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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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AZ CORP COMMISSION
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VICTOR MONROE STOCKBRIDGE
[CRD # 1233627], and
G. IRENE STOCKBRIDGE
[Husband and Wife]

61 Rufous Lane
Sedona, Arizona 86336-7117

Respondents.

DOCKET NO. S-03465A-02-0000

**THE SECURITY DIVISION'S
MEMORANDUM IN OPPOSITION TO
RESPONDENTS' MOTION TO STAY
AND/OR CONTINUE**
Arizona Corporation Commission
DOCKETED

JUL 23 2004

DOCKETED BY

I. INTRODUCTION AND BACKGROUND

A. Summary

The Securities Division ("Division") asks the Hearings Division to deny Respondents Victor and G. Irene Stockbridge's motion to stay and/or continue. The Respondents have not shown sufficient cause for a stay or continuance for the following reasons:

- The facts in the parallel proceedings partially overlap however, the objectives do not. Adjudication of the administrative action, the arbitration, or the civil trial will not dispose the need to independently adjudicate each case.
- Nothing in Arizona law, general constitutional, statutory, or common law prohibits simultaneous maintenance of multiple actions – be they criminal, civil, administrative, or self regulatory.
- No net judicial economy can be had because no party to the parallel actions can obtain complete relief in any one venue. Each action will ultimately have to be independently adjudicated.

- 1 • The defensive right collateral estoppel will protect the Respondents from re-defending matters which have been terminally resolved in prior adjudications.
- 2 • The likelihood of prejudice to the Division is considerable given the age, prior history, and
- 3 current health of many of the parties to the litigation.
- 4 • The Division has not been lax in the prosecution of this case but has instead worked in
- 5 cooperative interest to fully address all rights of remedy due to the aggrieved parties.
- 6 • The Division's interests entail more than the revocation of Mr. Stockbridge's securities
- 7 licensure. The fact that Mr. Stockbridge is currently retired is not relevant to the actions he engaged in prior to retirement.

8 **B. The Security Division's Case**

9 This action arises from the Division's investigation and finding that Victor Stockbridge engaged in
10 fraudulent, dishonest, and unethical practices as a securities salesperson. At issue is Mr.
11 Stockbridge's unauthorized liquidation and churning of his client Susan Coleman's inheritance of
12 approximately six and a half million dollars of stocks, bonds, and mutual fund shares into
13 unauthorized and unsuitable variable annuity insurance investments. Mr. Stockbridge then
14 transferred approximately half of these funds into an unauthorized and unsuitable non-profit
15 foundation and attempted to misappropriate the remaining funds by unlawfully naming himself as
16 the beneficiary to certain of Ms. Coleman's remaining investment accounts.
17

18 Throughout, prior, and subsequent to the transactions at issue, Mr. Stockbridge perpetrated a
19 series of negligent and or intentional deceptions, misrepresentations, and omissions sufficiently
20 rendering the trades which he affected for Ms. Coleman unauthorized and illegal. *See generally,*
21 Securities and Exchange Com'n. v. Hasho, 784 F.Supp. 1059, 1110 (S.D. N.Y. 1992)
22 ("Unauthorized trades are illegal when accompanied with 'deception, misrepresentation or non-
23 disclosure' "), *Cf. Advest, Inc. v. McCarthy*, 914 F.2d 6, 7-8 (1st Cir. Mass. 1990) (broker misled
24 the customer with respect to margin requirements on an account).
25

26 **C. Procedural Timeline**

1 *Notice of Opportunity for Hearing* was filed by the Division in December of 2002. In April of
2 2003, a *Stipulated Motion to Continue* was entered between the Division and the Respondents. In
3 the interim, the Division assigned new trial counsel and to resolve discovery disputes, the Division
4 and the Respondents entered a *Stipulated Protective Order* regarding certain confidential medical
5 records obtained in the Division's investigation. In October and November of 2003, Ms. Coleman
6 respectively initiated separate civil claims with the Maricopa County Superior Court and a NASD
7 private arbitration. The defendants in these separate civil claims are: the Respondents, Mr.
8 Stockbridge's branch manager, his employing broker/dealer, and the American Foundation (where
9 approximately one half of the unauthorized transactions wound up, allegedly as a charitable
10 foundation donation). In May of 2004, the Respondents entered a joint stipulation with the parties
11 to the Superior Court action. This agreement has stayed the respective Superior Court claims
12 against the Respondents, and Mr. Stockbridge's employing broker/dealer until the resolution of
13 their private NASD arbitration. When the Division learned of the Superior Court's intentions to
14 stay the civil proceedings, the Division made final settlement overtures to the Respondents. This
15 offer was rejected and the Division moved the Hearing Division to set a firm hearing date on this
16 matter. On July 7, 2004 the Maricopa County Superior Court placed the civil trial of the
17 Respondent's parallel proceeding on its inactive calendar.

19 **D. The Instant Motion**

20 The Respondents now motions the Hearing Division to continue the administrative hearing on
21 this matter for an indefinite stay. The Respondents argue that they will be substantially and unduly
22 prejudiced if forced to concurrently proceed with this administrative hearing and their parallel
23 NASD arbitration because the issues in both matters substantially overlap. The Respondents
24 believe their request of an indeterminate stay will increase the probability of a settlement and
25 conserve scarce judicial resources. Finally, the Respondents argue that the Division will not be
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1 prejudiced nor will public interest be harmed because Mr. Stockbridge has subsequently retired
 2 from the securities business and the Division has taken virtually no action on this matter in over a
 3 year.

