

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

Administrative Proceedings Rulings
Release No. 4908 / July 6, 2017

Administrative Proceeding
File No. 3-17342

In the Matter of

**RD Legal Capital, LLC, and
Roni Dersovitz**

Protective Order

Respondents seek to have twenty-three hearing exhibits filed under seal. The exhibits contain third-party business records, proprietary third-party valuation models, and financial information related to Respondents' "inability-to-pay" defense. The Division of Enforcement opposes Respondents' motion as to eight exhibits Respondents characterize as going to their inability to pay, because "[t]he investing public has a clear interest in understanding . . . how profits from the RD Legal flagship funds were utilized, including the extent to which such profits were transferred from RD Legal funds or entities to Dersovitz's family members." Opp'n at 1. The Division does not oppose as to the other fifteen exhibits.

"Documents . . . introduced in a public hearing are presumed to be public." 17 C.F.R. § 201.322(b). However, a protective order may be granted if "the harm resulting from disclosure would outweigh the benefits of disclosure." *Id.* Rule of Practice 630 provides that a respondent who submits financial information in support of an inability-to-pay defense, as Respondents have done, may seek a protective order against its disclosure. 17 C.F.R. § 201.630(c).

In response to the Division's argument about the investing public's right to know, Respondents invoke Rule 630, which they argue cannot be "trumped" by the Division's argument. Reply at 1. But Rule 630(c) is not a talisman automatically protecting the disclosure of all personal financial information. Instead, "[t]he public's right to review" documents submitted in connection with an inability-to-pay defense "should be balanced against the

respondent's legitimate interest in protecting confidential or personal information." Rules of Practice, 60 Fed. Reg. 32,738, 32,792 (June 23, 1995). "Each request for confidentiality must be decided based on the procedural status of the case, the extent to which financial information has already been disclosed, and the individual facts and circumstances underlying the request." *Id.*

The balancing test and enumerated factors favor disclosure of the contested exhibits, except as provided below. Regarding "the extent to which financial information has already been disclosed," all of the contested exhibits were admitted at hearing—with no concurrent request to seal them—and discussed by Respondent Dersovitz and Respondents' witness, Ms. Amy Hirsch, on the record, which testimony is not under seal. I ordered the parties to "redact personal information before filing their final exhibits," but did not order any exhibit sealed entirely. Tr. 6199-6200. Respondents contend that the harm from disclosure is "obvious," Reply at 5, but the contested exhibits do not contain personally identifiable information such as social security or bank account numbers.

Under the facts and circumstances of this case, in which the Division alleges that Respondents have essentially manufactured their purported inability to pay, I find that any harm resulting from disclosure of the contested exhibits does not outweigh the benefits to the investing public in learning how Respondents handled funds, with two exceptions: (1) exhibit 2727B, Mr. Dersovitz's unaudited personal financial statement, is akin to (although does not meet the standards of) a Form D-A, which this office typically treats as confidential; and (2) exhibits 725, 726, and 728–30 contain signatures.

Therefore, I DENY Respondents' motion as to exhibits 2378 and 2379 and exhibits 725, 726, and 728–30, which the parties shall re-submit with all signatures redacted. I GRANT Respondents' motion with respect to exhibit 2727B, which shall be placed under seal.

As to the unopposed exhibits—which contain third-party documents and documents containing sensitive, personally identifiable information—I find that the harm from their disclosure outweighs any benefit. Accordingly, I GRANT the motion with respect to exhibits 355A, 474, 494, 582-85, 603, 727, 731-32, 737, 2314, 2689, and 3178, which shall also be placed under seal.

Jason S. Patil
Administrative Law Judge