

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

RD LEGAL CAPITAL, LLC
and RONI DERSOVITZ,

Respondents.

File No. 3-17342

APPLICATION TO QUASH OR MODIFY
SUBPOENA TO PRODUCE DOCUMENTS

To: The Honorable Brent J. Fields
Secretary
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Steven Mizel, by his undersigned attorneys, hereby applies pursuant to Securities & Exchange Commission Rule of Practice 232(e)(1), to quash or modify the Subpoena To Produce Documents (“Subpoena”) served on him on or about December 28, 2016 in the above-captioned matter, a copy of which is attached hereto as Exhibit A, and in support thereof represents as follows:

1. Mr. Mizel and an entity he directs, Palmetto Partners LP, are plaintiffs in an action pending in the United States District Court for the

District of Delaware captioned *Steven M. Mizel, et ano. v. Roni Dersovitz, et al.*, Civil Action No. 1:15-CV-00727-LPS (“Delaware Action”). Respondents in this matter, Roni Dersovitz and RD Legal Capital, LLC, are two of the three defendants in the Delaware Action (“Delaware Defendants”). The Subpoena seeks materials generated in discovery in the Delaware Action.

2. The United States District Court for the District of Delaware entered a Protective Order in the Delaware Action, a copy of which is attached hereto as Exhibit B. Pursuant to Paragraph 19 of the Protective Order, upon receipt of the Subpoena, Mr. Mizel’s counsel advised counsel for the Delaware Defendants of the Subpoena.

3. In a letter dated January 6, 2017, a copy of which is attached hereto as Exhibit C, counsel for the Delaware Defendants advised Mr. Mizel’s counsel that the Delaware Defendants designated certain discovery material in the Delaware Action as confidential; asserted that most of the discovery material the Subpoena seeks either now is or was previously designated as confidential pursuant to the Protective Order; and stated Delaware Defendants’ position that they would regard any production of documents in response to the Subpoena as a violation of the Protective Order.

4. Whether or not the subpoenaed documents should be produced is a dispute between the SEC Division of Enforcement (“Division”) on the one

hand, and Mr. Dersovitz and RD Legal Capital LLC on the other hand. Those parties should resolve the dispute either by negotiation or in an appropriate forum. The Division can, and indeed should, seek the documents directly from Respondents in this proceeding (Respondents have the requested materials). Alternatively, per Paragraph 19 of the Protective Order, Respondents, not Mr. Mizel, have the obligation to seek relief from the Subpoena.

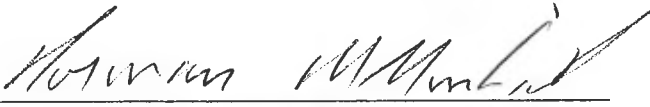
5. Mr. Mizel has no interest in this dispute¹ and should not be placed at risk of consequences for potential violations of the Protective Order. He should also not be required to expend resources to obtain relief from the Delaware Court so that he may comply with the Subpoena.

6. Accordingly, Mr. Mizel requests that the Subpoena either be quashed or modified to provide that he has no obligation to respond unless or until the Division has obtained a ruling or agreement that Mr. Mizel's production of the subpoenaed documents would not be considered a violation of the Protective Order.

¹ Other than avoiding a potential violation of the Protective Order, Mr. Mizel has no interest in whether or not the Division obtains the subpoenaed documents. For present purposes, Mr. Mizel expresses no view on the propriety of the confidentiality designation the Delaware Defendants have placed on most of the discovery in the Delaware Action.

Respectfully submitted,

ROSENTHAL MONHAIT & GODDESS, P.A.

By: 

Norman M. Monhait (#1040)
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Attorneys for Steven M. Mizel

January 10, 2017

EXHIBIT A



SUBPOENA TO PRODUCE DOCUMENTS

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO
Steven Mizel
c/o Norman Monhait, Esq.
919 N. Market Street, Suite 1401
Wilmington, DE 19801
nmonhait@rmgglaw.com

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION
Securities and Exchange Commission
c/o Michael Birnbaum
Brookfield Place, Suite 400
200 Vesey Street, New York, NY 10281

3. DATE AND TIME PRODUCTION IS DUE
January 11, 2017 at 10:00 a.m.

4. PARTY AND COUNSEL REQUESTING
ISSUANCE OF SUBPOENA
Division of Enforcement, SEC

5. THE PRODUCTION OF DOCUMENTS OR OTHER
TANGIBLE EVIDENCE IS ORDERED BY

Administrative Law Judge
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

RD Legal Capital, LLC and Roni Dersovitz, File No. 3-17342

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See Appendix

DATE SIGNED

12/28/2016

SIGNATURE OF ADMINISTRATIVE LAW JUDGE

Brenda P. Murray, Chief Administrative Law Judge

GENERAL INSTRUCTIONS

MOTION TO QUASH

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

APPENDIX

1. All deposition transcripts in the case *Mizel, et al. v. Dersovitz, et al.*, 15-cv-00727 (D. Del.) (“Mizel Litigation”) and any exhibits thereto.
2. All interrogatories and responses thereto provided in the Mizel Litigation.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

STEVEN M. MIZEL, on Behalf)
Of The Steven M. Mizel Roth IRA,)
and PALMETTO PARTNERS LP,)

Plaintiffs,)

v.)

RONI DERSOVITZ, RD LEGAL)
FUNDING PARTNERS L.P., and)
RD LEGAL CAPITAL LLC,)

Defendants.)

C.A. No. 15-727 LPS

PROTECTIVE ORDER

The parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for issuance of an appropriately-tailored confidentiality order governing the pre-trial phase of this action, it is therefore hereby

ORDERED that any person subject to this Order – including without limitation the parties to this action, their attorneys, agents, experts and consultants, and any other persons providing discovery materials in this matter – shall adhere to the following terms, upon pain of contempt:

1. As used in this Order, the term “Discovery Material” shall be defined as information of any kind provided in the course of discovery in this action, and the term “Confidential” shall refer to Discovery Material designated as “Confidential” pursuant to the terms of this Order. Any person subject to this Order who receives from any other person any Confidential Discovery Material shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder.

2. The person producing any given Discovery Material may designate as Confidential only such portion of such material as consists of:

- a) previously nondisclosed financial information (including, without limitation, profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports and sale margins);
- b) previously nondisclosed material relating to ownership or control of any non-public company;
- c) previously nondisclosed business plans, product development information, or marketing plans;
- d) previously nondisclosed opinions or reports of consultants or other experts retained to provide advice;
- e) previously nondisclosed drafts of any other Discovery Material described in this paragraph, even if the final document has been publicly disclosed;
- f) any information designated as confidential under applicable state or federal law, or by any federal regulatory agency;
- g) previously nondisclosed testimony from any person, including any exhibits used during the deposition;
- h) any information subject to a protective order regarding confidentiality in any other litigation;
- i) personal financial records or personal investment information related to any individual;

- j) any information of a personal or intimate nature regarding any individual;
or
- k) any other category of information hereinafter given confidential status by
the Court.

For purposes of this paragraph, “previously nondisclosed” means that, prior to its production in this litigation, the Discovery Material had not been disclosed to a person or persons who had no obligation to maintain its confidentiality.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person’s counsel may designate such portion as “Confidential” by stamping or otherwise clearly marking as “Confidential” the protected portion in a manner that will not interfere with legibility or audibility. With respect to deposition transcripts and exhibits, a producing person or that person’s counsel may indicate on the record that a question calls for Confidential information, in which case the transcript of the designated testimony shall be marked “Confidential Information Governed by Protective Order” by the reporter and the designated testimony shall be treated as Confidential.

4. The inadvertent failure by a party to designate information as Confidential shall not constitute a waiver of the party’s right to so designate the information when the error is discovered. If at any time prior to the trial of this action, a producing person realizes that some portion of Discovery Material that that person previously produced without limitation should be designated as Confidential, he may so designate by so apprising all parties in writing and such designated portion[s] of the Discovery Material will thereafter be treated as Confidential under the terms of this Order.

5. A producing party who previously designated Discovery Material as Confidential may withdraw that designation at any time.

