

records and scheduled a hearing for May 10, 2004. On April 28, 2004, the respondents subpoenaed EBSA Investigator Bindu George to appear and testify at the hearing to show cause and to produce documents relating to EBSA's investigation of the respondents.

The first question before the Court is whether the respondents must comply with the subpoenas. The respondents object to the subpoenas on the grounds that they are not generally enforceable and on the grounds that they request privileged information. The Court will address the general challenge to the subpoenas in this Order, not the specific objections related to privilege.¹ The second question before the Court is whether the subpoena requiring Investigator George to produce documents relating to the investigation of the respondents should be quashed.

The requirements for the enforcement of an administrative subpoena duces tecum are as follows: "(1) the inquiry must be within the authority of the agency, (2) the demand for production must not be too indefinite, and (3) the information sought must be reasonably relevant to the authorized inquiry." U.S. v. Westinghouse Electric Corp., 638 F.3d 570, 574 (3d Cir. 1980).

The above standards for enforcing subpoenas have been

¹ The Court will address the issues related to privilege in a later Order if the parties are unable to resolve these issues themselves.

met in the instant matter. First, the inquiry is within the authority of the DOL. Section 504 of ERISA gives the Secretary of Labor broad authority to conduct investigations to determine whether any person has violated or is about to violate Title I of ERISA. 29 U.S.C. § 1134. Investigator Bindu A. George states in her declaration that the investigation was initiated to determine if any person has or is about to violate Title I of ERISA.

George Decl. ¶ 2. Second, the request for production is definite. The documents, and the date and location that the documents were to be produced, are stated in the subpoenas. Finally, the documents are relevant to EBSA's investigation. The subpoenas requested documents pertaining to the establishment, contractual relationships, operation and finances of the Regional Employers' Assurance Leagues Voluntary Employees' Beneficiary Association Health and Welfare Benefit Plan and the Voluntary Employees' Beneficiary Association Trusts. George Decl. ¶ 3, 9.

The respondents argue that the plans involved are not covered by ERISA. In a subpoena enforcement action, however, an administrative agency is not required to demonstrate that the matter or entity it seeks to investigate "is covered by the enabling statute since the '(authority) to investigate the existence of violations . . . include(s) the authority to investigate coverage.'" Donovan v. Shaw, 668 F.3d 985, 989 (8th

Cir. 1982) (citations omitted).²

The petitioner has made a prima facie showing of the statutory authority, legitimate purpose, and relevance. The burden shifts to the respondents to provide compelling reasons why the subpoena should not be enforced. Marshall v. Amalgamated Ins. Agency Services, Inc., 523 F. Supp. 231, 233 (N.D. Ill. 1981). See also United States v. Powell, 379 U.S. 48, 57-58 (1964). In a subpoena enforcement matter, a hearing on the merits of an investigation is not proper unless the respondents convince the Court that the agency is acting in bad faith or for an improper purpose. See United States v. Aero Mayflower Transit Co., 831 F.3d 1142, 1145-47.

The respondents have argued that the agency is acting in bad faith and for an improper purpose because the investigation is being driven by Sidney Charles Markets, Inc. ("SCM"), the respondents' adversary in ongoing litigation. The only evidence proffered by the respondents in support of this allegation is that SCM's counsel told respondents' counsel that he would "use the DOL" to get funds for his client. SCM's

² The respondents argue that two federal courts have reviewed the relevant records in this case and have determined that the plans and trusts involved are not employer controlled. The Court finds that the DOL is not estopped from challenging that conclusion, both because the DOL was not a party in the previous cases and because the courts in those cases were deciding motions to dismiss. See Schroeder v. Acceleration Life Ins. Co. of Pennsylvania, 972 F.2d 41, 45 (3d Cir. 1992).

motivation is not relevant to the propriety of the DOL's investigation. Even assuming that the investigation was prompted by a complaint by SCM, that fact does not rise to the level of bad faith or improper purpose by the agency. See Securities and Exchange Commission v. Wheeling-Pittsburgh Steel Corp., 648 F.2d 118, 127 (3d Cir. 1981). The Court, therefore, will quash the subpoena for the testimony and documents of Investigator Bindu George.

For the above reasons, the Court finds that the subpoenas are generally enforceable. The respondents argue that some of the requested information is protected by the attorney-client privilege or is privileged private and/or sensitive health information. The Court will not resolve these issues until the parties have had a chance to negotiate the respondents' specific objections.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELAINE L. CHAO, SECRETARY OF :
LABOR, UNITED STATES DEPARTMENT :
OF LABOR :
 Petitioner :
 v. :
 : :
JOHN KORESKO, et al. : :
 Respondents : No. 04-MC-74

ORDER

AND NOW, this 11th day of May, 2004, following a hearing in the above captioned case on May 10, 2004, and upon consideration of the Petition to Enforce Administrative Subpoenas (Docket No. 1), the responses thereto, the Petitioner's Motion to Quash Subpoena and Motion in Limine (Docket No. 6), and the response thereto, IT IS HEREBY ORDERED that the Petition to Enforce Administrative Subpoenas is GRANTED in part and HELD IN ABEYANCE in part; and the Petitioner's Motion to Quash Subpoena and Motion in Limine is GRANTED for the reasons given in a memorandum of today's date. IT IS FURTHER ORDERED that the parties shall attempt to resolve the specific objections to the subpoenas by June 1, 2004. If they cannot resolve the dispute, they may present the dispute to the Court, and the Court will resolve the matter.

BY THE COURT:

MARY A. MCLAUGHLIN, J.