UNITED STATES DISTRICT COURT
FOR THE WESTERN DIVISION OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	**Civil Action No.**
	)	
v.	)	
	)	
LIGHTHOUSE DIVING CENTER, INC.	)	
	)	
Respondent.	)	

MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND

INTRODUCTION

The United States has filed a petition to enforce a Civil Investigative Demand (CID) issued by the Antitrust Division of the United States Department of Justice to Lighthouse Diving Center, Inc. ("Lighthouse Diving"), the operator of four retail stores engaged in the sale of scuba diving equipment. The CID seeks information related to an antitrust investigation of alleged collective and anticompetitive conduct with respect to the sale of scuba diving equipment, including an alleged group boycott against persons that sell scuba diving equipment through the mail.

Respondent, Lighthouse Diving, has failed to fully comply with a CID served on it. Petitioner has granted respondent at least one extension to respond to the CID, has offered to review and copy the requested material at Respondent's premises, and has been exceedingly patient in seeking the material requested by the

CID. Respondent, despite all of the foregoing, has failed to fully comply with the CID.

Thus, the United States seeks enforcement of the CID and requests that it recover its costs in bringing this enforcement proceeding.

BACKGROUND

The United States is and has been conducting an investigation with respect to the sale of scuba diving equipment. Specifically, Petitioner is investigating allegations that a horizontal group boycott has been organized against companies that sell scuba diving equipment and gear through the mail. Petitioner is investigating whether trade associations consisting of retail dive stores have pressured those in the industry to refuse to deal with persons who sell scuba diving equipment at discount prices to consumers through the mail.

One of the persons being investigated is the Scuba Retailers Association ("SRA"), a national trade association based in Florida, whose members consist of the owners and operators of retail dive stores. Civil investigative demands have been issued to the SRA and a number of its members including the Respondent. The Respondent, Lighthouse Diving, is a charter member of the SRA. The owner and president of Respondent, Harry Truitt, is a founding member of the SRA, has served on the board of directors of the SRA from its inception, and has been chairman of the communications committee and de facto editor of the SRA's quarterly periodical, Scuba Retailer, which is distributed not

only to the SRA's members and associate members, but to all dive stores located throughout the United States.

While Respondent did provide some interrogatory answers and documentary material in response to the CID, it has failed to provide all responsive documentary material in its possession and control. Respondent also has failed to return the Certificate of Compliance averring that it has produced all responsive documentary information in its possession and control.

The Petitioner seeks enforcement of CID No. 11252 served on Respondent.

ARGUMENT

A PRESUMPTION OF REGULARITY ATTACHES TO THE ISSUANCE OF A CIVIL INVESTIGATIVE DEMAND AND THE COURT SHOULD ENFORCE THE CID

The law is well-established that a presumption of regularity applies to the issuance of civil investigative demands. Lightning Rod Mfrs. Assn. v. Staal, 339 F.2d. 346, 347 (7th Cir. 1964); Hyster Co. v. United States, 338 F.2d. 183, 187 (9th Cir. 1964); American Pharm. Assn. v. United States Department of Justice, 344 F.Supp. 9, 12 (E.D. Mich. 1971), aff'd, 467 F.2d 1290 (6th Cir. 1972). Courts have routinely enforced civil investigative demands in the face of claims that they sought information in the public record or in the possession of another government agency, that the requests were overbroad and onerous, or that the requests were overbroad and immaterial. See, e.g., Finnell v. United States Department of Justice, 535 F.Supp. 410 (

D. Kan. 1982); Phoenix Bd. of Realtors v. United States Department of Justice, 521 F.Supp. 828 (D. Az. 1981); Petition of Columbia Broadcasting System, 235 F.Supp. 684 (S.D.N.Y. 1964).

In the instant matter, Respondent has not objected to the CID or sought to have it quashed or altered. Rather, it simply has failed to provide all documentary material and information in its possession required by the CID. Petitioner has tried to accommodate Respondent, but to no avail. It has granted Respondent at least one extension, it has offered to review the requested material at Respondent's premises, and it has been more than generous in allowing Respondent the opportunity to respond.

Petitioner realizes and appreciates that Respondent does not have the resources of a multinational corporation but that does not excuse its failure to comply with compulsory process after numerous promises that it would do so. Respondent has had more than enough time to provide the material requested. It has failed to do so, even though Harry Truitt, the president of Respondent, has acknowledged that it possesses minutes of board meetings and teleconferences of the SRA, documents and information provided to board members of the SRA, and documents relating to the communications committee and the creation and publication of the Scuba Retailer, the "voice" of the SRA, all of which are responsive to the CID. Finally, Respondent has failed to provide the Certificate of Compliance required of all CID recipients.

CONCLUSION

The United States is entitled to the documents and interrogatory answers sought by CID No. 11252 to further its investigation of possible antitrust violations. Respondent has chosen to ignore the CID served on it. It has not and cannot overcome the presumption of regularity that attaches to a CID. The CID should be enforced.

Wherefore, the United States requests that the instant petition be granted.

Respectfully submitted,

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