

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 13, 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' For-Profit Legal Status ("Motion") at the April 21, 2009 hearing on jurisdiction in this matter ("Jurisdictional Hearing"). On April 15, 2009, an order was issued directing that Respondents submit their response, if any, on an expedited basis, no later than 5:00 p.m. on April 16, 2009. Respondents submitted an Opposition to the Motion ("Opposition") on April 15, 2009.

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 two documents obtained from the Corporations Division of the State of Rhode Island Office of the Secretary of State (hereinafter, "Rhode Island Corporations Division"). The documents, copies of which are attached to the Motion, indicate that they were obtained on-line from the Rhode Island Corporations Division on April 9, 2009. Pursuant to the Scheduling Order in this case, Complaint Counsel's final exhibit list was provided to Respondents on February 24, 2009.

According to Complaint Counsel, the documents are evidence of the prior for-profit legal status of two corporations operated by Respondent James Feijo, including Daniel Chapter One, Inc., from 1990 to 1998, and World Sports Nutrition, Inc., from 1991 to 1998, both of which were incorporated as "Domestic Profit Corporations," with

James Feijo as President and with the same address as Respondents' current address. Complaint Counsel argues that the documents are relevant to counter Respondents' claim in their prehearing memorandum on jurisdiction that Daniel Chapter One has operated as a non-profit religious entity since 1983. Complaint Counsel further argues that the documents should have been, but were not, produced in response to Request No. 12 of Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things, which requested:

All documents relating to Respondents' response to Interrogatory Number 26 in Complaint Counsel's First Set of Interrogatories that "[r]eceipts of Daniel Chapter One are considered donations to a religious organization," including any documents to or from any local, state, or federal taxing authority or licensing agency. . . .

Complaint Counsel contends that Respondents will not be prejudiced by the addition of the documents because the documents are, or should be, in Respondents' custody or control, and should have been produced in discovery. Moreover, Complaint Counsel asserts, the documents contain information provided by Respondents, and are a matter of public record.

Respondents contend that Daniel Chapter One's prior organizational structure is irrelevant to its current financial status. Respondents "restate" their statement in their prehearing memorandum on jurisdiction, to assert that "Daniel Chapter One *is* a non profit religious organization" and that it operated as an "unincorporated religious association *beginning* in 1983." Opposition, p. 2 (emphasis added).

Respondents further contend that the proposed documents are only a partial record, and that the entire record from the Rhode Island Corporations Division shows that there were revocation notices issued in 1994, 1997 and 1998, with a revocation certificate issued on November 1, 1998, and that only one annual report was filed, in 1997. Respondents assert that Daniel Chapter One, Inc. had no board of directors or other indicia of a corporation. Respondents further assert that: James Feijo was overseas and/or ill during the period Daniel Chapter One was incorporated in Rhode Island; another individual was running Daniel Chapter One; the incorporation was undertaken on advice that it was the only way Daniel Chapter One could lawfully operate; and that Feijo does not believe he authorized the filing of the annual report.

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. . .”).

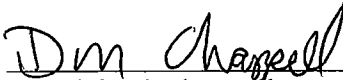
Complaint Counsel has demonstrated good cause to allow its final exhibit list to be modified to add the Rhode Island Corporation Division documents. Respondents have placed jurisdiction in issue by asserting non-profit status as a challenge to the exercise of jurisdiction in this case. As part of this challenge, Respondents contend that Daniel Chapter One has operated as an unincorporated religious organization since 1983, including during the period 1990 to 1998, although Respondents acknowledge that they filed “corporation papers in Rhode Island.” Respondents’ Prehearing Memorandum on Jurisdiction (Corrected), p. 1 n.1. In addition, Respondents are not prejudiced by allowing Complaint Counsel to designate additional exhibits because, even if the documents were not currently in Respondents’ possession, they reflect information that is within Respondents’ knowledge. Respondents’ opposition to the modification of Complaint Counsel’s final exhibit list goes to the admissibility of the documents, and not to whether Complaint Counsel has demonstrated good cause for modifying its final exhibit list.

Nothing herein shall be construed as a preliminary ruling on the 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 to the Court on the Issue of Respondents’ For-Profit Legal Status is hereby GRANTED.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: April 20, 2009