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BEFORE THE ARIZONA CORPORATION COMMISSION

2004 OCT - 7 A 11: 29

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission  
**DOCKETED**

OCT - 7 2004

DOCKETED BY *CAK*

**In the matter of:**

**TIERRA GROUP, a/k/a TIERRA GROUP  
PROPERTIES, a/k/a TIERRA GROUP  
COMPANIES, a/k/a TIERRA GROUP, INC.,**  
10105 East Via Linda Drive, Suite 103-330  
Scottsdale, Arizona 85258

**PRESERVATION TRUST CORPORATION,**  
a/k/a **PRESERVATION CORPORATION,**  
a/k/a **PRESERVATION TRUST COMPANY,**  
10105 East Via Linda Drive, Suite 103-330  
Scottsdale, Arizona 85258

**PARTNERSHIP PRESERVATION TRUST,**  
a/k/a **PARTNERSHIP PRESERVATION  
CORPORATION LIMITED PARTNERSHIP,**  
10105 East Via Linda Drive, Suite 103-330  
Scottsdale, Arizona 85258

**CATERPILLAR FOUNDATION  
PROPERTIES, a/k/a CATERPILLAR  
FOUNDATION PROPERTIES LIMITED  
PARTNERSHIP,**  
10105 East Via Linda Drive, Suite 103-330  
Scottsdale, Arizona 85258

**RENE L. COUCH, a married man**  
10727 East Palm Ridge Drive  
Scottsdale, Arizona 85259

**TERRY COUCH, a married woman**  
10727 East Palm Ridge Drive  
Scottsdale, Arizona 85259,

Respondents.

DOCKET NO. S-03437A-03-0000

**MOTION TO RECOGNIZE  
SECURITIES DIVISION  
ALLEGATIONS AS ADMITTED**

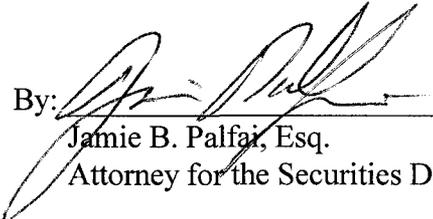
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1 Because respondents to this action failed to submit a timely Answer to the Securities  
2 Division's Notice of Opportunity for Hearing as required by rule, the Securities Division of the  
3 Arizona Corporation Commission ("Division") hereby requests that the presiding Administrative  
4 Law Judge recognize as admitted each of the allegations brought by the Division against respondents  
5 in this action.

6 This motion is supported by the case record in this matter, and by the accompanying  
7 Memorandum of Points and Authorities.

8 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2004.

10 ARIZONA CORPORATION COMMISSION  
11 SECURITIES DIVISION

12 By:   
13 Jamie B. Palfai, Esq.  
14 Attorney for the Securities Division

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 ***Procedural History***

17 On January 23, 2003, the Division filed a "Notice of Opportunity for Hearing Regarding  
18 Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and  
19 For Other Affirmative Relief" ("Notice of Opportunity") against respondents Tierra Group, a/k/a  
20 Tierra Group Properties, a/k/a Tierra Group Companies, a/k/a Tierra Group, Inc., Preservation Trust  
21 Corporation, a/k/a Preservation Corporation, a/k/a Preservation Trust Company, Partnership  
22 Preservation Trust, a/k/a Partnership Preservation Corporation Limited Partnership, Caterpillar  
23 Foundation Properties, a/k/a Caterpillar Foundation Properties Limited Partnership, Rene L. Couch,  
24 and Terry Couch, (collectively "Respondents"), alleging multiple violations of the Securities Act of  
25 Arizona. Approximately 10 days later, on or about February 3, 2003, Respondents collectively filed  
26 a "Request for Hearing."

1           Despite the submission of this initial Request for Hearing, Respondents failed to submit an  
2 Answer to the Division's Notice of Opportunity and subsequently made no attempt to file any  
3 additional administrative papers. Respondents' deadline for filing an Answer to the Notice of  
4 Opportunity in this matter expired on or about February 25, 2003. Approximately two weeks  
5 following this expiration date, on or about March 12, 2003, the assigned administrative law judge  
6 convened a preliminary conference to discuss scheduling issues, filing deadlines, and other pre-  
7 hearing matters. Neither the Respondents nor their counsel appeared at this conference, and the  
8 Respondents have since made no other appearances or filings in this case.

9           The Division, aware that Respondents were coping with involuntary bankruptcy proceedings  
10 and defense counsel problems at the time, refrained from taking any immediate action so as to afford  
11 the Respondents additional time to meet their administrative filing obligations in this case. The  
12 Respondents have now ignored their Answer obligations for over a year.

