

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4526/January 13, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17342

In the Matter of :
:
RD LEGAL CAPITAL, LLC, and : ORDER
RONI DERSOVITZ :
:

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on July 14, 2016, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. The hearing is set to commence on March 20, 2017.

January 20, 2017, was set as the date by which depositions must be completed, “[t]o avoid ‘undermining the goal of providing a prompt and efficient administrative forum’ or ‘compromising the hearing schedule.’” *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4499, 2017 SEC LEXIS 11, at *4 (A.L.J. Jan. 4, 2017) (quoting Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. 50212, 50217 (July 29, 2016)).

Under consideration are: (1) Respondents’ January 12, 2017, request to reschedule two depositions to dates later than January 20, 2017; and (2) the January 12, 2017, motion of non-parties Alan Mantell and Arthur Sinensky to quash or modify subpoenas directed to them, issued on January 9, 2017, at Respondents’ request.

Depositions

Respondents request that the deposition of fact witness Steven Perles, originally noticed to proceed on December 9, 2016, take place on January 24, 2017. The subpoena for this deposition, noticed on November 28, 2016, was issued on November 30, 2016. Counsel for Perles advised Respondent that he and Perles were unable to proceed on December 9, Respondents re-noticed the deposition for January 20, and counsel for Perles advised that he has a conflict for the week of January 16-20 but that he and Perles are available on January 24. Respondents represent that the Division consents to the deposition of Perles on January 24. In light of the foregoing, the deposition of Perles may take place on January 24.

Respondents also seek to reschedule the deposition of Mantell to February 2, 2017. The Division does not consent to this date. The history of the scheduling of the Mantell deposition is as follows: Following Respondents’ noticing five fact witness depositions as of right, pursuant to 17

C.F.R. § 201.233 (Rule 233), Respondents moved for two additional depositions, including that of Mantell, pursuant to Rule 233(a)(3). Pursuant to Rule 233(a)(3)(i)(A), the deadline for such a motion is ninety days prior to the hearing date, and Respondents submitted their motion on December 20, 2017, exactly ninety days before the March 20, 2017, scheduled hearing date. The motion was granted on January 4, 2017. *RD Legal Capital, LLC*, 2017 SEC LEXIS 11. On January 6, 2017, Respondents issued a notice of deposition and requested a subpoena, scheduling the deposition for January 17, 2017, in New York City. Mantell's counsel advised Respondents that Mantell was in California until January 29, visiting an aged relative, and was not available until February 1 or thereafter. Mantell's counsel advises that Respondents made no effort to ascertain Mantell's availability prior to their application to depose him or even before sending him a notice of deposition. Thus, he requests that the subpoena and notice of deposition be quashed or, at least, modified to allow the deposition to take place in early February. The notice of deposition will be quashed. Under the circumstances, it would be unreasonable for Mantell to be deposed on January 17, and Respondents did not make a timely good faith effort to ascertain his availability and obtain leave to depose him. That is, their request for two additional depositions was submitted on the last possible date, and they did not attempt to ascertain his availability until after their request was granted.

Subpoenas

Since the deposition of Mantell will not take place, the subpoena requiring him to produce documents at the time of, and for, the deposition is moot, and will be quashed. The subpoena directed to Sinensky requesting the same categories of documents is unreasonable, oppressive, and unduly burdensome and will be modified. The subpoena, issued on January 9, 2017, and emailed to Sinensky's counsel the same day, required him to produce broad categories of documents at the time of, and for, his January 18, 2017, deposition.¹ Items 1-3 of 7 are documents related to communications with the Commission. As such, Respondents have, or could have, obtained the documents from the Division of Enforcement, and the subpoena is quashed as to these items. Sinensky does not have any documents responsive to Item 4, and his counsel has none that are not privileged. Item 7 requests Sinensky's "due diligence file on RD Legal and/or any other documents related to RD Legal." His "due diligence file on RD Legal" is described in a circumscribed manner so as to facilitate a search, and should be produced. The request for "any other documents related to RD Legal" is vague and open-ended, and as such, is unreasonable, oppressive, and unduly burdensome and will be quashed. Items 5 and 6 are overbroad may include documents subject to privileges, and will also be quashed.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

¹ The deposition will actually take place on January 17, as agreed by counsel for Respondents and Sinensky.