

MAR 14 2002

UNITED STATES OF AMERICA

Before the

CTFD. NO. _____ SECURITIES AND EXCHANGE COMMISSION

March 13, 2002

In the Matter of :
: ORDER DENYING BLIZZARD'S
CLARKE T. BLIZZARD and : MOTION TO EXCLUDE ROACH'S
RUDOLPH ABEL : PRIOR SWORN TESTIMONY

The hearing in this proceeding is scheduled to commence on April 2, 2002.¹ Respondents are charged with willfully aiding and abetting and causing violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 through their alleged involvement in an alleged improper soft-dollar scheme.

Under consideration are (1) Respondent Clarke T. Blizzard's February 28, 2002, Motion to Exclude Prior Sworn Testimony; and (2) the March 12 Opposition of the Division of Enforcement (Division).

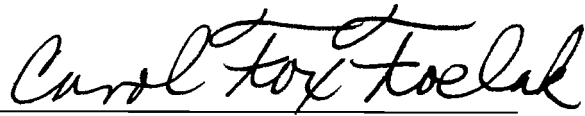
The Division intends to call Christopher Roach as a witness at the hearing to testify about an alleged improper arrangement with Blizzard. The Division anticipates that there will be a conflict between the testimony of Roach and of Blizzard concerning the facts at issue.

Blizzard refers to proposed Division Exhibits 110-12, which are transcripts of Roach's prior sworn testimony. The Division's February 11, 2002, Revised Exhibit List identifies Exhibit 110 as designated portions of Roach's January 25, 2001, Grand Jury testimony; Exhibit 111 as designated portions of his December 2001 trial testimony in United States v. Blizzard; and Exhibit 112 as designated portions of his March 19, 2001, investigative testimony in Duff & Phelps Inv. Co.

¹ The proceeding was originally captioned Michael J. Rothmeier, Clarke T. Blizzard, Rudolph Abel, Donald C. Berry, Christopher P. Roach, Craig Janutol, and East West Institutional Services, Inc. It ended on April 13, 2000, as to Respondents Rothmeier, Berry, and Janutol, who settled, when the Commission issued Orders Making Findings and Imposing Sanctions as to each of them. It ended on February 28, 2002, as to Respondents Roach and East West Institutional Services, Inc., who defaulted, when the undersigned entered an Order Making Findings and Imposing Sanctions by Default as to them.

Blizzard argues that the exhibits should be excluded from evidence and that Roach should be required to testify orally in an open hearing. The Division, however, confirms that it intends to call Roach as a witness to testify, as previously indicated on its March 1, 2000, Witness List and its February 11, 2002, Revised Witness List. Additionally, the transcripts will not be excluded in advance of hearing. As the Division points out, Roach's prior sworn statements would be admissible pursuant to 17 C.F.R. § 201.235 if, at the time of the hearing, he is unable to testify because of "sickness, infirmity, imprisonment or other disability." It is noted that, by listing the transcripts, the Division has identified in advance material that may be used to impeach Roach's testimony or to refresh recollection. This will enable the examination of Roach to proceed expeditiously.

IT IS ORDERED that Blizzard's Motion to Exclude Prior Sworn Testimony IS DENIED.



Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge