

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18099

In the Matter of .

BLACK DIAMOND ASSET
MANAGEMENT LLC

and

ROBERT WILSON,

Respondents.

THE DIVISION OF ENFORCEMENT'S RESPONSE
TO RESPONDENT ROBERT WILSON'S REVISION REQUEST

Preethi Krishnamurthy
James K. Hanson
Division of Enforcement
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street
New York, NY 10281

Attorneys for the Division of Enforcement

January 19, 2018

TABLE OF CONTENTS

PRELIMINARY STATEMENT..... 1

ARGUMENT 1

 I. The Court Should Ratify the Prior Default Order as to Black Diamond,
 Because It Has Not Sought Revision of any Prior Actions 1

 II. Wilson and the Division Apparently Agree That the Court Should Revise Its Prior
 Default Order So That It Does Not Apply to Wilson. 2

 A. The 2015 Form ADV..... 2

 B. The 2016 Form ADV..... 4

CONCLUSION 6

Pursuant to the Court's Record Reexamination Order, dated December 5, 2017, and the Court's Order Scheduling Prehearing Conference, dated January 10, 2018, the Division of Enforcement respectfully submits this brief and attached Exhibit 1 in response to Respondent Robert Wilson's "Brief to Reenter Evidence in to the Review of the by the Judge" [*sic*] ("Wilson's Brief") and in further support of the Division's Brief Requesting Ratification of Certain Prior Actions in These Proceedings and Revision of the Default Order ("Division's Opening Brief"), dated January 5, 2018.¹

PRELIMINARY STATEMENT

Black Diamond still has not appeared and has submitted no papers requesting revision or ratification of the Court's prior actions. The Court should therefore ratify its prior Default Order as to Black Diamond.

Wilson's Brief, however, contests the OIP's allegations. Liberally construed, Wilson's Brief appears to request that the Default Order should be revised as to him. Indeed, Wilson's Brief sets forth certain defenses, which have no merit for the reasons briefly previewed below (pending the Division's submission of a more comprehensive pre-hearing brief, if appropriate). Given these disputes and the parties' agreement that the Default Order should be revised, the Court should set a prehearing and hearing schedule and provide Wilson with another opportunity to answer the OIP and otherwise participate in these proceedings.

ARGUMENT

I. The Court Should Ratify the Prior Default Order as to Black Diamond Because It Has Not Sought Revision of Any Prior Actions.

As the Division's Opening Brief explains, the Court should ratify its default order as to Black Diamond primarily because Black Diamond has not appeared or otherwise defended itself in this proceeding. In addition, the Record Reexamination Order's January 5, 2018 deadline for the parties to

¹ This brief uses the same short forms and citation methods as the Division's Opening Brief, except as noted herein.

file briefs requesting ratification or revision of prior actions has since passed, and Black Diamond has not filed or served any such papers. Indeed, Wilson signed and submitted such a brief on his own behalf but not on Black Diamond's behalf. The Court's Default Order as to Black Diamond should therefore be ratified.

II. Wilson and the Division Apparently Agree that the Court Should Revise Its Prior Default Order So That It Does Not Apply to Wilson.

While Wilson's Brief does not explicitly seek revision of any prior orders, Wilson contests the OIP's allegations. (Wilson's Br. ("I am listing key exhibits that show all the Commission charges are false.")(Given that Wilson apparently submitted his brief in response to the Record Reexamination Order, Wilson and the Division seem to agree that the Court should therefore revise the Default Order to apply only to Black Diamond and not to Wilson. (*See also* Order Scheduling Prehearing Conference, Jan. 10, 2018, at 1 ("The parties contend that I should revise some of these actions.")(

Wilson's Brief—in conjunction with his opposition to the Division's motion for sanctions (Responses of Respondent Wilson dated 11/7/17 (hereinafter "Wilson's Opposition")) and exhibits, which Wilson's Brief references—offers two main defenses to the OIP. As described further below, these defenses have no merit, as the Division will prove at any hearing through witness testimony and documents. Nevertheless, under the circumstances, these disputes further weigh in favor of the Court's setting a prehearing and hearing schedule and providing Wilson with another opportunity to answer the OIP and otherwise participate in these proceedings.