6. No person subject to this Order other than the producing person shall disclose any of the Discovery Material designated by the producing person as Confidential to any other person whomsoever, except to:

- a) the parties to this action;
- b) counsel retained specifically for this action, including any paralegal, or clerical and other assistants employed by such counsel and assigned to this matter;
- c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- d) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action or who are believed to possess information deemed necessary for the presentation of the claims and defenses in this action, provided that the witness either (i) has first executed the Acknowledgment of Protective Order in the form annexed as Exhibit A hereto, or (ii) is ordered by a court with jurisdiction over the witness to maintain the confidentiality of the Discovery Material disclosed to him or her;
- e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed the Acknowledgment of Protective Order in the form annexed as Exhibit A hereto;

- f) outside vendors who are necessary to assist counsel retained specifically for this action in the preparation and trial of this action, provided such person either (i) is subject to a non-disclosure agreement that would prevent the disclosure of Confidential Discovery Material; or (ii) has executed the Acknowledgment of Protective Order in the form annexed as Exhibit A hereto;
- g) stenographers engaged to transcribe depositions conducted in this action;
or
- h) the Court and its support personnel.

7. Prior to any disclosure of any Confidential Discovery Material to any person, such person shall be advised that disclosure is pursuant to the terms of this Protective Order and may not be disclosed other than pursuant to the terms herefor. Counsel for the party who makes disclosure pursuant to paragraphs 6(d), 6(e), or 6(f) shall retain each signed Acknowledgment of Protective Order, hold it in escrow, and produce it to opposing counsel upon request for good cause shown.

8. All Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential Discovery Material, shall be filed under seal in accordance with the provisions of Local Rule 5.1.3. and the Revised Administrative Procedures Governing Filing And Service By Electronic Means. All such materials so filed shall be released from confidential treatment only upon further order of the Court.

9. Any party who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as “attorneys eyes only” in extraordinary

circumstances), may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will cooperate to seek a Court ruling.

10. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential. The Court retains unfettered discretion whether or not to afford confidential treatment to any Confidential Discovery Material or information contained in any Confidential Discovery Material submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

11. Each person who has access to Discovery Material that has been designated as Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

12. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection (“Inadvertently Disclosed Information”), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

13. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

14. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.

15. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

16. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.

17. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Discovery Material designated as "Confidential," and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

18. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

19. Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" pursuant to this order shall promptly notify that party of the motion so

that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

SO STIPULATED AND AGREED.

Dated:

/s/ Norman M. Monhait
Norman M. Monhait (#1040)
ROSENTHAL MONHAIT & GODDESS,
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Attorneys for Plaintiffs

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(202) 721-4676
Terence.healy@hugheshubbard.com

Attorneys for Defendants

Dated: March 16, 2016

So Ordered:

The Honorable Leonard P. Stark
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

STEVEN M. MIZEL, on Behalf)
Of The Steven M. Mizel Roth IRA,)
and PALMETTO PARTNERS LP,)

Plaintiffs,)

v.)

RONI DERSOVITZ, RD LEGAL)
FUNDING PARTNERS L.P., and)
RD LEGAL CAPITAL LLC,)

Defendants.)

C.A. No. 15-727 LPS

ACKNOWLEDGMENT OF PROTECTIVE ORDER

The undersigned represents that he/she, along with his or her support personnel, as applicable: (a) has received a copy of the Court’s Protective Order (“Protective Order”) in the above-captioned case; (b) has read the Protective Order and understands its provisions; (c) agrees to be bound by the terms of the Protective Order; and (d) agrees to be subject to the jurisdiction of the United States District Court for the District of Delaware for the purposes of any proceedings related to the enforcement of the Protective Order.

Date:

Signature

Norman Monhait

From: ded_nefreply@ded.uscourts.gov
Sent: Friday, March 18, 2016 8:05 AM
To: ded_ecf@ded.uscourts.gov
Subject: Activity in Case 1:15-cv-00727-LPS Mizel et al v. Dersovitz et al SO ORDERED

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered on 3/18/2016 at 8:04 AM EDT and filed on 3/18/2016

Case Name: Mizel et al v. Dersovitz et al

Case Number: 1:15-cv-00727-LPS

Filer:

Document Number: No document attached

Docket Text:

SO ORDERED, re [22] Protective Order filed by RD Legal Capital LLC, RD Legal Funding Partners LP, Roni Dersovitz. Signed by Judge Leonard P. Stark on 3/17/2016. (rpg)

1:15-cv-00727-LPS Notice has been electronically mailed to:

Norman M. Monhait nmonhait@rmgglaw.com

Thomas E. Hanson, Jr thanson@morrisjames.com, clees@morrisjames.com, jstamper@morrisjames.com, mtouchton@morrisjames.com

1:15-cv-00727-LPS Filer will deliver document by other means to:

EXHIBIT C

January 6, 2017

VIA EMAIL AND U.S. MAIL

Norman Monhait
Rosenthal Monhait & Goddess, P.A.
919 Market Street, Suite 1401
Citizens Bank Center
Wilmington, Delaware 19801
nmonhait@rmgglaw.com

Re: *Steven M. Mizel et al. v. Roni Dersovitz, et al.*,
No. 15-cv-00727-LPS (D. Del.)

