

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

R. SANDERS HICKEY, JAMES E. HICKEY,)
T. L. DAWSON, TRACY S. ANDERSON,)
DOUGLAS A. FREELEY, THOMAS A.)
McKINNON, KAY W. McKINNON,)
CHARLES F. JONES, and PETER V. PLATT,)

Plaintiffs,)

v.)

CHARLES J. COTTONE, and)
OCCIDENTAL TRADING, LTD.,)

Defendants.)

Civil Action No. 99-0125

**ORDER GRANTING
PLAINTIFFS' MOTION TO
COMPEL DISCOVERY AND
DENYING PLAINTIFFS'
MOTION FOR INTERIM
ORDERS**

I. PROCEDURAL BACKGROUND

This matter came before the court on December 1, 1999, in Courtroom 223 at 9:00 a.m. on Plaintiffs' motion to compel discovery and motion for interim orders pending dissolution. Richard W. Pierce, Esq. appeared on behalf of the Plaintiffs. Eric S. Smith, Esq. appeared on behalf of Defendant Charles J. Cottone. The court, having heard the arguments of counsel and being fully informed of the premises, now renders its decision.

II. FACTS

On October 29, 1995, the Registrar of Corporations for the Commonwealth of the Northern Mariana Islands issued a "Notice of Administrative Dissolution" dissolving Occidental Trading, Ltd. (Occidental Trading) for failure to file an annual corporate report. *See* Plaintiffs' Complaint, Exhibit B.

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[p. 2] On January 28, 1999, the Registrar of Corporations issued a “Certificate of Reinstatement” rescinding the dissolution and reinstating Occidental Trading as a corporation. *See* Declaration of Richard W. Pierce, Certificate of Reinstatement.

On February 10, 1999, Assistant Attorney General Elliott A. Sattler, Esq. wrote a letter addressed to Charles J. Cottone, President of Occidental Trading, stating that the “Certificate of Reinstatement” was issued in error. *See* Declaration of Richard W. Pierce, Letter of Elliott A. Sattler, Esq. The letter purported to “rescind” the reinstatement “[b]ecause the issuance of the ‘Certificate of Reinstatement’ . . . is beyond the legal authority of the Registrar of Corporations [the] document . . . is of no legal consequence.” *Id.*

On March 1, 1999, Plaintiffs filed a complaint seeking a judicial declaration confirming the February 10, 1999, “rescission” of the “Notice of Reinstatement.”

On August 2, 1999, Plaintiffs filed a motion to compel discovery and a motion for interim orders. Plaintiffs seek appointment of a custodian of the assets, books, and records of Occidental Trading to initiate the “winding down” process required after a corporate dissolution.

III. ISSUE

1. Whether the court should grant Plaintiffs’ motion to compel discovery pursuant to Com. R. Civ. P. 37 and thereby order that Defendant submit to a deposition and produce discovery materials relating to the management and assets of Occidental Trading, Ltd.

2. Whether there has been an effective dissolution of Occidental Trading, Ltd. that warrants granting Plaintiffs’ motion for an interim order appointing a custodian with directions to wind down the affairs of the corporation, publish a notice to creditors, handle the corporation’s affairs and assets in the dissolution, and report to the court on his actions

IV. ANALYSIS

A. Motion to Compel Discovery.

Pursuant to Com. R. Civ. P. 37 “[a] party upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery” Com. R. Civ. P. 37. Here, Plaintiffs request that the court order that Defendant Cottone submit to a deposition and provide documents accounting for certain expenditures made as President of Occidental Trading. Defendant Cottone, through counsel, indicated no opposition to the request. As such, Plaintiffs’ motion to compel discovery is **GRANTED**. Defendant Cottone shall submit to a deposition within 90 days and shall provide documents accounting for expenditures made as President of Occidental Trading, subject to the applicable rules of discovery.

Plaintiffs’ counsel also requested an entry of default and sanctions against Defendant Cottone’s for an alleged failure to respond to earlier discovery requests. The court finds, however, that Defendant Cottone has voluntarily agreed to provide the requested discovery materials. Therefore, Plaintiff’s request for an entry of default and for sanctions is **DENIED**.

B. Motion for Interim Orders.

Plaintiffs request that the court issue the following order: (1) Occidental Trading is dissolved; (2) Sanders J. Hickey is appointed custodian of Occidental Trading, with directions to wind down the affairs of the corporation, publish a notice to creditors, handle Occidental’s affairs and assets in the dissolution, and report to the court on his actions; and (3) Sanders J. Hickey is to serve without bond and to have sole authority to act for Occidental Trading in its affairs.

Defendant Cottone, however, contends that such an order is inappropriate and premature because there has been no determination as to whether Occidental Trading has in fact been effectively dissolved. Defendant Cottone contends that the February 10, 1999, letter from Assistant Attorney General Elliott A. Sattler, Esq. purporting to “rescind” the January 28, 1999, reinstatement was of no legal consequence and did not change the fact that Occidental Trading had indeed been reinstated as a corporation.

[p. 4] Plaintiffs respond by arguing that Defendant Cottone can not contest the validity of the letter because Defendant Cottone failed to appeal the letter's purported "rescission" of the reinstatement within 30 days as required by 4 CMC § 4614.

4 CMC § 4614 states, in pertinent part, that "[a] corporation may appeal the denial of reinstatement to the Commonwealth Superior Court within 30 days after service of the notice of denial is perfected." 4 CMC § 4614. Here, however, the Registrar of Corporations never "denied" Defendant Cottone's application for reinstatement. Rather, the purported "rescission" or "denial" of the reinstatement was only accomplished through a letter by Assistant Attorney General Elliott A. Sattler, Esq. As such, Defendant Cottone's failure to appeal within 30 days is not at issue because there was never an effective "denial" of reinstatement as contemplated by 4 CMC § 4614.

Moreover, even if the court were to find that the February 10, 1999, letter was an effective "rescission" of the reinstatement, Plaintiffs never perfected "service of the denial of reinstatement" as required by 4 CMC § 4614. The only service given was that a letter was sent to Defendant Cottone informing him of the Registrar of Corporations' purported error and offering to refund expenses incurred in applying for reinstatement. Furthermore, Assistant Attorney General Elliott A. Sattler, Esq. does not have the authority to rescind an action taken by the Registrar of Corporations as "[a]n agency position is not final if it is only the ruling of a subordinate official." *Sabella v. United States*, 864 F.Supp. 1, 3 (D.D.C. 1994), citing *Franklin v. Massachusetts*, 505 U.S. 788, 797, 112 S.Ct. 2767, 2773, 120 L.Ed.2d 636 (1992); see also *Student Loan Mktg. Ass'n v. Riley*, 907 F.Supp 464 (D.D.C. 1995), cert. denied 522 U.S. 913, 118 S.Ct. 295, 139 L.Ed.2d 227 (1997) (stating that there is impressive authority for the assertion that opinions of subordinate, legal personnel within an agency are not reviewable final agency actions). Therefore, Defendant Cottone's failure to appeal the "rescission" within 30 days does not preclude Defendant Cottone from challenging the validity or effect of such "rescission" at the present time.

For the foregoing reasons, the court finds that the issue of whether Occidental Trading has been effectively dissolved has not been resolved. As such, the parties are ordered to

maintain the *status quo* until the Registrar of Corporations determines whether the “Notice of Reinstatement” of [p. 5] Occidental Trading was made in error. Therefore, Plaintiffs’ motion for interim orders is **DENIED** and R. Sanders Hickey shall remain the custodian until such time as the Corporate Registrar makes an official determination as to Occidental’s status as a corporation.

V. CONCLUSION

For the foregoing reasons, Plaintiffs’ motion to compel discovery is **GRANTED**. Defendant Cottone shall submit to a deposition within 90 days and shall provide documents accounting for certain expenditures made as President of Occidental Trading, subject to the applicable rules of discovery. The court finds, however, that Defendant voluntarily agreed to provide the requested discovery materials. Therefore, Plaintiffs’ request for an entry of default and for sanctions is **DENIED**.

For the foregoing reasons, Plaintiffs’ motion for interim orders is **DENIED** and the Registrar of Corporations is hereby ordered to reconsider the reinstatement of Occidental Trading. R. Sanders Hickey shall remain as custodian of Occidental Trading, and shall continue to have the sole authority to act for Occidental Trading in its affairs.

In addition, to expedite the “winding down process” in the event the Registrar of Corporations finds that Occidental Trading is in fact dissolved, each party shall submit the name of a person or corporation capable of completing the “winding down process” to this court within 30 days of the Corporate Registrar’s determination.

So ORDERED this 20 day of January, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge