

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 1137/January 2, 2014

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

ORDER

On September 24, 2013, the Securities and Exchange Commission instituted this proceeding with an 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. A hearing is scheduled to commence on January 21, 2014, in Atlanta, Georgia.

On December 20, 2013, this Office received the Division of Enforcement's (Division's) Notice of Intent to Seek Associational Bars (Notice). On December 30, 2013, this Office received Respondents' Response to the Notice (Response). On December 31, 2013, this Office received Respondents' Amended Witness List. On January 2, 2014, this Office received the Division's Amended Witness List.

I am troubled and disappointed by these filings. I see absolutely no purpose to the Notice and Response. Nothing in the Notice changes my mind about the lack of availability of associational bars in this proceeding, nor was there any need to brief the issue, because it is preserved by virtue of being raised during briefing on Respondents' motion for summary disposition (Motion). If the Division felt it prudent to file something in writing, a simple statement that it objected to my oral ruling on the issue would have been sufficient. Instead, the Division filed a five-page brief with many legal citations. Although it is understandable that Respondents then felt the need to file their Response, a simple statement that they disagreed with the Division, and incorporating by reference the arguments in their Motion, would have been sufficient. Instead, they filed an eight-page brief with many legal citations, which generally just rehashes the arguments in their Motion.

This proceeding is once again “getting out of hand.” Timbervest, LLC, Admin. Proc. Rulings Release No. 1069, 2013 SEC LEXIS 3711 (Nov. 25, 2013). It is, fundamentally, about three transactions: the sale of a tract of land by one of Respondent Timbervest, LLC’s (Timbervest’s) funds, the repurchase of that tract by a second Timbervest fund, and the sale of a second tract of land by the first Timbervest fund. Most of the historical facts, in particular, the “who,” “what,” “where,” and “when,” do not appear to be in dispute. For example, Respondents apparently agree that: the individual Respondents own Timbervest (Motion at 3); Chen Timber, LLC, purchased the Alabama property in 2006 (Motion at 4, 8); Chen Timber, LLC, sold the Alabama property back to a Timbervest fund several months later (Motion at 10, 13); Timbervest sold the Kentucky property in 2007 (Motion at 16); and Respondent Walter William Anthony Boden, III, received payments in connection with these transactions, while being associated with Timbervest, and he shared these payments with the other individual Respondents (Motion at 16-18).

To be sure, other facts, such as Respondents’ motives and states of mind, are hotly disputed. But the parties agree on enough issues that the hearing should not take long. Nonetheless, the Division has identified thirty witnesses and Respondents have identified twenty-three witnesses, including the Division’s lead trial counsel.

This is entirely unreasonable. Based on my review of the summary disposition briefs, this case is triable in no more than one week, with no more than about ten witnesses total. Out of an abundance of caution, I will give the parties six days to try it, three for the Division and three for Respondents. The hearing will commence on Tuesday, January 21, 2014, the Division will rest no later than close of business on Thursday, January 23, 2014, and Respondents will begin their case no later than Friday, January 24, 2014. Should Respondents need more than one day to present their case, the case will continue on two dates to be determined at the hearing.

Except for motions in limine, motions to quash, and any additional subpoena requests, there is no reason for any additional motions, briefs, or papers to be filed prior to the prehearing conference scheduled for January 13, 2014. The parties should assume that any such papers will be disregarded and stricken. If the parties object to the timetable I have set forth, they may register their objections orally at the prehearing conference. I encourage the parties to stipulate to as much as possible, and to agree on designating investigative testimony in lieu of live testimony.

I will not entertain a motion in limine regarding Division counsel’s listing on Respondents’ Witness List. Needless to say, Respondents will not be allowed to call opposing counsel in their own case, and any such motion in limine is therefore unnecessary.

SO ORDERED.

---

Cameron Elliot  
Administrative Law Judge