

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4683/March 15, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC, and
RONI DERSOVITZ

ORDER FOLLOWING
PREHEARING CONFERENCE

On March 13, 2017, I held a telephonic prehearing conference in this matter at which the Division of Enforcement and counsel for Respondents appeared. For reasons discussed more fully during the conference, I ORDER the following:

- **Reliance Defense:** Respondents are permitted to present evidence at hearing to demonstrate that they relied on the advice of non-attorney professionals regarding the marketing and offering documents at issue in this proceeding. I defer ruling on the exclusion of such evidence based on Respondents' representation at the conference that they have not withheld from the Division any requested material regarding legal advice bearing on the same subject matter as the aforementioned non-attorney professional advice. However, to ensure that such subject-matter overlap does not exist and to avoid any possible prejudice to the Division, I will—following Respondents' presentation of evidence at hearing concerning non-attorney professional advice—conduct an in camera review of certain withheld documents, if the Division so requests. By March 16, 2017, Respondents should file a letter proposing how they intend to appropriately search and cull the population of withheld documents and thereafter provide a document-by-document privilege log to the Division from which the Division may select documents for in camera review. Documents listed on the log, at a minimum, should include representative documents from row no. 5 of Respondents' November 30, 2016, "categorical" privilege log—" [c]ommunications with counsel providing . . . legal advice regarding review of prospective or current investor materials." Div. Mar. 8, 2017, Mot. to Preclude Reliance Defense, Ex. E at 1. If possible, Respondents should confer with the Division prior to filing their letter on March 16 to determine whether the parties can agree on aspects of the proposal, including a document search protocol and the date by which the privilege log is to be provided to the Division. The Division may file a response to the proposal by March 17, 2017.

- **Respondents' Website:** By March 15, 2017, Respondents must provide the Division with credentials to access their website and also by that date provide the Division with a letter signed by counsel stating the precise period during which the website was unavailable. Based on a subsequent email, it appears that the credentials for website access were provided to the Division following the prehearing conference. The Division's motion with respect to the website materials is otherwise denied. However, the Division may renew its motion if, following the offering of such evidence at hearing, it appears the website materials lack foundation or are otherwise irrelevant, immaterial, or unreliable.
- **Parties' Various Objections to Exhibits:** I defer ruling on the parties' objections to specific exhibits until each exhibit is offered into evidence at hearing and its purported significance is explained. The parties may, if they so choose, provide me at the hearing with a list of exhibits to which neither side has objections, and I will admit those exhibits wholesale.
- **Witness Courtroom Access:** Except for when they are testifying, witnesses will not be permitted access to the hearing courtroom during the proceeding. This does not apply, however, to Respondent Roni Dersovitz, the Division's summary witness, and expert witnesses.
- **Bifurcation:** Respondents' request to bifurcate the presentation of their inability-to-pay defense from the remainder of the hearing is denied. Respondents' request for leave to file separate motions concerning disgorgement and/or civil penalties is also denied; Respondents may address those issues in post-hearing briefing.
- **Respondents' Financial Disclosures:** By March 17, 2017, Respondents shall provide to the Division supplemental financial disclosures relevant to their inability-to-pay defense. The hearing will be sealed during the presentation of such evidence.
- **Hearing Day Scheduling:** The hearing will begin at 10:00 a.m. on March 20, 2017, at the U.S. District Courthouse for the Eastern District of New York, Courtroom 2F North, 225 Cadman Plaza East, Brooklyn, NY 11201. Each subsequent hearing day will begin at 9:00 a.m. unless otherwise agreed, and the parties shall endeavor to coordinate witnesses and evidence such that hearing days conclude at approximately 5:30 p.m. The first three weeks of the hearing will occur from March 20 through April 7, 2017. The hearing will adjourn the week of April 10 and resume on either April 17 or 18, and continue through April 28, 2017, if necessary.
- **Traveling Witnesses:** Witnesses traveling to the hearing from outside the area shall only be called once, and the parties should coordinate their questioning of such witnesses accordingly. The parties may agree to do the same for any other witnesses.
- **Division's Summary Witness:** Any specific objections concerning the testimony of the Division's summary witness or related exhibits will be heard and ruled on during the hearing.
- **Ian Guy:** Respondents' motion to preclude the testimony of Ian Guy is denied.

- **Motion to Dismiss on Constitutional Grounds:** Respondents’ motion to dismiss this proceeding on grounds that it is unconstitutional is denied. *See, e.g., Harding Advisory LLC*, Securities Act Release No. 10277, 2017 SEC LEXIS 86, at *56-69 & nn.82, 90 (Jan. 6, 2017), *pet. filed*, No. 17-1070 (D.C. Cir. Mar. 6, 2017).
- **Motion for More Definite Statement:** Respondents’ motion for more definite statement is denied as moot. The Division bears the burden of establishing its factual allegations during the hearing. If the Division introduces evidence against which Respondents could not reasonably have prepared a defense, I will entertain a motion for proper amelioration. *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 SEC LEXIS 1538, at *51-52 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).
- **The Valuation Issue:** The Division stated during the conference that it is not pursuing standalone claims relating solely to the valuations at issue and that this is a “misrepresentations case” where investors were told that the funds were lower risk than they actually were. Rough Pre-hear’g Tr. 41. Yet the Division retains the contention that the valuations “look[ed] at cases as if they[were] all settled” when the funds were actually “invest[ed] in other things” with “other risks,” and that this enabled Respondents to defraud investors by drawing money from the funds in a manner inconsistent with the funds’ actual risk profile. *Id.* This characterization seemingly implicates the reasonableness of the valuations, as it suggests such valuations were “inflated” and did not comport with the true riskiness of the investments (albeit due to Dersovitz’s “fail[ure] to disclose” relevant information to the valuation agent). Order Instituting Proceedings ¶ 68. To provide clarity, the Division and Respondents should submit at the beginning of the hearing a stipulation as to the scope of the Division’s asserted claims concerning the valuations at issue. If the parties cannot agree on such a stipulation, I will take up the issue on the first day of the hearing. Moreover, following the hearing, I will address on the merits those issues raised in Respondents’ previously denied motion for summary disposition, assuming Respondents again raise those arguments in post-hearing briefing.
- **Kyle Vataha:** Vataha will be permitted to testify. However, in light of the issues raised by the Division concerning the potential subject-matter overlap between Vataha’s testimony and certain documents withheld by Respondents—two of which I reviewed in camera—I will entertain specific objections from the Division during the hearing as to the permissible scope of Vataha’s testimony.
- **Direct Examination of Expert Witnesses:** Expert witnesses will be permitted to provide direct testimony.
- **Opening and Closing Statements:** The parties will be permitted to make opening statements but should attempt to limit these openings to between twenty and thirty minutes each. The parties will also be permitted to make closing arguments. These closings should be argument and fact intensive and lengthier, but should not exceed two hours each.

- **Form of Exhibits:** Exhibits may be presented electronically. If a party presents exhibits electronically, it should provide me at the beginning of the hearing with electronic copies of all exhibits it intends to introduce, but not paper copies. I will set a date for the filing of exhibits with the Office of the Secretary, and for the submission of electronic copies of exhibits to my office, in a post-hearing order.
- **Character Witnesses:** Respondents may amend their witness list by March 17, 2017, to include character witnesses to provide testimony relevant to the public interest factors. *See, e.g., Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

Jason S. Patil
Administrative Law Judge