A. The 2015 Form ADV

On March 10, 2015, Wilson represented in Black Diamond's 2015 Form ADV that Black Diamond managed over \$583 million in assets and 26 accounts as of that date. (OIP ¶¶ 6–7, 16–18, 21.) Wilson further represented in the same ADV that Black Diamond (or a related person) had discretionary authority to "determine the (1) securities to be bought or sold for a *client's* account [and]

(2) amount of securities to be bought or sold for a *client's* account” (OIP ¶¶ 19–20 (emphases in original).)

Wilson’s Opposition apparently claimed that these statements were true, because in 2015 “Black Diamond was *asked* to advise and manage the assets of a \$10,000,000 private placement and a \$180,000,000 self-underwriting.” (Opp’n at 3 (emphasis added).) Wilson’s Brief further contends that Exhibit 2 to Wilson’s Opposition “clearly states that the contract is for consulting and asset management... [and] shows the value of the asset that *are to be managed* based on their Offering price to be \$556,473,400.00.” (Wilson’s Br. at ¶ 1 (emphasis added).)

The document Wilson cites—a consulting agreement, executed on May 4, 2015, between Wilson’s affiliated entity, RJ Advisor, LLC, and a securities issuer named HSH International Inc. (Wilson’s Opp’n Ex. 2)—refutes his defense for at least three reasons, as the Division will show at any hearing. First, the consulting agreement was executed almost two months *after* Wilson represented that Black Diamond managed over half a billion dollars of assets. (*Compare* OIP ¶¶ 6–7, 16–18, 21 *with* Wilson’s Opp’n Ex. 2 at 4.) Second, as the agreement shows, HSH never retained RJ Advisors to manage its assets. Instead, HSH retained RJ Advisors as a “financial consultant and advisor” to help HSH raise capital by issuing two million HSH shares to investors in a private placement, by raising \$160 million from investors through an initial public offering, and by otherwise obtaining funds for HSH through debt or equity financing. (Wilson’s Opp’n Ex. 2 at 1–2.) In compensation, HSH agreed to pay RJ Advisors (i) HSH stock, a fee, and a bonus when HSH closed its two-million-share private placement and initial public offering, (ii) travel expenses, and (iii) an additional 1.5% finder’s fee for introducing HSH to any investors who ended up providing financing to HSH. (*Id.* at 1–2 ¶¶ 2–4.) Third, despite Wilson’s representation that Black Diamond had discretionary authority over the assets it purportedly managed, the consulting agreement made clear that RJ Advisors had no authority to act on HSH’s behalf in any capacity. (Wilson’s Opp’n Ex. 2 at 3 ¶ 9 (“Nothing herein shall constitute

Consultant as an...agent of the Company, except to such extent as might hereinafter be agreed upon for a particular purpose. Except as might hereinafter be expressly agree[d], [R] Advisors] shall not have the authority to obligate or commit [HSH] in any manner whatsoever.”.) Ultimately, as Wilson testified, HSH asked Wilson to start selling the private placement shares to investors, Wilson refused (purportedly because he was not registered to solicit investors), and Wilson never received any compensation under the consulting agreement. (Tr. of Testimony of Robert Wilson (excerpts), Sept. 27, 2016, attached as Ex. 1, at 39–41.)

B. The 2016 Form ADV

On March 30, 2016, Wilson filed Black Diamond’s 2016 Form ADV. (OIP ¶ 22.) The 2016 ADV represented that Black Diamond had over \$25.69 million in assets under management. (OIP ¶¶ 29–30.) Wilson’s Opposition apparently claimed that this representation was true, because “in 2015 [he] had accounts that were sent to [him] by Momentous Entertainment Group to manage and rebalance as [he] saw fit.” (Wilson’s Opp’n at 4.) Wilson’s Brief, citing Exhibit 5 to Wilson’s Opposition, similarly contends that “accounts were open for my clients at BMA Securities for the depositing of the securities of Momentous Entertainment Group (MMEG).” (Wilson’s Br. at ¶ 2.)

In fact, Black Diamond never managed the Momentous Entertainment Group, Inc. (“Momentous”) shares, whatever Wilson may have hoped would occur in the future. As Wilson admitted in his investigative testimony, Momentous shares (traded under the ticker MMEG) were never deposited into an account, and he never ultimately sought a management fee. (Ex. 1 at 80–81 (“[B]asically, what went on is I was under an agreement with these people; all the assets would be deposited, and I would be managing them, but because of certain restrictions that have been put on by the SEC and FINRA, and because some of these companies agreed, in my opinion, to what they wanted to charge my clients, they were not -- they were rejected. I couldn’t deposit the assets, and I

don't think it's right to charge people a fee, unless you've got them in an account where you can liquidate them, and you can give them proper allocation of what's proper for them.'").

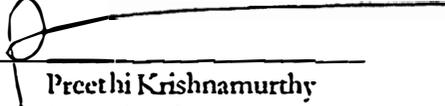
Yet even if Black Diamond had managed the Momentous shares, the total dollar value of the relevant shares did not exceed \$1.35 million—far less than the approximately \$25.69 million Wilson claimed Black Diamond managed on its 2016 Form ADV. Wilson's Opposition apparently contends that Black Diamond managed 10,276,360 Momentous shares: the total number of shares held by the seven investors whose letters Wilson submitted. (Wilson's Opp'n Ex. 5.) On both March 30, 2016—the date Wilson filed Black Diamond's 2016 Form ADV (OIP ¶ 22)—and the day before, Momentous's stock price opened at, closed at, and never traded above \$0.13 per share. *See* <https://finance.yahoo.com/quote/MMEG/history?period1=1451624400&period2=1459396800&interval=1d&filter=history&frequency=1d> (last visited Jan. 17, 2018). The value of all 10,276,360 Momentous shares therefore totaled less than \$1.35 million when Wilson filed Black Diamond's 2016 Form ADV. In fact, in the entire first quarter of 2016, Momentous's stock price never traded above \$0.52 per share. *See id.* Whatever price investors hoped to obtain in the future when selling their Momentous stock (Wilson's Opp'n Ex. 5 ("We have agreed that the stock would be liquidated at \$2.50 per share.")), the actual value of their shares never approached the \$25.69 million value Wilson claimed Black Diamond held in assets under management on the 2016 Form ADV.

These and other disputes between Wilson and the Division further support a revision of the Court's Default Order as to Wilson. The Court should set a schedule at the pre-hearing conference on January 23, 2018, to give Wilson another opportunity to answer the OIP and otherwise participate in these proceedings.

CONCLUSION

For the reasons described above and in the Division's Opening Brief and exhibits, the Court should revise the Default Order so that it applies only to Black Diamond and not to Wilson but otherwise ratify and affirm all of the Court's prior actions in these proceedings.

DIVISION OF ENFORCEMENT

By: 

Preeti Krishnamurthy
James K. Hanson
Securities and Exchange Commission
New York Regional Office
Brookfield Place, 200 Vesey Street, Ste. 400
New York, New York 10281
Tel. (212) 336-0116 (Krishnamurthy)
Fax. (212) 336-1319
KrishnamurthyP@sec.gov
HansonJ@sec.gov

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. NY-09568-A
BLACK DIAMOND ASSET MANAGEMENT, LLC)

WITNESS: Robert Wilson

PAGES: 1 through 85

PLACE: Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, New York 10281

Date: Tuesday, September 27, 2016

The above entitled matter came on for hearing,
pursuant to notice, at 10:40 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

Page 2

1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 JAMES HANSON, ESQ.
 5 GERALD A. GROSS, ESQ.
 6 Securities and Exchange Commission
 7 Division of Enforcement
 8 200 Vesey Street - Suite 400
 9 New York, New York 10285
 10
 11 On behalf of the Witness:
 12 ROBERT WILSON, PRO SE
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 4

