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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4157/September 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of	:	
	:	
LYNN TILTON;	:	
PATRIARCH PARTNERS, LLC;	:	
PATRIARCH PARTNERS VIII, LLC;	:	ORDER
PATRIARCH PARTNERS XIV, LLC; and	:	
PATRIARCH PARTNERS XV, LLC	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on March 30, 2015. The OIP alleges that Respondents violated the antifraud provisions of the Investment Advisers Act of 1940 in their operation of three collateral loan obligation funds (known as the Zohar Funds) by reporting misleading values for the assets held by the funds and failing to disclose a conflict of interest arising from Lynn Tilton's undisclosed approach to categorization of assets. The proceeding was stayed by order of the U.S. Court of Appeals for the Second Circuit between September 17, 2015, and June 2016. *See Tilton v. SEC*, No. 15-2103, 2016 U.S. App. LEXIS 9970, at *37 (2d Cir. June 1, 2016); *Tilton v. SEC*, No. 15-2103, ECF Nos. 76, 125. The hearing is currently scheduled to commence on October 24, 2016. Under consideration are Respondents' June 5, 2015 motion for summary disposition; the Division of Enforcement's June 26, 2015, opposition; and Respondents' July 10, 2015, reply.

First, Respondents argue that Tilton's approach to categorizing assets *was* disclosed. Specifically, they assert that trustee reports and materials provided sufficient disclosure and, "[b]y doing only very basic math," investors could determine the extent to which loans were or were not paying full interest. Most exhibits cited by Respondents, however, are not stipulations or admissions by the Division, uncontested affidavits, or facts subject to official notice. Thus, such evidence cannot form the basis of a summary disposition ruling in their favor. *See* 17 C.F.R. § 201.250(a). The remaining evidence fails to establish that there is "no genuine issue" of material fact. For example, even if it was generally known that some interest payments were missed or past due, and that Tilton exercised some discretion, the summary disposition record does not resolve whether Respondents accurately performed the categorization analyses anticipated by the indentures and, if not, whether there was sufficient disclosure and how Respondents' approach affected their receipt of fees and control of the Zohar Funds. These disputed issues would be best decided on a more developed record.

Second, Respondents argue that "the Division's fraud theory is, in reality, a contract dispute." They assert Tilton's approach to categorization of assets was pursuant to the Zohar Funds' indentures, but that her interpretation of those indentures cannot give rise to antifraud liability because there was no duty to disclose such interpretation. The OIP alleges that Respondents "all acted as investment advisers to the Zohar Funds they managed. As such, they owed fiduciary duties to these Funds." OIP ¶ 52. If these allegations are true (and Respondents have not provided evidence to show otherwise), there is a genuine issue whether Respondents had a duty to disclose inasmuch as Tilton's interpretation of the indentures affected her categorization of the Zohar Funds' assets, which in turn allegedly affected Respondents' receipt of fees and continued control of the Zohar Funds.

Third, Respondents contend that the Division's claims under Advisers Act Section 206(1) and (2) should be dismissed because the clients allegedly harmed are the Zohar Funds that were managed by Patriarch Partners and owned by Tilton, and Tilton "could not have defrauded herself or breached any duties owed to herself." But, viewing the evidence in the light most favorable to the non-moving party, a reasonable inference could be drawn that the Zohar Funds and Respondents are distinct legal entities and did not share the same interests. More recently, the Zohar Funds have sued Patriarch Partners for breach of contract based on alleged failures to provide requested information to the Zohar Funds' new manager, casting some doubt on Respondents' present contention. *See Zohar CDO 2003-1, LLC v. Patriarch Partners, LLC*, No. CA12247 (Del. Ch. filed Apr. 22, 2016); 17 C.F.R. § 201.323 (official notice).

Last, Respondents argue that their knowledge should be imputed to the Zohar Funds because they had an agent-principal relationship with the Zohar Funds, precluding the Division's claim that Respondents failed to make required disclosures. However, because there are genuine issues as to whether Respondents acted adverse to the Zohar Funds' interests, this issue is not ripe for resolution. *See SEC v. DiBella*, 587 F.3d 553, 568 (2d Cir. 2009) (agent's knowledge "is not imputed to the principal when the agent is acting adversely to the principal's interest"); *Bank of China, N.Y. Branch v. NBM LLC*, 359 F.3d 171, 179 (2d Cir. 2004) ("[W]hen an agent acts adversely to its principal," i.e., "exhibit[s] a 'total abandonment' of [the principal]'s interests," then "the agent's actions and knowledge are not imputed to the principal.").

In light of the above, the motion for summary disposition will be denied.

IT IS SO ORDERED.

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