

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION :

v. : Civil Action No. DKC 99-2985

GLEN W. SMITH & ASSOCIATES, :
INC. and ENVIRONMENTAL :
PRESERVATION ASSOCIATES, INC. :

MEMORANDUM OPINION

This case is before the court on objections to the Report and Recommendation of Magistrate Judge Schulze. The issues are fully briefed, the undersigned has made a *de novo* review of the portions of the record relevant to the objections, and, for the reasons that follow, the objections will be overruled and the recommendation of the magistrate judge adopted.

After a judgment was entered in favor of EEOC and against Glenn W. Smith & Associates, Inc., plaintiff moved to join Environmental Preservation Associates, Inc. (EPAI) as a defendant, as a successor. The motion was served on EPAI by personally serving Ms. Wendy Bumbernick, Resident Agent and President of EPAI. Paper no. 21. No opposition was received and the Magistrate Judge granted the requested joinder. Thereafter EPAI moved to alter or amend the judgment, and EEOC filed a response. Magistrate Judge Schulze has now issued a Report and Recommendation, recommending denial of the motion to alter or amend.

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Fed. R. Civ. P. 25 (c) permits the substitution or joinder of a party to which interest has been transferred upon "service of the motion" as provided by Rule 25 (a). That rule, in turn, provides for service of a motion under Rule 5 on existing parties, and "upon persons not parties in the manner provided in Rule 4 for service of a summons." Fed. R. Civ. P. 25 (a)(1). Based on that language, EPAI claims that it was entitled to service of the complaint and a summons, not just the motion for joinder, in the manner provided in Rule 4.

The plain language of Rule 25 (a)(1), however, refutes that argument. Only the motion to join (and any hearing notice) must be served on the party to be joined. Accord, 7C CHARLES ALAN WRIGHT, ARTHUR R. MILLER, AND MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE, § 1956 at 550-551 (2d ed. 1986). EPAI does not dispute that it received the motion through personal service on its president and resident agent. That is all the rule and due process require. EPAI could have responded to the motion. Accordingly, the objection to the report and recommendation of Magistrate Judge Schulze is overruled and, by separate order, her proposed ruling will be adopted.


DEBORAH K. CHASANOW
United States District Judge