



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Taotao USA, Inc.,) **Docket No. CAA-HQ-2015-8065**
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry)
Co., Ltd.)
)
Respondents.)

ORDER ON MOTION TO QUASH SUBPOENA

On September 22, 2017, Respondents requested to subpoena one of their proposed witnesses, Margaret Goldstein, to appear at the hearing in this matter. *See* Respondents’ Motion for Issuance of Subpoenas. As grounds for their request, Respondents stated that an individual at Ms. Goldstein’s firm, Harrison Wolf Consulting, “informed Respondents’ counsel that Margaret Goldstein and/or any other employee of Harrison Wolf will not testify at the hearing unless a subpoena is issued.” *See* Respondents’ Motion for Issuance of Subpoenas at 2. The hearing is scheduled to begin the morning of October 17, 2017, in Washington, D.C.

Based on Respondents’ representation, and the Agency’s statement that it did not object to their motion, this Tribunal on September 26, 2017, issued a subpoena to Respondents’ counsel for service on Ms. Goldstein. The subpoena expressly directed Respondents’ counsel that, in accordance with federal law, Respondents must pay Ms. Goldstein “[w]itness fees and expenses in the same amounts as are paid to witnesses in the courts of the United States.” *See* Subpoena at 1 n.1 (Sept. 26, 2017).

On October 11, 2017, Ms. Goldstein contacted the staff of the Office of Administrative Law Judges (“OALJ”) by telephone and stated she did not intend to appear at the hearing.¹ On October 13, 2017, Ms. Goldstein filed a motion to quash the subpoena (“Motion”). In her Motion, Ms. Goldstein states that she did not receive the subpoena until it was delivered by postal carrier to her Orange County, California office late in the day on October 10, 2017. Mot. at 1. The subpoena was not accompanied by any “information regarding travel arrangements or payment for witness fees, airfare, accommodations, per diem, etc.” Mot. at 1. “Arranging for a trip of this duration on such short notice presents an extreme hardship to me personally, given my responsibilities at work and to family,” Ms. Goldstein asserts. Mot. at 1. Further, Ms. Goldstein states she is not aware of any information she possesses that is material or relevant to Respondents’ claims, and “[t]he detriment to me and my family from a last minute effort to

¹ This telephone call was previously summarized in the Corrected Notice of Ex Parte Contact issued October 12, 2017.

attend the hearing far outweighs any imagined benefit to the respondents of any testimony I might be able to offer.” Mot. at 1-2.

Respondents filed a Response to Motion to Quash Subpoena (“Response”) on October 16, 2017. Counsel for Respondents argue that they called or emailed individuals at Harrison Wolf on September 8, 12, and 19, 2017, in search of additional information about services the firm provided Taotao USA, Inc., and stated then that Taotao needed Ms. Goldstein to testify at the hearing. Response at 1-2 & Attach. A. Counsel asserts that on September 21, 2017, Ryan Tovatt of Harrison Wolf called and “made it clear during the telephone conversation that Harrison Wolf did not intend on providing any assistance in this matter . . . and that Taotao USA would need to get a subpoena issued if they wanted Harrison Wolf or Margaret Goldstein to provide any assistance.” Response at 2. On September 27, 2017, Respondents’ counsel emailed Mr. Tovatt, and copied Ms. Goldstein, a broad request for documents related to Harrison Wolf’s work for Taotao USA. Response at 2 & Attach. A. Aside from eventually serving the subpoena, it appears counsel did not again reach out to Ms. Goldstein until October 13, 2017, after learning she had contacted OALJ. Response at 2 & Attach. A.

The rules governing this proceeding at 40 C.F.R. Part 22 do not specifically address motions to quash a subpoena. However, the Federal Rules of Civil Procedure offer guidance. Specifically, Rule 45(d)(3) provides that a subpoena must be quashed if it “fails to allow a reasonable time to comply” or “subjects a person to undue burden.” Fed. R. Civ. P. § 45(d)(3)(A)(i), (iii). In this case, the subpoena does both of these things. By waiting until a few days before the hearing to serve Ms. Goldstein with a subpoena that Respondents’ counsel had possessed for the two weeks prior, they did not allow their witness reasonable time to comply. Neither Ms. Goldstein nor Harrison Wolf had any obligation to voluntarily provide Respondents with documents or testimony. Further, Respondents counsel would subject Ms. Goldstein to undue burden by forcing her to leave her family and travel against her wishes across the country on short notice. Simply mentioning in a September 19 email that a hearing had been scheduled to begin in October is insufficient, and counsel’s October 13 email request that Ms. Goldstein contact them, several weeks after the subpoena was filed, is too little too late.

Moreover, Respondents ignored this Tribunal’s directive, as well as federal law, that they must pay Ms. Goldstein for her appearance. See 40 C.F.R. § 22.19(e)(4) (“Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears.”); 42 U.S.C. § 7607(a) (“Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.”)² “[I]t is clear beyond all question that the failure to tender the witness fee is legitimate grounds for the witness to refuse to appear.” *Martin v. Howard Univ.*, 209 F.R.D. 20, 20, 2002 U.S. Dist. LEXIS 15813 (D.D.C. 2002) (citing *Smith v. Midland Brake, Inc.*, 162 F.R.D. 683, 686 (D. Kan. 1995)). In this case, Ms. Goldstein has received no fee, and Respondents have not committed to making any payments. This fully justifies her request that the subpoena be quashed.

² See also 28 U.S.C. § 1821(b)-(d) (providing that witnesses in federal court shall be paid an attendance fee of \$40 per day; the actual expense of travel by common carrier or a mileage allowance for travel in private vehicle; parking fees; taxi fare between lodging and carrier terminals; and a subsistence per diem allowance).

For the foregoing reasons, Ms. Goldstein's Motion to Quash Subpoena is **GRANTED**. She is not obligated to attend the hearing in this matter.

SO ORDERED.



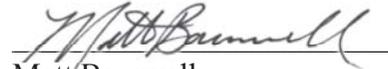
Susan L. Biro
Chief Administrative Law Judge

Dated: October 16, 2017
Washington, D.C.

In the Matter of *Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.*, Respondents. Docket No. CAA-HQ-2015-8065

CERTIFICATE OF SERVICE

I certify the foregoing **Order on Motion to Quash Subpoena**, dated October 16, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


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Attorney Advisor

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Dated: October 16, 2017
Washington, D.C.