1 P R O C E E D I N G S
 2 (Whereupon, Commission Form 1662
 3 was premarked as Commission Exhibit 1
 4 for identification.)
 5 (Whereupon, Subpoena was
 6 premarked as Commission Exhibit 2 for
 7 identification.)
 8 Whereupon,
 9 ROBERT WILSON
 10 was called as a witness and was examined and testified
 11 as follows:
 12 EXAMINATION
 13 Q We're on the record at 10:40 a.m. on September 27,
 14 2016, in the matter of Black Diamond Asset Management, LLC
 15 NY No. 9568. I'm James Hanson. This is Gerald Gross. We
 16 are both officers of the Securities and Exchange Commission
 17 for the purposes of this proceeding.
 18 This is an investigation by the U.S. Securities
 19 Exchange Commission in the matter of Black Diamond Asset
 20 Management to determine whether there have been violations
 21 of certain provisions of the Federal Securities Laws,
 22 however, the facts developed in this investigation might
 23 constitute violations of other federal or state, civil or
 24 criminal laws.
 25 Mr. Wilson, I'm handing you what's been marked as

Page 3

1 C O N T E N T S
 2
 3 WITNESS EXAMINATION
 4 Robert Wilson 4
 5
 6
 7 EXHIBIT DESCRIPTION IDENTIFIED
 8 1 Form 1662 4
 9 2 Subpoena 4
 10 3 Letter from exam staff 18
 11 4 List 71
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 5

1 Exhibit 1 in this matter. Are you familiar with that
 2 document?
 3 A No.
 4 Q That is the Commissions Form 1662, which was
 5 attached to the Subpoena that we sent you. We'll get into
 6 that in a moment.
 7 I'm also handing you a copy of what's been
 8 previously marked as Exhibit 2, which is the Subpoena that
 9 was sent to you on the 13th of September. Are you familiar
 10 with that?
 11 A Yes, it was fraudulent because of the Ninth
 12 Amendment being invoked by the United States Constitution,
 13 which takes away all authority of these two pieces of
 14 garbage, because this is retaliation because of the fact
 15 that I made a complaint about the First Lady of the United
 16 States of America, Michelle Obama, and a fraudulent deal
 17 that she's involved in with a group in Atlanta and her
 18 former chef at the White House, and against Mary Joe White,
 19 the head of the Securities and Exchange Commission, which I
 20 have e-mails.
 21 Q Just so you know, Mr. Wilson, I'm not here to
 22 discuss any of that today.
 23 A I don't care what you're here to discuss. It's
 24 going on the record so everybody knows what you're doing.
 25 Q While you're here, I'm going to give you a copy of

1 doing the private placement.

2 Q To raise additional money?

3 A Right.

4 Q And then what I don't understand is if there was
5 an attempt to keep the Bahamas deal going –

6 A The Bahamas deal was going. The other shell,
7 those guys took it, because they had this restaurant
8 Asante, which was –

9 Q That's what I'm trying to get to, because –

10 A That all happened around the same time, around the
11 end of 2014, but we immediately went with the other
12 shareholders and the same dollar value, because what I told
13 them they had to was based the value of the company on the
14 appraisal of the land.

15 Q That would be the appraisal of the land in the
16 Bahamas?

17 A Right, so what I'm saying is yes, the shell went
18 to this Asante deal, which the stock symbol is AIDC, and we
19 formed another corporation for the HSH Holdings
20 International, a brand new corporation, and were moving
21 forward with everything through a complete private
22 placement that was done by this law firm down in Atlanta,
23 and that's what you have, that PTM.

24 Q Now I just want to make sure that I understand now
25 that – because two different things are happening, right,

1 thought it would be good for their portfolio, I could put
2 them into it, but I couldn't solicit for it, because I
3 wasn't registered to do that.

4 Q That's based on your understanding of the legal
5 difference between being a broker and being an investment
6 adviser; is that right?

7 A That's right.

8 Q So you refused to do that?

9 A I refused to do that, and they walked.

10 Q Where did they walk to?

11 A They start selling it on their own with Dr. Jay
12 opening up people that he knew. Obviously, he's Dr. Jay.
13 He knows all sorts of people.

14 Q So then did they withdraw the 500 million from
15 your management at that point?

16 A Yes, that's why my total in 2016 went down.

17 Q Right, of course we're going to get to that one in
18 the minute, but I want to make sure that that money then
19 went back to the investors to send wherever they sent it?

20 A Right.

21 Q Do you know where they sent it?

22 A I have no idea.

23 Q Do you have any interest in it?

24 A I have interest in knowing. I'd like to have them
25 back, but I'm not going to get them. They all came to me

1 and the \$500 million that we're talking about, no restaurant
2 cost that much, so –

3 A No, the restaurant stock was – I think that only
4 added to my total maybe \$10 million at the most.

5 Q But were the people – you're talking about
6 Mr. Ford and some of these other wealthy individuals and
7 influential people that are involved in the Bahamas deal.
8 Did they pull out of the Bahamas deal?

9 A No.

10 Q Are they still involved in the Bahamas deal?

11 A Yes.

12 Q What has come of the Bahamas deal?

13 A I don't know, because after Folio wouldn't allow
14 it to be put onto their private placement platform, they
15 wanted me to go out and start selling it, and I told them I
16 couldn't do that; that I was an investment adviser, not a
17 broker.

18 Q What did they want you to sell?

19 A They wanted me to sell the private placement.

20 Q Okay. They wanted you to work the phones, and
21 talk to people you knew, and raise money for the private
22 placement?

23 A Right, and I told them I couldn't do that. I had
24 told them that all along, that all I can do is provide
25 advice, and if I happened to come along somebody that I

1 because of people that own the deal.

2 Q So did they give you some of the stock?

3 A I've gotten nothing. I was supposed to get stock.
4 It will tell you right in the PPM that I did get stock, but
5 I never got a share. I never got anything. I spent two
6 years of working my butt off every single day, sometimes
7 12 hours a day, and I got zero. I got two trips paid for
8 to the Bahamas to go see the land. That's all I got out of
9 it.

10 Q What about that 1.2 percent you were supposed to
11 get?

12 A I didn't get that either.

13 Q So you didn't get compensated –

14 A I got compensated nothing.

15 Q So your understanding was that you were going to
16 get compensated 1.2 percent of the assets under management
17 as your investment adviser fee; is that right?

18 A Right, and it even says it in the PPM I was
19 supposed to.

20 Q And who was supposed to pay you that money?

21 A The people that own the stock.

22 Q And they didn't do that?

23 MR. GROSS: Shaking your head

24 no?

25 Q Shaking your head no, you did not get that money?

1 they have that they're going to take
 2 public.
 3 MR. GROSS: Do you know what the
 4 assets under management that you're --
 5 THE WITNESS: I don't yet. I'm
 6 not totally sure.
 7 We're putting that all
 8 together now.
 9 Q I think that obviously, there's a lot of new
 10 material, and I'm going to have to observe it.
 11 MR. HANSON: When we were out of
 12 the room, I told him we may have to
 13 contact him for additional questions.
 14 We may have to ask him to come back
 15 in, depending on what works.
 16 Q There is one additional question.
 17 I think one of the issues that may have come up
 18 when you were dealing with the exam staff was whether you
 19 had a Series 65 license.
 20 A Yes, I do. I took the test.
 21 Q You took the test, and you passed the test?
 22 A I provided them the thing that they give you from
 23 the test there.
 24 Q You did?
 25 A Yeah. You know, they give you that sheet after