13 ***Discussion***

14           The filing requirements applicable to respondents in administrative actions brought by the  
15 Division are provided within the Arizona Administrative Code ("A.A.C."). One such requirement  
16 is the timely submission of an "Answer." Pursuant to Title 14 of the A.A.C., a respondent who has  
17 requested an administrative hearing *shall* file in the record and serve upon the Division an Answer  
18 to a Notice of Opportunity within 30 calendar days after the date of service of the Notice of  
19 Opportunity. *A.A.C. Rule R14-4-305(A)*.

20           But for good cause shown, the failure to submit an Answer to a Division's Notice of  
21 Opportunity in a timely manner has clearly defined consequences. Arizona Administrative Code  
22 Rule R14-4-305(D) specifically provides that, in connection with a respondent's Answer to a  
23 Notice of Opportunity, "an allegation not denied *shall* be considered admitted" (emphasis added).  
24 As a result, a respondent who declines to file any answer at all to a Division's Notice of  
25 Opportunity effectively admits to all allegations contained therein. Such constructive admissions  
26

1 obviate the need for any formal hearing on the merits, and the submission of a proposed final order  
2 by the Division is subsequently appropriate.

3 In this instance, Respondents have ignored all Answer obligations.<sup>1</sup> As discussed *supra*,  
4 the deadline for Respondents to file Answers to the Division's Notice of Opportunity expired some  
5 time in late February, 2003. Not only did Respondents miss this deadline, but they then made no  
6 effort to either explain this failure or to pursue a filing extension. Respondents' disregard for this  
7 entire administrative action was further displayed the following month, when Respondents failed to  
8 appear at a scheduled pre-hearing conference. Although the Division subsequently afforded the  
9 Respondents a lengthy period of time (over a year) to remedy their administrative filing  
10 deficiencies, the Respondents have yet to submit an Answer. Under any standard, there is simply  
11 no possible justification for such delinquency.

12 Under A.A.C. rules, this failure to file an Answer has plain legal implications: Respondents  
13 have relinquished their right to challenge the allegations brought by the Division. To move this  
14 matter towards a final determination, the presiding administrative law judge should consequently  
15 issue an order recognizing all allegations contained in the Division's Notice of Opportunity as  
16 admitted.

### 17 ***Conclusion***

18 Under applicable law, Respondents have failed to make the requisite filings to preserve  
19 their right to challenge the Division's Notice of Opportunity in this matter. As a consequence of  
20 this failure, the presiding Administrative Law Judge should facilitate the resolution of this matter  
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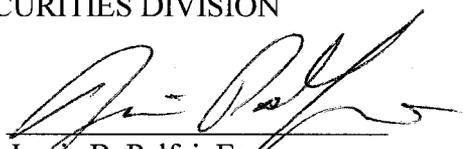
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24 <sup>1</sup> There is no reason to believe that Respondents were somehow unaware of the necessity to file an Answer  
25 to the Division's allegations in this matter. The specifics of this Answer requirement, including the amount  
26 of time available to make this filing, the mandatory nature of the Answer, and the consequences of not  
complying with this requirement, were all explicitly provided to the Respondents in Section IX of the  
Division's Notice of Opportunity.

1 by entering an order recognizing as admitted all allegations brought against the Respondents in the  
2 Division's Notice of Opportunity.

3 Upon the affirmation of the allegations contained within the Division's Notice of  
4 Opportunity, and as a natural consequence thereof, the presiding Administrative Law Judge should  
5 Order that the Division draft a proposed final order for subsequent submission to the Commission  
6 for consideration at Open Meeting.

7 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2004.

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10 ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION

11  
12 By:   
13 Jamie B. Palfai, Esq.  
Attorney for the Securities Division

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21 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
22 filed this 7<sup>th</sup> day of October, 2004, with

23 Docket Control  
24 Arizona Corporation Commission  
25 1200 West Washington  
26 Phoenix, AZ 85007

1 ~~COPY~~ of the foregoing hand-delivered this  
2 ~~7<sup>th</sup>~~ day of October, 2004, to:

3 ALJ Marc Stern  
4 Arizona Corporation Commission/Hearing Division  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered and/or mailed  
8 this ~~7<sup>th</sup>~~ day of October, 2004, to:

9 Respondent Rene L. Couch  
10 1475 West Laurel  
11 Gilbert, Arizona

12 Respondent Terry G. Couch  
13 9821 East Mirasol Circle, #2191  
14 Scottsdale, Arizona 85260

15  
16 By: 