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ADMINISTRATIVE PROCEEDING
FILE NO. 3-11692

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 9, 2005

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

MAR 10 2005

In the Matter of	:	
	:	
RAYMOND JAMES FINANCIAL SERVICES, INC.,	:	ORDERS FOLLOWING HEARING
J. STEPHEN PUTNAM, and	:	
DAVID LEE ULLOM	:	

The Securities and Exchange Commission (“Commission”) initiated this proceeding on September 30, 2004. The Order Instituting Proceedings (“OIP”) directed that an initial decision be issued on, or before, August 1, 2005. This order will dispose of two pending matters unresolved at the conclusion of the public hearing on February 24, 2005.

Pending Matters

A. Division Exhibits 409, 413 through 415, and 417 through 426

On February 16, 2005, the Division of Enforcement (“Division”) moved to introduce Division Exhibits 409, 413 through 415, and 417 through 426. (Tr. 2242-45.) In support of its position that a cease-and-desist order is required, the Division seeks to admit these materials to show a likelihood, based on past conduct, that Raymond James Financial Services, Inc. (“Raymond James”), will commit a future violation. (Tr. 2242-46.) The likelihood of a future violation supports issuance of a cease-and-desist order. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (Jan. 19, 2001), reh’g denied, 74 SEC Docket 1351 (Mar. 8, 2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002). The Division notes that there are few litigated civil cases involving allegations of fraud by Raymond James because Raymond James requires that customers agree to arbitrate their complaints. (Tr. 2246.)

Div. Ex. 409 - Raymond James Financial Services, Inc., Order Instituting Administrative and Cease and Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b)(4) of the Securities Exchange Act of 1934, (Securities Act of 1933 Release No. 8374, and Securities Exchange Act Release No. 49234 (Feb. 12, 2004)).

Div. Ex. 413 - Raymond James Financial Services, Inc., Administrative Proceeding Before the Securities Commissioner of Maryland, No. 2000-0549, Consent Order (July 31, 2002).

Div. Ex. 414 - In the Matter of the Arbitration Between Paul F. Nemzek, IRA v. Raymond James Financial Services, Inc., Docket No. 03-08972, 2004 WL 2848939 (N.A.S.D. Dec. 2, 2004).

Div. Ex. 415 - In the Matter of the Arbitration Between Margaret Coddling v. Raymond James Financial Services, Inc., Docket No. 03-05945, 2004 WL 2795892 (N.A.S.D. Nov. 24, 2004).

Div. Ex. 417 - In the Matter of the Arbitration Between Danny and Mary Giardina v. Thomas Van Geffen and Raymond James Financial Services, Inc., Docket No. 03-02176, 2004 WL 1774982 (N.A.S.D. July 27, 2004).

Div. Ex. 418 - In the Matter of the Arbitration Between Linda Thomas Woolsey as Personal Representative for the Estate of James L. Thomas v. Raymond James Financial Services, Inc., and Reginald Carr Rogers, Jr., Docket No. 03-04284, 2004 WL 1253396 (N.A.S.D. May 21, 2004).

Div. Ex. 419 - In the Matter of Arbitration Between Marjorie Routien, an Individual, and Mark Routien, as Executor of the Estate of Ira Routien v. Raymond James Financial Services, Inc., Robert Thomas Securities, Inc., and John K. Bryant, Docket No. 02-02993, 2004 WL 1125940 (N.A.S.D. May 4, 2004).

Div. Ex. 420 - Stacy Jean Susman and Stacy Jean Susman, IRA v. Raymond James Financial Services, Inc. and Lawrence A. Appleman, Docket No. 03-04149, 2004 WL 1047878 (N.A.S.D. Apr. 30, 2004).

Div. Ex. 421 - In the Matter of the Arbitration Between Gary G. Parsons, Sr. v. Howard R. Polen, William A. Driver, Raymond James and Associates, Inc., Manufacturers Life Insurance Co., Raymond James Financial Services, Inc., Manulife Wood Logan, Inc., and Manulife Financial Securities, LLC., Docket No. 02-06665, 2004 WL 784994 (N.A.S.D. Mar. 26, 2004).

Div. Ex. 422 - In the Matter of the Arbitration Between Dennis Good v. Raymond James Financial Services, Inc., and Winfield Mayne, Docket No. 01-06680, 2003 WL 22332167 (N.A.S.D. Oct. 1, 2003).

