

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3678 / September 24, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30697 / September 24, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of

Timbervest, LLC,

Joel Barth Shapiro,
Walter William Anthony Boden, III,
Donald David Zell, Jr.,
and Gordon Jones II,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Timbervest, LLC, pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and against Joel Barth Shapiro, Walter William Anthony Boden, III, Donald David Zell, Jr., and Gordon Jones II (collectively, the “Principals”), pursuant to Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Timbervest, LLC (“Timbervest”) is a Georgia limited liability company with its principal place of business in Atlanta, Georgia. Timbervest was established in 1995 and currently manages approximately \$1.2 billion in timber-related investments. Timbervest has been registered as an investment adviser with the Commission since October 5, 1995.

2. Joel Barth Shapiro (“Shapiro”), age 50, is a resident of Atlanta, Georgia. Shapiro is the Chief Executive Officer of Timbervest and a Managing Partner.

3. Walter William Anthony Boden, III (“Boden”), age 52, is a resident of Atlanta, Georgia. Boden is the Chief Investment Officer of Timbervest and a Managing Partner.

4. Donald David Zell, Jr. (“Zell”), age 53, is a resident of Atlanta, Georgia. Zell is the Chief Operating Officer of Timbervest and a Managing Partner.

5. Gordon Jones II (“Jones”), age 43, is a resident of Atlanta, Georgia. Jones is the President of Timbervest and a Managing Partner. He also served as Chief Compliance Officer from approximately January 2005 until August 2012. Jones is an attorney and a member of the bar in the state of Georgia.

B. TIMBERVEST ENGAGES IN THE UNAUTHORIZED SALE OF ASSETS TO AN AFFILIATED FUND

6. From approximately 1995 until 2012, Timbervest served as an investment adviser to its largest client (the “Client”). Timbervest also served, separately, as an investment adviser to a single-client investment fund (“Fund #1”) holding the private pension plan assets of the Client.

7. The assets held by Fund #1 were governed by the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”). Among other things, ERISA prohibited Timbervest from selling properties to other funds that it managed.

8. The operating agreement establishing Fund #1 – and signed by Timbervest – also prohibited Timbervest from engaging in any affiliated transactions without the prior written approval of the Client.

9. In or around 2005, the Client ordered Timbervest to reduce the size of Fund #1’s portfolio by selling substantial amounts of timberland property. In order to circumvent the ERISA restrictions and satisfy the Client’s disposition requirements, Timbervest and its Principals orchestrated the sale of a property from Fund #1 to another timberland fund managed by Timbervest (“Fund #2”) by “parking” the property with a third party.

10. On or around September 15, 2006, Timbervest agreed to sell a timberland property located in Alabama (the “Alabama property”) for \$13.45 million to a third-party real estate company (the “Real Estate Company”). The deal closed on October 17, 2006. Boden,

Timbervest's Chief Investment Officer and a Managing Partner, negotiated the deal directly with the principal of the Real Estate Company, and the sale was specifically reviewed and approved by each of the Principals.

11. At the time of the initial sale of the Alabama property, Boden told the principal of the Real Estate Company that Timbervest would repurchase the Alabama property for another Timbervest-managed fund at a profit to the Real Estate Company. Before the deal closed on October 17, 2006, Boden had agreed to a repurchase price of \$14.5 million.

12. Just six weeks after the closing of the sale, on November 30, 2006, Boden sent the Real Estate Company principal a draft sales contract offering to repurchase the same property on behalf of Fund #2, another Timbervest-managed fund, for \$14.5 million.

13. On December 15, 2006, the two parties entered an agreement to sell the Alabama property to Fund #2 for \$14.5 million, and the deal closed on February 1, 2007. Once again, each of the Timbervest Principals reviewed and approved the deal.

14. Neither Timbervest nor its Principals sought approval for, or otherwise disclosed the affiliated nature of the Alabama property sale and the "parking" arrangement with the Real Estate Company, to either Fund #1 or to Fund #2.

15. By structuring the sale of the Alabama property to another Timbervest-managed fund through the use of a middleman, Timbervest concealed the unauthorized nature of the transaction, while imposing an undisclosed \$1.05 million parking fee on a deal between Fund #1 and Fund #2. The unauthorized sale of the Alabama property therefore constituted a prohibited use of the assets of both funds.

C. BODEN COLLECTS UNAUTHORIZED, UNDISCLOSED REAL ESTATE COMMISSIONS AND SPLITS THE COMMISSIONS WITH SHAPIRO, ZELL, AND JONES

16. In connection with the sale of the Alabama property in October 2006, and the later sale of a timberland property in Kentucky (the "Kentucky property") in April 2007, Boden collected a total of \$1,156,236 in real estate commissions paid to him out of Fund #1's pension plan assets.

17. The payments were remitted to two companies – Fairfax Realty Advisors, LLC ("Fairfax") and Westfield Realty Partners, LLC ("Westfield"), respectively. Both companies were beneficially owned by Boden and incorporated by his personal attorney.

18. Fairfax and Westfield were shell companies, having no offices, no assets, and no employees. The companies performed no services and were established for the sole purpose of receiving these commission payments.

19. Upon receipt of the commission payments, Boden allowed his attorney to keep approximately \$115,000. Boden then split the remaining proceeds equally with Shapiro, Jones, and Zell, who received approximately \$260,000 each.

20. Each of the Principals knew, prior to the closing of each transaction, that Boden was to be paid a commission in connection with the sale of Fund#1's assets. Each of the Principals also knew, at the time they received their share of the proceeds, that the funds were derived from the commission payments that Boden had received on these transactions.

21. The Principals did not disclose the commission payments to the Client. Moreover, because Timbervest and its Principals were fiduciaries of Fund #1, collection of these payments was prohibited by ERISA and proscribed by the operating agreement. The undisclosed commissions therefore constituted a further prohibited use of Fund #1's assets.

22. The payments to Boden were structured in a manner that concealed the identities of the recipients. For example, although Boden was the beneficial owner of both companies, his name does not appear on any of the public filings or organizational documents of the two companies. Also, Fairfax and Westfield did not list their addresses as that of Timbervest, or of any of Boden's other personally-owned companies. Instead, the companies listed addresses in their organizational documents that turned out to be post office boxes at private mail stores in separate parts of Atlanta, and the "suite numbers" noted in the business addresses actually corresponded to the assigned post office boxes. At the deal closings, the commission payments were released by the escrow agents directly to Fairfax and Westfield, care of Boden's personal attorney, who then deposited the proceeds into his own Interest on Lawyer Trust Account ("IOLTA"), not into an account owned by or affiliated with Boden or with Timbervest. Boden's attorney then transferred the funds to Boden not by writing him a check, but rather by writing a check payable to one of Boden's personal holding companies. Boden then drew cashier's checks for his partners, which were subsequently deposited into their own personal accounts.

D. VIOLATIONS

23. As a result of the conduct described above Timbervest willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for an investment adviser to employ any device, scheme or artifice to defraud clients or to engage in any transaction, practice or course of business that defrauds clients or prospective clients.

24. As a result of the conduct described above, Shapiro, Boden, Zell, and Jones willfully aided, abetted, or caused Timbervest's violations of Section 206(1) and 206(2) of the Advisers Act, which make it unlawful for an investment adviser to employ any device, scheme or artifice to defraud clients or to engage in any transaction, practice or course of business that defrauds clients or prospective clients.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent Timbervest pursuant to Section 203(e) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents Shapiro, Boden, Zell, and Jones pursuant to Section 203(f) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act; and

E. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1) and 206(2) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary