

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11692

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
January 24, 2005

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE
JAN 25 2005
FIRST CLASS

In the Matter of	:	
	:	
RAYMOND JAMES FINANCIAL SERVICES, INC.,	:	ORDER DENYING MOTION TO QUASH SUBPOENA
J. STEPHEN PUTNAM, and	:	
DAVID LEE ULLOM	:	

The Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings on September 30, 2004. A public hearing is scheduled to begin on January 31, 2005. On January 14, 2005, Raymond James Financial Services, Inc. ("Raymond James"), filed a Motion for Protective Order and to Quash the Subpoena Directed to Thomas James ("Motion to Quash"). The subpoena, issued January 12, 2005, requires Thomas James ("Mr. James") to testify in these proceedings on January 31, 2005. Mr. James is chairman and chief executive officer of Raymond James Financial, Inc., the parent company of Raymond James.

In its Motion to Quash, Raymond James maintains that Mr. James has no personal knowledge of the facts and that his testimony would be duplicative. Raymond James claims the subpoena is unreasonable, oppressive, and unduly burdensome in violation of Rule 232 of the Commission's Rules of Practice, 17 C.F.R. § 201.232, and also violates the "apex witness" doctrine. (Motion to Quash at 1-2.) As described by Raymond James, the apex witness doctrine protects high-level corporate officials from court appearances where: (1) the testimony is sought to harass the executive; (2) the executive has little or no personal knowledge of the facts; or (3) lower level employees can provide the testimony or information. (Id. at 2.) Raymond James asserts that in order to subpoena Mr. James, the Division of Enforcement ("Division") must show: (1) Mr. James possesses some unique or special knowledge of a relevant fact; (2) Mr. James's testimony would not be duplicative or cumulative; and (3) there is no less intrusive or alternative method for the Division to obtain the information. (Id. at 4.)

The Division filed its Opposition to the Motion to Quash ("Opposition") on January 21, 2005. The Division claims that in January 2000 Mr. James participated in a series of e-mails that raised red flags about Brite Business, Inc., and that he has unique knowledge about his communications with J. Stephen Putnam and others concerning Raymond James's relationship with Brite Business. (Opposition at 2-4; Exhibit A.) The Division argues that the case law,

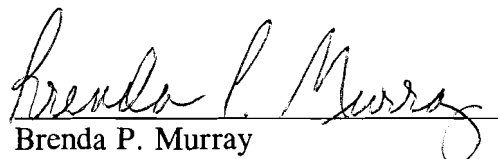
including cases cited by Raymond James, does not insulate high-placed executives with unique factual knowledge from testifying pursuant to a subpoena. (Opposition at 4-5 N. 2.) The Division maintains that attending a hearing in Tampa is not unreasonable, oppressive or unduly burdensome for Mr. James because his office is in St. Petersburg and the testimony will not take a long time. Finally, the Division claims that it is inconsistent for Raymond James to move to quash Mr. James's appearance because he is an executive of Raymond James Financial, Inc., when it has listed the president and chief operating officer of Raymond James Financial, Inc. as a witness.

Ruling

The subpoena to Mr. James complies with the Commission's Rules of Practice standard that subpoenas not be unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b). Mr. James works in the metropolitan area where the testimony will be given, Mr. James's testimony will not take a long period of time, and the Division stated that it will notify counsel when it expects to call Mr. James.

Raymond James has not made a persuasive argument that the subpoena to Mr. James is a Division attempt to harass or that Mr. James lacks personal knowledge of the facts. Mr. James appears to have been directly involved in these matters and the Division should be allowed to offer his testimony and exhibits into evidence.

For these reasons, I DENY the Motion to Quash the Subpoena Directed to Thomas James.


Brenda P. Murray
Chief Administrative Law Judge