

ALJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11692

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 30, 2004

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE
NOV 30 2004
ANDROSS

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

The Securities and Exchange Commission ("Commission") instituted this proceeding on September 30, 2004, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(f) of the Investment Advisers Act of 1940.

Subpoena Requests

Raymond James Financial Services, Inc. ("Raymond James"), has requested subpoenas pursuant to Rule 232 of the Commission's Rules of Practice. See 17 C.F.R. § 201.232. Each request is accompanied by a statement as to why the information is sought, and each subpoena requests information from 1996 to the present.

Subpoenas to the Commission

On November 18, 2004, Raymond James requested two subpoenas to the Commission. The first subpoena seeks materials described in Exhibit A, which consist of twelve numbered paragraphs. Paragraph number one, which is broken up into nineteen separate parts and subparts, seeks "[a]ll documents relating to public pronouncements, rule proposals (proposed, considered, or actually passed), rulings, no action letters, and/or industry communications regarding the retention and production of email communications by broker-dealers, including without limitation," any materials that come within eighteen descriptions.

Paragraph number four seeks:

All audit or examination programs, instructions, guidance or other documents utilized by the Commission in connection with its performance of audits, examinations of broker-dealers, or in connection with oversight of self-

regulatory organizations, relating to the retention or maintenance of records in electronic format, including, but not limited to, emails or other electronic communications.

Paragraph number five seeks all Commission communications, not provided to Raymond James as part of the investigative file, with other governmental agencies relating to twenty-six individuals and/or entities.

Paragraph number ten seeks analyses of “receipts, disbursements, misappropriations, expenditures, or diversion of any funds” of twenty-six named individuals and/or entities. The rest of the subpoena contains several requests that are as broad as the paragraphs detailed above.

Exhibit A to the second subpoena to the Commission has a two paragraph description of documents sought. Those paragraphs seeks any and all documents regarding: (1) the appointment of Commission administrative law judges pursuant to Article II of the Constitution, and (2) the Commission’s procedures for appointing administrative law judges.

Subpoenas to Self Regulatory Organizations

On or about November 19, 2004, Raymond James requested a subpoena to the National Association of Securities Dealers (“NASD”) and a subpoena to the New York Stock Exchange (“NYSE”). The document description in Exhibit A to the subpoenas to the NASD and to the NYSE consists of five paragraphs, and the first four paragraphs are almost identical to the first four paragraphs in the first subpoena to the Commission.

Subpoenas to Individuals

On November 23, 2004, Raymond James requested subpoenas to seventeen persons it represents are purported investors and/or associates of Brite Business Corporation. The document description in Exhibit A to each subpoena requests:

Any and all documents of any kind or nature (please be sure to include internal and external emails, notes, memos, letters and other items constituting documents as defined above) created or received [since 1996 to the present] that refer, relate, constitute, concern, reflect, pertain to, or regard any of the following:

twenty-seven named individuals and/or businesses.

Opposition to the Subpoenas

In a November 17, 2004, letter, the Division of Enforcement (“Division”) objected to the subpoenas addressed to the Commission. The Division contends that the subpoenas: (1) are unreasonable, oppressive, excessive in scope and unduly burdensome, (2) seek documents

covered by the attorney work product or attorney-client privilege, and (3) seek much irrelevant information. The Division believes the Commission's General Counsel should be heard on the request because the subpoenas are addressed to the Commission. The Division wants an opportunity to make a written filing or to participate in a conference, and for Raymond James to "make a sufficient showing of relevance and reasonableness prior to issuance of the" subpoenas.

Raymond James's Reply to Division's Opposition

In a November 23, 2004, letter, Raymond James characterizes the Division's opposition as "merely boilerplate, non-substantive claims without any support or merit." It contends that it has made a prima facie showing that the material sought is necessary and relevant, and that the Division can only object after a subpoena is issued in the form of a motion to quash.

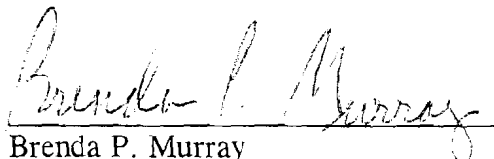
RULING

I DENY Raymond James's requests for subpoenas to: (1) the Commission, (2) the NASD and the NYSE, and (3) seventeen individuals because they are unreasonable, oppressive, excessive in scope, and unduly burdensome. See 17 C.F.R. § 201.232(b). I reach this determination because these subpoenas, as shown by the portions quoted above, seek vast amounts of information and documents for nearly an eight-year period, from a myriad of sources, and in several forms. The Commission, the NASD, and the NYSE would have to expend major amounts of time and effort and assign significant numbers of people to the task of complying with these subpoenas in a conscientious manner. Further, the subpoenas to the seventeen individuals while not as excessive as the subpoenas to the Commission, the NASD, and the NYSE, are unreasonable, oppressive, and unduly burdensome because each individual would have to perform a search that is overly broad in scope and duration or hire others to perform the task.

The Commission has made it clear in a number of proceedings that the Federal Rules of Civil Procedure ("F.R.C.P.") do not govern Commission administrative proceedings, however, the Commission has referred to the F.R.C.P. on occasion where appropriate. It is appropriate to note the F.R.C.P. in this situation because they cover the subjects of discovery and subpoenas far more extensively than the Commission's Rules of Practice. See Fed.R.Civ.P. 26, 45. In setting limitations on discovery, the F.R.C.P. caution that use of discovery shall be limited if discovery "is obtainable from some other source that is more convenient, less burdensome, or less expensive." See Fed.R.Civ.P. 26(b). In this situation, a tremendous deal of the information that Raymond James seeks via subpoena is publicly available information. For example, subpoena one to the Commission, and the subpoenas to NASD and the NYSE seek "public pronouncements, rule proposals (proposed, considered, or actually passed), rulings, no-action letter, notices to members and/or industry communications," etc. All of this material is available from public sources. The second subpoena to the Commission seeks information about the qualification and appointment of federal administrative law judges. Federal administrative law judges are qualified and appointed by the United States Office of Personnel Management ("OPM"). Information about

the position, including qualifications and appointments, is on OPM's Web site, and is also available in public literature. Administrative law judges should not exercise their subpoena powers simply to assist a party in their research and compilation of material. See 17 C.F.R. § 201.111.

Finally, Raymond James has not made a persuasive showing that the materials sought are necessary for, or relevant to, the presentation of its defense to the allegations.

A handwritten signature in cursive script, reading "Brenda P. Murray", written over a horizontal line.

Brenda P. Murray
Chief Administrative Law Judge