas, they shall have the earlier of ten days after service of the subpoena or the

time for compliance therewith to file any such motion. 16 C.F.R. § 3.34(c). In addition, pursuant to Rule 3.36(c), Cabell may forward to the Secretary a request for the authorized subpoenas, with a copy of this authorizing order attached. Cabell shall serve a copy of this order on Marshall, WVHCA, and Mr. Pitrolo at the time it serves the subpoenas. 16 C.F.R. § 3.36(c).

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: January 6, 2016

Notice of Electronic Service

I hereby certify that on January 06, 2016, I filed an electronic copy of the foregoing Order on Unopposed Motions of Respondent Cabell Huntington Hospital for Issuance of Subpoenas, with:

D. Michael Chappell
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I hereby certify that on January 06, 2016, I served via E-Service an electronic copy of the foregoing Order on Unopposed Motions of Respondent Cabell Huntington Hospital for Issuance of Subpoenas, upon:

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