

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC and
RONI DERSOVITZ

RESPONDENTS' MOTION *IN LIMINE* TO EXCLUDE TESTIMONY OF IAN GUY

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I. INTRODUCTION

RD Legal Capital, LLC and Roni Dersovitz (“Respondents”) respectfully ask the Court to preclude the Division of Enforcement (the “Division”) from calling Ian Guy (“Guy”) as a witness in this administrative proceeding. Guy was not an investor in either of the two funds managed by Respondents (the “Funds”), and has no percipient knowledge of the allegations in the Order Instituting Proceedings (“OIP”), namely, whether Respondents made material misrepresentations to investors and/or improperly inflated the value of the assets in the Funds’ portfolio. Indeed, Guy’s *only* connection to this case is that he was a plaintiff in the Beirut Marine barracks litigation and a counterparty to various assignment and sale agreements that Respondents invested in on behalf of the Funds. Because he has no information that is relevant to any of the issues presented by the OIP and is being offered solely to sow prejudice rather than to provide a factual basis for the Division’s allegations, the Court should preclude Guy from testifying at the hearing.

II. BACKGROUND

On July 14, 2016, the Securities and Exchange Commission issued an OIP alleging that “[s]ince at least June 2011, Respondents defrauded investors by (i) marketing and selling investments in two funds based on misrepresentations concerning the type and diversification of assets under management in these funds, and (ii) by withdrawing money from the funds using valuations based on unreasonable assumptions” OIP, ¶ 1. Among other alleged misstatements, the OIP contends that Respondents made misstatements regarding the “concentrated exposure to investments in certain receivables relating to the litigation” arising out of the 1983 terrorist bombing of a Marine barracks in Beirut, Lebanon. *Id.*, ¶ 20.

Guy's *only* connection to this case is that he agreed to sell the Funds judgment proceeds he was legally entitled to receive in his capacity as a plaintiff in the Marine barracks litigation. This fact is confirmed by the final witness list the Division filed on March 1, 2017, which describes the subject of Guy's testimony as "Transaction with Respondents relating to claims in Marine Barracks litigation and communications with Respondents regarding same."

III. LEGAL STANDARD

Pursuant to Rule 320 of the Rules of Practice, this Court must "exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable." 17 C.F.R. § 201.320(a). To be relevant, evidence must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 587 (1993) (quoting Fed. R. Evid. 401). Moreover, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." *United States v. Kaplan*, 490 F.3d 110, 119 (2d Cir. 2007) (quoting Fed. R. Evid. 602) (brackets in original).

IV. GUY DOES NOT POSSESS INFORMATION WITH ANY PROBATIVE VALUE AND SHOULD NOT BE PERMITTED TO TESTIFY

Guy should not be permitted to testify in this proceeding because he does not possess any information that is relevant to any fact that is of consequence to the determination of the claims raised in the OIP. As noted above, Guy was not an investor in the Funds, and was not privy to any of Respondents' communications with the Funds' investors. Guy accordingly lacks any personal knowledge that bears upon the truth of the OIP's allegations regarding Respondents'

purported misstatements to investors. Nor does Guy have any personal or expert knowledge that would bear on whether Respondents properly valued the assets in the Funds' portfolio.

Given that his testimony would add no probative value to this case, the only plausible reason for the Division's decision to include Guy on its witness list is that it wants to prejudice the factfinder with emotional but ultimately irrelevant testimony from a counterparty to one of Respondents' transactions who has seller's remorse. Indeed, documents produced by the Division establish that Guy has been in communication with the Division for at least several months and has expressed in no uncertain terms his negative feelings about his prior transactions with the Funds. Those hard feelings, however, have no bearing on any of the issues this Court must determine as the factfinder in this proceeding. The Court thus should exclude Guy's testimony, if for no other reason than to avoid any implication that the Court's ultimate decision on the merits is based on anything other than an impartial evaluation of relevant evidence. *See, e.g., Fed. R. Evid. 403* (providing for the exclusion of evidence in federal court "if its probative value is substantially outweighed" by, among other things, the danger of unfair prejudice).

V. CONCLUSION

As the Court is well aware, this case involves dozens of witnesses with *relevant* information, and will be difficult (even under the best of circumstances) to try within the time allotted by the Court for the hearing. Because Guy does not possess information relevant to any of the Division's claims, and because his testimony would only serve to prejudice the factfinder and unnecessarily prolong the hearing, Respondents respectfully request that the Court grant their motion and preclude Guy from testifying at the hearing.

Dated: March 8, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion *In Limine* was served on this 8th day of March 2017 by U.S. Postal Service on the Office of the Secretary and by electronic mail on the following counsel of record:

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