



February 16, 2017

The Honorable Carol F. Foelak
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of RD Legal Capital, LLC, et al.*
Administrative Proceeding No. 3-17342

Dear Judge Foelak:

We represent RD Legal Capital, LLC and Roni Dersovitz (“Respondents”) in the above matter. We write to respond to the letter submitted earlier today by the Division of Enforcement (the “Division”) in opposition to Respondents’ request for leave to file a Motion for Summary Disposition (the “Motion”). As explained below, the Division’s objections to Respondents’ request for leave to file the Motion have no merit because (1) Respondents’ request for leave to file the Motion is timely and will not delay the hearing; and (2) good cause exists to grant Respondents leave to seek summary disposition.

Respondents’ Request To File The Motion Is Timely And Will Not Delay The Hearing

Respondents filed the request for leave and the accompanying Motion as soon as possible and within hours of the last deposition. This can hardly be considered untimely.¹ Indeed, had Respondents filed earlier, the Division no doubt would be arguing that it was improper to allege that there were no material facts in dispute when Respondents’ valuation experts were yet to be deposed. Instead, Respondents allowed the Division its opportunity to depose Respondents’

¹ The Division deposed Respondents’ expert Leon Metzger on Tuesday, February 14, 2017. The Division deposed Respondents’ expert David Martin yesterday, February 15, 2017. Both Respondents’ experts touched on valuation issues. Within hours of the close of Mr. Martin’s deposition, Respondents served their request for leave to file the Motion, which they served concurrently with the Motion.

experts to seek to draw out material disputed facts before seeking to move for summary disposition. The Division was unable to do so, and summary disposition is now proper.

Respondents are entitled to summary disposition on the Division's valuation claims in significant part because the Division has not adduced any evidence or expert testimony to create a disputed issue of material fact or rebut the opinions of Respondents' experts that the assets were properly valued. The Division's failure to rebut Respondents' evidence of the reasonableness of the valuation could only be confirmed once the Division's expert had been deposed, which occurred three business days prior to the filing of the request for leave. The Division's suggestion that Respondents could have "moved for summary disposition months ago" is thus disingenuous on its face, because the Division would have argued that such a motion was premature in light of ongoing fact and expert discovery and depositions. Respondents waited until there could be no doubt that summary disposition was warranted on the valuation claims and then requested leave to file the moment it became appropriate to do so.

Moreover, should the Court grant Respondents' request for leave, the Division's opposition to the motion for summary disposition would be due the week before the pre-hearing conference, scheduled for March 13, 2017. Respondents would file their reply before the status conference, and by rule, the administrative law judge is required to act "promptly" on a motion for summary disposition. Rule 250(c). Given that there is no ruling on the summary disposition motion that would *expand* the scope of the hearing, there is no reason that such a ruling the week before trial would cause any delay at all. *See, e.g., Houston American Energy Corp., SEC Release No. 2125, at 1 (ALJ Dec. 12, 2014) (in "300-day timeline" proceeding with January 12, 2015 hearing date, entering Motion for Summary Disposition briefing schedule setting January 2, 2015 deadline for the respondents' reply brief).* To the contrary, a ruling on the motion could only *shorten* the hearing, thereby ultimately conserving the time of the Court, reducing the burden on third-party witnesses, and serving the efficiency-focused goals of Rule 250.

In sum, Respondents' request for leave is timely. The timing issues are not of our own making, but due to this proceeding's compressed timeframe. Respondents filed the request for leave as soon as possible in light of the summary disposition standard requiring that we demonstrate no material facts in dispute.² Permitting the Motion to go forward, moreover, will not delay the hearing.

Good Cause Exists to Grant Respondents Leave to Seek Summary Disposition

"It is the Commission's view that good cause may generally be demonstrated where there is a substantial likelihood that the party seeking leave to file a motion [for summary disposition] will be successful on the merits of the motion." SEC Adopting Release, Rel. No. 34-78319 at 56. As explained in Respondents' Motion, which was served concurrently with their request for

² The Division seems to suggest that this court may only consider a summary disposition motion if it will lessen the burden on a party preparing for the hearing. But this is not part of the standard. In any event, consideration of Respondents' Motion would not *increase* the Division's pre-hearing burden, as the Division will presumably wish to brief the valuation and penalties issues ahead of trial regardless of whether we had moved for summary disposition.

leave, the undisputed evidence—and lack of contrary evidence from the Division—establishes that Respondents are likely to succeed on the merits of their challenge to the Division’s claims that (1) Respondents’ valuation of fund receivables was fraudulent, and (2) the Division is not entitled to seek third-tier penalties.

The Division, however, does not even attempt to challenge whether Respondents are likely to succeed on the merits of their Motion. Indeed, the Division concedes in its February 16, 2017 letter (“Opp. Letter”) that its opposition to Respondents’ request for leave “does not address” the merits of Respondents’ Motion. (*See* Opp. Letter at 2, fn. 1.) The Division’s failure to address what the Commission itself has identified as an independently sufficient basis for permitting a motion for summary disposition to go forward is reason enough to reject the Division’s objection to Respondents’ request for leave to file the Motion.

Moreover, the sole basis for the Division’s opposition to Respondents’ request for leave—*i.e.*, that an order granting the Motion would not materially shorten the trial (*see* Opp. Letter at 2)—is wrong. Contrary to the Division’s contention, granting the Motion would eliminate the Division’s claims for fraudulent valuation, which in turn would significantly “narrow the issues to be tried at the hearing [and] the proof to be adduced to address those issues.” (Division’s February 16, 2017 letter at 2, fn. 1.) In fact, the first paragraph of the OIP identifies the Division’s claim that Respondents’ “withdr[ew] money from the funds using valuations based on unreasonable assumptions” as one of the Division’s two primary accusations against Respondents in this action. (OIP ¶ 1.) Respondents can confirm dismissing the Division’s valuation claims prior to the hearing would permit Respondents to eliminate or narrow the testimony of as many as five percipient witnesses from the presentation of their defense, and would also significantly narrow the scope of testimony from Respondents’ two designated experts.

The only specific argument the Division makes in support of its suggestion that summarily disposing of its valuation claims based on the undisputed evidence would not reduce the length of the hearing is that “*all* of the Division’s claims of disgorgement relate to the valuation of the Funds’ assets.” (Opp. Letter at 2.) Respectfully, this argument is a red herring, because the amount of any disgorgement penalty following a determination of liability would not turn on a determination of whether Respondents’ valuations were fraudulent. Accordingly, dismissing the Division’s valuation claims would permit the Court to eliminate the need for Respondents to present evidence in defense of their valuations irrespective of the fact the Division would still be seeking a disgorgement penalty in connection with their remaining claims. Likewise, summary disposition on the Division’s request for Tier III penalties could eliminate the potential need for the parties to address ability-to-pay issues.

By opposing Respondents’ request for leave without addressing the merits of their arguments, the Division is seeking to force Respondents into a costly and time-consuming administrative proceeding without once justifying the basis for their claims through the presentation of evidence. In addition to being grossly inefficient, such a result would be deeply unfair to Respondents and would not comport with their right to due process.

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Respectfully submitted,

A handwritten signature in cursive script that reads "Terence Healy / JCU".

Terence Healy

cc: David K. Willingham (email only)
Michael D. Roth (email only)
Michael Birnbaum (email only)
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