Div. Ex. 423 - In the Matter of Arbitration Between Ronald L. Thomas and Patricia Thomas v. Raymond James Financial Services, Inc., and Fred L. Dowd, Docket No. 02-00914, 2003 WL 1478036 (N.A.S.D. Mar. 12, 2003).

Div. Ex. 424 - In the Matter of the Arbitration Between Debbie Isola and Charles Isola v. Raymond James Financial Services, Inc., Evan Kralstein, and Evan Thomas Associates, Docket No. 01-03776, 2002 WL 31737291 (N.A.S.D. Nov. 18, 2002).

Div. Ex. 425 - In the Matter of the Arbitration Between Jae Kwang Kim and Kyung Sook Kim v. Raymond James Financial Services, Inc., and Jimmy Young Hu, Docket No. 01-04334, 2002 WL 31737300 (N.A.S.D. Nov. 15, 2002).

Div. Ex. 426 - In the Matter of the Arbitration Between Nancy E. Krivacek v. James A. Nickels and Raymond James Financial Services, Inc., Docket No. 01-04715, 2002 WL 1948253 (N.A.S.D. July 24, 2002).

Raymond James submitted a Bench Brief in Support of [Raymond James]'s Motion to Exclude Evidence of Other Arbitration Awards, Web CRD Disclosures, and SEC Actions on February 16, 2005.¹ (Tr. 2241). Raymond James claims that the materials should be excluded based on Rule 320 of the Commission's Rules of Practice and Rules 404(b) and 403 of the Federal Rules of Evidence. It claims that the proffered evidence is immaterial and irrelevant in that many of the actions occurred outside the relevant period, and the arbitration awards and Commission action fail to state specifically the basis for imposing liability. Raymond James cites Huddleston v. United States, 485 U.S. 681 (1988), for the proposition that evidence of similar acts should be only allowed under limited circumstances, and argues that those "limited circumstances" do not exist here. Raymond James also cites In re Adler v. Ensminger, 1998 WL 160036 (Bankr. S.D.N.Y. April 3, 1998), for the proposition that consent decrees are inadmissible as evidence of prior illegal actions.

Ruling

The evidentiary standard for admissibility in a Commission administrative proceeding is that evidence be relevant and not immaterial or unduly repetitious. 17 C.F.R. § 201.320. Accordingly, I GRANT Raymond James's motion in part and exclude Division Exhibits 409 and 413 from evidence because they are agreements to resolve disputes in the form of an offer of settlement and a consent, respectively. Neither exhibit shows regulatory violations by Raymond James. Thus, they are not relevant for the purpose for which the Division is offering them.

Division Exhibits 414, 415, and 417 through 426 are twelve arbitration awards from 2002 through 2004, involving situations where a customer filed a complaint, Raymond James contested the complaint, and an arbitration panel found in favor of the claimant. Contrary to

¹ On February 17, 2005, I granted Raymond James's motion in part and refused to admit into evidence Division Exhibits 345 through 350 and 352 through 357, which are certain reports Raymond James made to the National Association of Securities Dealers that appear on the Central Registration Depository ("CRD"), Web CRD disclosures. (Tr. 2235-36, 2242, 2292-94.) Pursuant to Rule 323 of the Commission's Rules of Practice, I took official notice of the fact that the CRD contains entries for Raymond James. (Tr. 2294; 17 C.F.R. § 201.323.)

the thrust of Raymond James's opposition, this evidence does not address whether Raymond James committed the violations alleged in the OIP. I DENY Raymond James's motion in part and allow into evidence Division Exhibits 414, 415, and 417 through 426 because these exhibits are relevant as they could be used to argue the likelihood of a future violation, and the Commission has directed that administrative law judges be inclusive in making evidentiary determinations. City of Anaheim, 71 SEC Docket 191, 193 & n.7 (Nov. 16, 1999).

B. Division's Motion to Introduce Prior Sworn Statements of Deceased Witness Martin Fife and Respondent Putnam's Motion to Exclude Testimony of Martin D. Fife