1 you take the test, pass or fail at the exam center. I gave
 2 them that, a copy of that.
 3 MR. GROSS: You gave that to the
 4 exam staff?
 5 THE WITNESS: Yes.
 6 MR. GROSS: When did you take
 7 the test?
 8 THE WITNESS: I took it in 2013.
 9 MR. GROSS: Do you know
 10 approximately when?
 11 THE WITNESS: I think
 12 approximately sometime in June 2013.
 13 MR. GROSS: Have you ever looked
 14 up yourself on CRB?
 15 THE WITNESS: No. Yeah, I'm on
 16 CRB, but it doesn't show the 65. I
 17 don't know why. I passed it.
 18 MR. GROSS: Did you take any
 19 steps to determine why it does not
 20 show the --
 21 THE WITNESS: I called FINRA,
 22 and they said that because of the
 23 fact that it's a 65 and it's not
 24 their exam, it doesn't show on there.
 25 That's what the person told me on the

1 phone.
 2 Q It's not their exam?
 3 A Yeah, it's not their exam, the 65. The 65 is
 4 State Administrator's Exam, because they have 66, which is
 5 the same thing as the 65. They just administer it for the
 6 state administrators, is what they told me, but I do have a
 7 65.
 8 MR. GROSS: You don't happen to
 9 remember the person at FINRA you
 10 talked to, do you?
 11 THE WITNESS: I don't, no. Half
 12 the time, you can't understand what
 13 they say their name is.
 14 Q I'd like to do this, because I think we have asked
 15 the questions that we're confident to ask today, because we
 16 haven't had a chance to review the new information, and
 17 we're not going to keep you sitting here while we read
 18 through it all, but is there anything that you want to add
 19 to clarify what you've said or change anything you've said
 20 or just in general just to make sure -- the record has been
 21 a little complicated today, and I want to give you the
 22 opportunity to say what you think is going on.
 23 A Well, basically, what went on is I was under an
 24 agreement with these people; all the assets would be
 25 deposited, and I would be managing them, but because of

1 certain restrictions that have been put on by the SEC and
 2 FINRA, and because some of these companies agreed, in my
 3 opinion, to what they wanted to charge my clients, they
 4 were not -- they were rejected. I couldn't deposit the
 5 assets, and I don't think it's right to charge people a
 6 fee, unless you've got them in an account where you can
 7 liquidate them, and you can give them proper allocation of
 8 what's proper for them. So how can I charge somebody for
 9 managing their assets if I can't allocate it properly and
 10 do a proper job for them? I have to wait until I can get
 11 it in that situation, and I do think that the SEC should
 12 look into these broker dealers that don't accept fully
 13 reporting companies, especially ones that are DWAC
 14 eligible, because I think it's pretty fraudulent. I think
 15 it is actually a violation of the Fourteenth Amendment. If
 16 you're doing the same thing that IBM is doing and you're
 17 being treated differently, it's not fair.
 18 I think little companies are very important to the
 19 economy. As a matter of fact, the Census Bureau says that
 20 since 1980, no company over five years old has created a
 21 new job in this country, but I also think that we need some
 22 changes. Now I'm preaching a little bit. I hope you don't
 23 mind, and that is we got all these small business
 24 development centers around the country. To prevent fraud
 25 in the small companies, we should make those people earn

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18099

In the Matter of

BLACK DIAMOND ASSET
MANAGEMENT LLC

and

ROBERT WILSON,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing Division of Enforcement's Response to Respondent Robert Wilson's Revision Request, dated January 19, 2018, along with the attached Exhibit 1 on this 19th day of January, 2018, on the following by the means indicated:

Robert A. Wilson

██████████
Calverton, NY ██████████

██████████@optonline.net

(By email and UPS)

Black Diamond Asset Management, I.I.C

77 Mastro Road

Calverton, NY 11933

(By UPS)

Brent Fields, Secretary

Office of the Secretary

U.S. Securities and Exchange Commission

100 F. Street, N.E.S

Washington, D.C. 20549-2557S

(By facsimile and UPS (original and three copies))

The Honorable James E. Grimes

Administrative Law Judge

U.S. Securities and Exchange Commission

100 F Street, N.E.S

Washington, DC 20549-2557S

alj@sec.gov

(By email)



Preethi Krishnamurthy

Senior Trial Counsel