

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10007 SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 15, 2002

CTFD. NO. _____

In the Matter of :
: CLARKE T. BLIZZARD, et al. : ORDER ON APPLICATION TO QUASH SUBPOENA
:

The Securities and Exchange Commission (Commission) commenced this proceeding on September 9, 1999.¹ The hearing is scheduled to commence March 26, 2002. Under consideration is Ropes & Gray's March 7, 2000, Application to Quash Subpoena Issued at Request of Respondent Blizzard (Application to Quash) and responsive pleadings.²

Respondents in this proceeding were associated with the predecessor to Fleet Investment Advisors, Inc. (FIA), Shawmut Investment Advisors (SIA), prior to its acquisition by Fleet Financial Group. FIA questioned practices that it discovered and retained the law firm of Ropes & Gray to investigate. FIA also advised the Commission, which commenced its own investigation, which led to this proceeding.

The Application to Quash concerns a subpoena duces tecum, issued at the request of Respondent Blizzard and directed to Ropes & Gray, that sought extensive material from Ropes & Gray's investigation. In 2000, Ropes & Gray and Respondent Blizzard filed pleadings that thoroughly discussed issues of attorney-client and work-product privileges and waiver of the privileges. In 2002, they narrowed the issues greatly, in letters of January 24 (Blizzard), January 30 (Ropes & Gray), February 8 (Ropes & Gray), February 8 (Blizzard), February 11 (Ropes & Gray), February 14 (Blizzard), and February 14 (Ropes & Gray). Respondent Blizzard now seeks only notes and memoranda of Ropes & Gray's April 1996, interview of him.

¹ The proceeding was originally captioned Michael J. Rothmeier, Clarke T. Blizzard, Rudolph Abel, Donald C. Berry, Christopher P. Roach, Craig Janutol, and East West Institutional Services, Inc. It has ended as to Respondents Rothmeier, Berry, and Janutol, who settled. The Commission issued Orders Making Findings and Imposing Sanctions as to each of them on April 13, 2000.


² The undersigned deferred ruling on the Application to Quash pending attempts between Ropes & Gray and Respondent Blizzard's previous and present counsel to resolve it informally and because the proceeding was stayed for a lengthy period pending a criminal prosecution.

During the course of Ropes & Gray's investigation, Michael Fee, a member of the firm, interviewed Respondent Blizzard on April 19, 1996. The Division of Enforcement (Division) has indicated that it intends to elicit evidence of Respondent Blizzard's statements in the interview. The Division lists Mr. Fee as a witness for that purpose in its February 11, 2002, Revised Witness List. It lists Ropes & Gray's May 2, 1997, report about the interview, as Exhibit 108, in its Revised Exhibit List.

Respondent Blizzard argues that any contemporaneous notes or memoranda prepared by Ropes & Gray of the April 19, 1996, interview are highly relevant and should be made available, if Mr. Fee is permitted to testify and the Division is permitted to offer Exhibit 108. He requests that the undersigned either exclude Mr. Fee from testifying at the hearing, and exclude Division Exhibit 108, or order Ropes & Gray to comply with the subpoena and produce all notes and memoranda of the interview.

The Division has listed Mr. Fee as a proposed witness and Exhibit 108 as a proposed exhibit concerning what Respondent Blizzard said on April 19, 1996, to Mr. Fee about matters at issue in this proceeding.³ The undersigned cannot predict, however, whether the Division will actually call Mr. Fee to testify and authenticate Exhibit 108 at the hearing and, if it does, whether Mr. Fee will claim attorney-client or work-product privilege to decline to provide evidence about the interview. If Mr. Fee does testify, notes and memoranda of the interview, redacted of opinion content, must be made available to Respondent Blizzard so that he may cross-examine effectively. Any claim of privilege would be waived by Mr. Fee's testimony. The Division should ensure that this material is made available in sufficient time so as not to delay the cross-examination and lengthen the proceeding.

IT IS SO ORDERED.



Carol Fox Foelak
Administrative Law Judge

³ To the extent that such evidence is hearsay, it is nonetheless admissible in a Commission administrative proceeding if relevant, material, and not unduly repetitious. See Rule 320 of the Commission's Rules of Practice, 17 C.F.R. § 201.320, and Section 556(c)(3) and (d) of the Administrative Procedure Act, 5 U.S.C. § 556(c)(3) and (d).