

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4561/January 27, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17342

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

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 hearing is set to commence on March 20, 2017.

Under consideration are: (1) Respondents' January 19, 2017, application to quash or modify the subpoena directed to RD Legal Capital, LLC, issued on January 12, 2017, at the Division of Enforcement's request; and (2) the Division's January 23, 2017, opposition.

The subpoena requested production of: (1) "[a]ll deposition transcripts and any exhibits thereto, and all interrogatories and responses thereto" in *Mizel v. Dersovitz*, 15-cv-727 (D. Del.) (*Mizel v. Dersovitz* documents); and (2) "[a]ll communications relating to [Respondents or affiliates] between (i) RD Legal or any party acting on RD Legal's behalf, including counsel (but excluding Woodfield Fund Administration LLC), and (ii) investors or prospective investors identified on Respondents' First Amended Preliminary Witness List."

Respondents object generally to the Division's requesting subpoenas *duces tecum* after having already conducted a full investigation prior to bringing this proceeding. However, as noted previously, the Commission's rules do not prohibit this. See *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4387, 2016 SEC LEXIS 4373, at *2 (A.L.J. Nov. 23, 2016).

Mizel v. Dersovitz Documents

Previously, a subpoena directed to Steven Mizel and requesting the *Mizel v. Dersovitz* documents was issued on December 28, 2016, at the request of the Division. Mizel moved to quash the subpoena. He stated that Respondents (defendants in *Mizel v. Dersovitz*) advised him that they would regard production of the documents to the Division as violating a protective order entered in *Mizel v. Dersovitz*. He further stated that the Division should obtain the materials directly from Respondents and that he had no interest in whether or not the Division obtained the documents, other than avoiding a potential violation of the protective order. The Mizel subpoena was quashed,

and the subpoena at issue, directed to RD Legal Capital, LLC, was issued. *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4521, 2017 SEC LEXIS 95 (A.L.J. Jan. 12, 2017).

Respondents argue that the request is duplicative and unreasonably overbroad and that the Division should not be permitted to demand wholesale production of confidential discovery materials generated in the context of an unrelated private litigation. They state that the Division received nearly a million of pages of documents from them during its investigation and thousands of documents from Mizel, as well. Respondents also state, without providing details as to the documents themselves, that much of the requested material is irrelevant to this proceeding. They also allude to the protective order.

The subpoena will not be quashed as to this request. The request is not duplicative since neither Respondents nor Mizel have previously produced any *Mizel v. Dersovitz* documents to the Division. Respondents' general statement that much of the requested material is irrelevant to this proceeding is not verifiable based on the application nor entirely consistent with the fact that the complaint in *Mizel v. Dersovitz*, like the OIP in this proceeding, alleges that Respondents violated Exchange Act Section 10(b) and Rule 10b-5. See *Mizel v. Dersovitz*, ECF No. 1. Concerning confidential material protected by the District Court's protective order, the plaintiff, Mizel, has stated that he has no interest in whether or not the Division obtains the documents. If the defendants, Respondents herein, are concerned that some of the requested material contains confidential information, *e.g.*, personally identifiable information (PII), Respondents may produce the material redacted of PII or negotiate safeguards with the Division. The Division is cautioned to avoid violating the Privacy Act, 5 U.S.C. § 552a, in its use of the material. If Respondents are concerned that producing the material may be contempt or otherwise violate the protective order, they may seek a ruling from the District Court.

Communications with Investor Witnesses

Respondents argue that this request is oppressive, unduly burdensome, and "nearly entirely duplicative" such that "any unexplored terrain is vanishingly small." Application at 6-7. Accordingly, the subpoena will be modified to specify that Respondents need not produce any documents that they have already produced.

IT IS SO ORDERED.

/s/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge