

HOPING FOR GOOD CORPORATE GOVERNANCE

A UNITE HERE corporate governance case study

One of the responsibilities of board directors is the oversight function they provide to the companies they serve. Directors should remain free from appearance of conflicts of interest. For non-executive directors deemed “independent”, they should be regularly vetted by a board’s governance committee.

Failure to practice good corporate governance could lead to embarrassing headlines or increased legal risk.

This UNITE HERE Local 5 report looks at corporate governance practice in the case of Ms. Hope S. Taitz’s tenure as a director at two Apollo Global Management linked companies, Athene Holding Ltd. and Diamond Resorts International.

Athene Holding Ltd.

Ms. Hope Scheffler Taitz has been a board member of Athene Holding Ltd. since 2011. Athene is an annuity insurance company co-founded by Apollo Global Management. Taitz was eventually appointed Lead Independent Director of Athene in October 2016, two months before the company’s IPO. Athene’s board reversed their decision less than a year and half later when it determined Taitz didn’t meet independence requirements under NYSE listing rules. The board replaced Taitz on the nominating and corporate governance and audit committees and Taitz resigned her role as the Lead Independent Director of Athene.

Before Athene’s December 2016 IPO, Bloomberg News reported on the relationship between the insurer and Apollo Global Management. Bloomberg pointed out Apollo was a shareholder of Athene while it received hundreds of millions of dollars in investment management fees from Athene and that the relationship between the companies had been questioned by regulators, investors and bankers.

The Financial Times reported in November 2016 that Taitz was a member of Athene’s conflicts committee that reviewed transactions between Athene and Apollo while having served on the boards of other Apollo-related entities.



Bloomberg quotes a corporate governance expert saying, *“This is characteristic of many private equity firms pushing limits, here into incestuous financial relationships, with the general goal of increasing aggregate fees to the firm.”*

Hope and Diamond Resorts

Taitz was appointed as an independent director of Diamond Resorts in 2013. The press release announcing her appointment noted her board memberships included Athene Holding Ltd and Apollo Residential Mortgage Inc.

In 2016, Apollo Global Management won the bid to acquire Diamond Resorts for about \$2.2 billion and took the timeshare company private. Two years later the Wall Street Journal reported Apollo planned to take the company public again in an IPO aiming for a \$4 billion valuation. The IPO didn’t materialize.

In 2016 a class-action shareholder lawsuit was filed by Diamond Resorts shareholders after Apollo acquired Diamond. The plaintiffs alleged Diamond’s directors breached their fiduciary duties, ran a sales process that contained conflicts of interest and failed to disclose material information to shareholders about the transaction that resulted in Apollo’s acquisition of the company.

Hope Taitz was a named director defendant in the suit’s amended complaint and was scheduled for deposition on April 23, 2019. Taitz was appointed on Feb 22, 2016 to Diamond’s “strategic review committee” as an independent director, the committee was formed to consider strategic options for the company. The review committee declared in March 2016 that none of its members had a material relationship with likely potential bidders but did point out that Taitz served on boards of entities owned by Apollo Global Management. Four months after the strategic review committee was formed, Taitz recused herself from the committee in June 2016. The agreement to sell to Apollo was made within the same month she recused herself, on June 29, 2016.

In Taitz’s answer to the shareholder lawsuit’s amended complaint she denied certain allegations but did admit she was on Diamond Resorts’ strategic review committee, served on the boards of certain entities affiliated with Apollo and “knows” Apollo co-founder Marc Rowan.

Notably, the shareholder litigation was initially dismissed by a lower court but was revived by the Delaware Supreme Court.

Referring to board meeting minutes, the higher court revealed that Cloobek (Diamond's founder, former CEO, then-chairman and largest shareholder) abstained from supporting the company's sale and abstained from ultimately approving the deal because *"he was disappointed with the price and the company's management for not having run the business in a manner that would command a higher price, and that in his view, it was not the right time to sell the company."*

The court noted that Cloobek had twice abstained from voting on the sale because he said mismanagement of Diamond Resorts had negatively affected the sale price and therefore it was the wrong time to sell the company. The court held that Cloobek's views were material and said:

"For a Chairman to abstain from voting on the sale of the business he founded and led is no common thing, and when his reasons for doing so contradict the board's recommendations to the stockholders, it is difficult for us to understand how the omission was inadvertent."

The shareholder suit is ongoing as of September 2019. The case is Appel v. Berkman, Court of Chancery State of Delaware, C.A. No. 12844-VCMR.

View Hope Taitz's Answer to the Amended Complaint, Delaware Supreme Court order, complaint and most recent publicly available defendants' brief in support of their renewed motion to dismiss at www.DiamondResortsWatch.org/court-documents.

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