Dear Norm:

We write on behalf of Defendants in this action concerning the SEC Subpoena to Produce Documents served on Plaintiff Steven Mizel dated December 28, 2016 (the “Subpoena”). We understand that the Subpoena seeks from Mr. Mizel production of (i) all deposition transcripts in this action; (ii) all exhibits to such depositions; (iii) all interrogatories provided in this action; and (iv) all responses to such interrogatories.

Under the clear language of the Protective Order that Judge Stark entered in this action on March 18, 2016 (the “Protective Order”), Confidential Discovery Material¹ may not be produced outside of this litigation. See ECF 22 ¶¶ 1, 6. This prohibition stands notwithstanding Mr. Mizel’s receipt of the Subpoena. See, e.g., *U.S. v. GAF Corp.*, 596 F.2d 10, 15–16 (2d Cir. 1979) (collecting cases supporting conclusion that courts will not enforce a subpoena against a recipient of discovery material in another proceeding as to such material subject to protective order in that other proceeding); see also *Minepeco S.A. v. Conticommodity Services Inc.*, 832 F.2d 739, 741, 742 (2d Cir. 1987) (affirming denial of motion to modify protective order filed by the CFTC after plaintiff, recipient of CFTC subpoena, “declined to produce [documents subject to protective order], citing the protective order,” and observing that litigants “should be entitled to rely upon the enforceability of a protective order against any third parties, including the Government”); *Savant Sys., LLC v. Crestron Elecs., Inc.*, No. CIV.A. 12-MC-51, 2012 WL 987404, at *4 (E.D. Pa. Mar. 22, 2012) (quashing subpoena *duces tecum* purporting to require a non-party to produce documents received in discovery in separate action, because “it is clear that the documents in question are protected [by] a negotiated protective order”).

¹ All capitalized terms not defined herein shall have the meanings set forth in the Protective Order.

Defendants note that the vast majority of the deposition exhibits in this action consist of copies of one or more documents that Defendants have designated as Confidential under ¶ 3 of the Protective Order (“Confidential Exhibits”).

Pursuant to ¶ 4 of the Protective Order, Defendants hereby designate as Confidential the following Discovery Material:

1. All deposition testimony that discusses or characterizes any Confidential Exhibit(s) or any information contained therein or derived therefrom, or that otherwise responds to a question or line of questioning calling for the deponent’s review of any Confidential Exhibit(s);
2. Defendants’ Responses to Plaintiffs’ Third Set of Interrogatories (comprising Defendants’ responses to Plaintiffs’ Interrogatories Nos. 11–13); and
3. Defendants’ Responses to Plaintiffs’ Fourth Set of Interrogatories (comprising Defendants’ response to Plaintiffs’ Interrogatory No. 14).

Defendants also note that the following Discovery Material created by Plaintiffs contains or derives from Discovery Material (i.e., financial information) that Defendants have designated as Confidential under ¶ 3 of the Protective Order:

1. Plaintiffs’ Third Set of Interrogatories (specifically, Interrogatories Nos. 12 and 13); and
2. Plaintiffs’ Fourth Set of Interrogatories (specifically, Interrogatory No. 14).

Again, Defendants believe that any disclosure of any Confidential Discovery Material, including any of the Discovery Material designated as Confidential above, would violate the Order of Judge Stark.

If you would like to discuss any of the above, please let us know.

Very truly yours,



Webster D. McBride

Cc: Michael D. Birnbaum, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of January, 2017, a copy of the foregoing **Application To Quash Or Modify Subpoena To Produce Documents** was served upon the following as follows:


By Federal Express/Next Day Delivery

The Honorable Brent J. Fields
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

By Email And First Class Mail

Terence Healy, Esquire
Hughes Hubbard & Reed LLP
1775 I Street, N.W., Suite 600
Washington, D.C. 20006-2401
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Norman M. Monhait (#1040)