On February 2, 2005, the Division submitted a Motion to Introduce Prior Sworn Statements of Deceased Witness Martin Fife. The Division maintains that these exhibits should be allowed in evidence pursuant to Rule 235 of the Commission's Rules of Practice because the Division would have called Martin Fife ("Fife") as a witness but Fife died on or about April 24, 2004. 17 C.F.R. § 201.235. The Division claims that as the president of Brite Business, Fife's prior testimony contains his unique perspective about investor funds that moved in and out of the Brite Business account at Raymond James, which is relevant to the issues in the proceeding, particularly disgorgement. The Division is offering the evidence to show the flow of funds in and out of the Brite Business account at Raymond James. (Tr. 863.) In support of its motion, the Division cites City of Anaheim, 71 SEC Docket 191 (Nov. 16, 1999); L.C. Wegard & Co., Inc., 67 SEC Docket 814 (May 29, 1998), *aff'd*, 189 F.3d 461 (2d Cir. 1999); Charles P. Lawrence, 43 S.E.C. 607 (Dec. 19, 1967), *aff'd*, 398 F.2d 276 (1st Cir. 1968); Robert W. Armstrong, 82 SEC Docket 2559 (Apr. 6, 2004); and Donald T. Sheldon, 52 SEC Docket 618 (Mar. 19, 1987). The Division requests that the following three exhibits be admitted into evidence. (Tr. 854-55.)

Division Exhibit 434 - Investigative Testimony of Martin D. Fife, January 14, 2002, page 57, line 25 through page 62, line 10; page 97, line 13 through page 100, line 17; page 143, line 3 through page 147, line 23;

Division Exhibit 87 - a summary of account balances and investment activities that Fife authenticated during his investigative testimony; and

Division Exhibit 88 - SEC v. Dennis S. Herula, Mary Lee Capalbo (a/k/a Mary Lee Capalbo Herula), Martin D. Fife, Farouk A. Khan, Seaview Development and Holdings, Ltd., Michael A. Clarke, Robert M. Wachtel, Johan C. Hertzog, and Charles W. Sullivan, C.A. No 02-154 ML (D.R.I.), Affidavit of Martin D. Fife with Exhibits C through I in Opposition to the SEC's Motion for a Preliminary Injunction and Order Freezing Assets.

The Division argues that these exhibits not only satisfy Rule 235, but they also meet the stricter requirements of the Federal Rules of Evidence, specifically Rule 807, because the statements bear the indicia of trustworthiness in that: (1) Fife gave investigative testimony and submitted the affidavit while under oath and subject to penalties for perjury; (2) Fife had first-

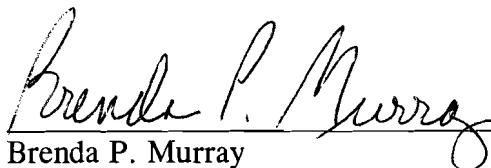
hand knowledge of these events; (3) Fife's testimony is corroborated by documents and investors; and (4) the statements are being offered as evidence of a material fact. The Division also argues that the exhibits are admissible as statements against interest. (Tr. 859.)

Respondent Putnam submitted a Motion to Exclude Testimony of Martin D. Fife on February 2, 2005 ("Motion to Exclude"). (Tr. 856.) Respondent Putnam argues against allowing these exhibits in evidence because: (1) Putnam did not have an opportunity to cross examine Fife on his investigative testimony or the contents of his affidavit; (2) Fife is not credible given that the court in SEC v. Martin D. Fife, 311 F.3d 1, 10 (1st Cir. 2002), found that Fife made misleading and false statements to investors; (3) Fife used his investigative testimony to blame others, including Raymond James; and (4) Rule 326 of the Commission's Rules of Practice states that a party is entitled to conduct cross-examination, which is not possible in this situation. (Tr. 856-63; Motion to Exclude at 2-3.) Putnam also argues that Fife's testimony would be inadmissible under Federal Rule of Evidence 804(b)(i), because the party against whom the former testimony is now offered did not have an opportunity for cross examination. (Motion to Exclude at 2.) Finally, Putnam argues that, for all the reasons stated, Fife's testimony should be given little to no weight if allowed into evidence.

Ruling

None of the considerations advanced by Putnam outweigh the plain language of Rule 235 of the Commission's Rules of Practice, which provides that a prior sworn statement of a witness may be admitted if the witness is dead. 17 C.F.R. § 201.235(a)(1). Moreover, the evidence is relevant as it concerns the disbursement of funds, a fact material to the allegations. 17 C.F.R. § 201.320. For these reasons, I DENY the Motion to Exclude and allow Division Exhibits 87, 88, and 434 into evidence. It is impossible to know now what weight this evidence will receive, but I take official notice, pursuant to 17 C.F.R. § 201.323, of the court's views of Fife's credibility set forth in SEC v. Martin D. Fife, 311 F.3d 1, 10 (1st Cir. 2002).

IT IS SO ORDERED.


Brenda P. Murray
Chief Administrative Law Judge