

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4622/February 23, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17342

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

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The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) 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 OIP alleges that Respondents violated the antifraud provisions of the Securities and Exchange Acts in connection with two funds that they operated. The hearing is set to commence on March 20, 2017.

Under consideration are: (1) Respondents' request for leave to file a motion for summary disposition and associated documents, dated February 15, 2017, and filed February 17, 2017; (2) the Division of Enforcement's opposition to the request, dated February 16, 2017; and Respondents' reply to the Division's opposition, also dated February 16, 2017.

*Inter alia*, the OIP alleges that Respondents unreasonably [over]valued the funds' assets, thereby enabling them to withdraw excess profits, in accordance with the funds' governing documents. The OIP authorizes various sanctions, including civil penalties. Respondents' motion for summary disposition, attached to their request, asks that the undersigned (1) enter judgment in their favor on any claims related to the valuation of the assets, and (2) strike any request for Tier III penalties.

The request will be denied as untimely. Leave to file a motion for summary disposition "shall be granted only for good cause shown and if consideration of the motion will not delay the scheduled start of the hearing." 17 C.F.R. § 201.250(c). Pursuant to 17 C.F.R. § 201.250(f)(2)(ii), any opposition must be filed within twenty-one days after service of a motion for summary disposition, and any reply, within seven days after service of any opposition. Thus, the pleading cycle would conclude approximately two business days before the March 20, 2017, scheduled start of the hearing,<sup>1</sup> such that consideration of the motion would necessarily "delay the scheduled start

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<sup>1</sup> The parties waived their right to receive service, pursuant to 17 C.F.R. § 201.150, of papers by parties; instead they agreed to serve each other and provide a courtesy copy to [alj@sec.gov](mailto:alj@sec.gov) by

of the hearing.” Respondents’ commitment to file their reply before the March 13, 2017, prehearing conference would still leave the undersigned insufficient time to consider Respondents’ voluminous motion, exhibits, and the parties’ responsive briefing and thereafter to render a decision without delaying the scheduled start of the hearing.

In support of the motion for summary disposition’s request for judgment regarding valuation of assets, Respondents attach several exhibits including expert reports of two expert witnesses. Respondents note that the Division has not identified any expert witness to testify about valuation,<sup>2</sup> and argue that, thus, their expert testimony is un rebutted and confirms that Respondents’ valuation process was sound. The Division, however, must be given a chance to *voir dire* and cross-examine Respondents’ experts at the hearing. *See RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4237, 2016 SEC LEXIS 3818, at \*2 n.2 (A.L.J. Oct. 7, 2016).

If the undersigned concludes that Respondents violated the antifraud provisions, consideration of whether civil penalties should be imposed, and if so, of what type and amount, can only take place after consideration of the entire record.

Respondents filed their February 17, 2017, filing under seal and request that it be treated as confidential pursuant to 17 C.F.R. § 200.83. Pursuant to 17 C.F.R. § 201.322, filings in Commission administrative proceeds are “presumed to be public,” and a protective order shall issue only “upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.” At least two of the exhibits accompanying the motion – the two expert reports – have already been filed publicly. Accordingly, Respondents shall have until March 2, 2017, to file a motion pursuant to 17 C.F.R. § 201.322 explaining why their summary disposition filing, or a portion thereof, should be subject to a protective order. In the interim, the filing will remain under seal.

IT IS SO ORDERED.

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

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email. *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4086, 2016 SEC LEXIS 2927 (A.L.J. Aug. 23, 2016). Respondents’ submissions were served by email sent on Wednesday, February 15, 2017, at 11:58 p.m.

<sup>2</sup> The deadline for expert disclosures required under 17 C.F.R. § 201.222(b) was January 27, 2017. *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4499, 2017 SEC LEXIS 11, at \*4 (A.L.J. Jan. 4, 2017).