

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-15526

In the Matter of

GEORGE B. FRANZ III

and

RUBY CORPORATION

DIVISION OF ENFORCEMENT'S MOTION TO  
STRIKE RESPONDENTS' DECEMBER 31, 2013  
MOTION FOR SUMMARY DISPOSITION

Pursuant to Rule 154 of the Commission's Rules of Practice, the Division of Enforcement ("Division") hereby moves to strike the Respondents' December 31, 2013 Motion for Summary Disposition.<sup>1</sup> The Court should strike the Respondents' Motion for Summary Disposition because: (1) it is procedurally improper under Rule 250(a); and (2) it is inappropriate given the numerous factual disputes between the parties.

First, the Respondents' Motion for Summary Disposition is procedurally improper under Rule 250(a) because the Respondents did not obtain (or even seek) leave to file their motion. Rule 250(a) states: "If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer." The Division will not start presenting its case in chief until February 24, 2014. Even if the Respondents had sought leave to file a Motion for Summary Disposition, it would not have been appropriate given the numerous factual disputes between the parties, as explained below.

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<sup>1</sup> In the event that the Court ultimately denies this Motion to Strike, the Division respectfully requests leave to file an opposition to the Respondents' Motion for Summary Disposition two weeks after the date of the Court's ruling on this Motion.

Second, Summary Disposition is inappropriate given the numerous factual disputes between the parties. Under Rule 250(b), the Court will grant a Motion for Summary Disposition “if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law” (emphasis added). The Respondents’ December 9, 2013 Answer to the Order Instituting Proceedings (“OIP”) and the Respondents’ Motion both deny the vast majority of the OIP’s factual claims. This alone demonstrates that Summary Disposition is inappropriate and that a hearing is necessary to resolve these proceedings. Without delving into the specific details of the parties’ factual disputes, during the hearing the Division intends to prove that the vast majority of the factual claims in the Respondents’ Motion for Summary Disposition are incorrect or incomplete.

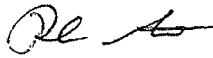
Moreover, under Rule 250(a) all facts in the OIP are taken as true for the purposes of determining whether the Respondents are entitled to summary disposition as a matter of law. *See In re Becker*, Initial Decision Rel. No. 252, 2004 WL 1238256 at \*2 (June 3, 2004) (“The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission’s Rules of Practice.”) (emphasis added). Among other things, the OIP alleges that the Respondents were aware of numerous instances of fraud by Andrew Franz, but that they failed to reasonably respond to that information. The OIP further alleges that the Respondents engaged in extensive efforts to conceal Andrew Franz’s fraud from advisory clients, including by making false statements of material fact to them. The OIP’s allegations, if found to be true, would support findings of the numerous violations alleged. If all facts in the OIP are taken as true, as they must for the present

purposes, the Respondents are not entitled to summary disposition as to any of the alleged violations.

For the above reasons, the Division of Enforcement respectfully moves this Court to strike the Respondents' Motion for Summary Disposition.

Dated: January 6, 2014

Respectfully submitted,



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Robin Andrews  
U.S. Securities and Exchange Commission  
Chicago Regional Office  
175 W. Jackson Blvd., Suite 900  
Chicago, IL 60604  
Telephone: (312) 353-4304  
Facsimile: (312) 353-7398

*Attorney for the Division of Enforcement*