4 II. ARGUMENT AND AUTHORITY

5 A. Standard of Review

6 A trial court has broad discretionary power to stay proceedings to control disposition of cases
 7 on its docket with economy of time and effort for itself, for counsel, and for litigants. Landis v.
 8 North American Co., 299 U.S. 248, 254-255 (U.S. D.C., 1936). The grounds for ordering a stay
 9 necessarily vary with the circumstances of each case, Lewis v. Moultree, 627 P.2d 94, 96 (Utah,
 10 1981), and may include considerations of:

- 11 • Whether the *rights of parties* to the second action can or cannot be properly determined
 12 until questions raised in the first action are settled; Estate of Lanterman v. Lanterman, 462
 13 N.E.2d 46, 51 (Ill. App. 4th Dist., 1984) (staying partition action until will contest involving
 14 the estate was concluded);
- 15 • *Comity and courtesy* amongst courts; Peck v. U.S., 522 F.Supp. 245, 247 (D.C. N.Y.,
 16 1981);
- 17 • Whether the trial of one action will effectively *dispose the need for trial* of the other;
Kellerman v. MCI Telecommunications Corp., 493 N.E.2d 1045, 1053-1053 (Ill., 1986);
- 18 • The desirability of avoiding a *multiplicity of forums*; Simmons v. Superior Court in and
 19 for Los Angeles County, 214 P.2d 844, 849 (Cal. App. 2nd Dist. 1950);
- 20 • Whether the second litigation is at an *advanced or preliminary stage*; I. J. A., Inc. v.
Marine Holdings, Ltd., Inc., 524 F.Supp. 197, 198-199 (D.C. Pa., 1981);
- 21 • The likelihood of obtaining *complete relief* in either jurisdiction; Jam Productions, Ltd. v.
 22 Dominick's Finer Foods, Inc., 458 N.E.2d 100, 102-103, (Ill. App. 2nd Dist., 1983);
- 23 • Whether the second matter was *instituted after* the action to be stayed; General Foods
 24 Corp. v. Cryo-Maid, Inc., 198 A.2d 681, 683-683 (Del. 1964) *over'ld on other grounds by*
 25 261 A.2d 520, 521 (Del. 1969);
- 26 • Whether adjudication in the immediate forum will *affect the outcome* of the matter in the
 second forum; Lanova Corp. v. Atlas Imperial Diesel Engine Co., 64 A.2d 419,420-421
 (Del. Super. 1949); and

- 1 • The possibility that a judgment entered in either jurisdiction will give rise to *collateral*
2 *estoppel* and/or *res judicata*. Bonneville Auto. Ins. Co. v. Insurance Division, Dept. of
3 Commerce, 632 P.2d 796, 800-801 (Or. App., 1981).

4 In each case however, it is the proponent of a stay who bears the burden of establishing its need
5 and providing a basis in granting the stay. Clinton v. Jones, 520 U.S. 681, 708 (U.S. Ark., 1997);
6 *See also generally*, 1 AM. JUR. 2d Actions § 70 – 80 (2004).

7 **B. The Respondents Have not Established a Need or a Basis in Granting a Stay**

8 **1. The Facts in the Parallel Proceedings Overlap However the Issues do not**

9 While the facts pled in each of the parallel proceedings concerning Mr. Stockbridge's
10 unauthorized and illegal trading, and conversion are similar, the objectives at issue in each of the
11 parallel proceedings are not. The administrative adjudication of the Division's claims in this forum
12 cannot wholly affect the outcome of the matter in the Superior Court or Arbitration forums, nor can
13 the adjudication of Ms. Coleman's claims in those forums wholly affect the outcome of the
14 administrative proceeding in this forum. Lanova Corp., 64 A.2d at 420-421. To wit, Ms.
15 Coleman's NASD claim ostensibly seeks concurrent remedies of actual and exemplary damages
16 from the Respondents. Her Superior Court claim further seeks to remedy the consequential
17 damages due to Mr. Stockbridge's unauthorized placement of her funds into the American
18 Foundation charity. While the Division's administrative action does share an objective of
19 disgorging the Respondents' ill-gotten sales commissions, the Division's objectives in this
20 administrative action also entail professional censure and regulatory oversight of the securities
21 industry. No single forum can successfully address all these interests. No single forum has
22 jurisdiction over all these interests.
23

24 The Respondents' motion to stay should be denied because a full determination of the rights of
25 the parties to each of the parallel proceedings in this matter are not outcome determinate upon prior
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1 resolution of the other actions, Lanterman, 462 N.E.2d at 51, and the adjudication of the
2 administrative action, the arbitration, or the civil trial will not dispose the need for the adjudication
3 of the other matters. Kellerman, 493 N.E.2d at 1053-1053.

4 ***2. The Respondents Assert no Facts to Demonstrate Undue Prejudice from What is an***
5 ***Otherwise Acceptable Process***

6 The Respondents exclusively rely upon argument derived from the parallel criminal
7 proceedings discussed in Healthsouth Corp., S.E.C. v. Healthsouth Corp., 261 F.Supp.2d 1298
8 (N.D. Ala., 2003), and Keating, Keating v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir.
9 Ariz. 1995), to persuade the Commission of the prejudice which will result if they are to defend
10 this administrative action prior to the NASD arbitration. While the Respondents' parallel
11 proceedings are of a civil rather than criminal nature, it is also a well established rule of law that
12 nothing prohibits simultaneous maintenance of multiple actions – be they criminal or civil. State
13 ex rel. Corbin v. Goodrich, 726 P.2d 215, 222 (Ariz. App. Div. 2, 1986). The Division has a
14 legitimate interest in pursuing its civil administrative action seeking to enjoin any further violations
15 of Arizona securities laws as well as to establish and afford instructional guidance and overall
16 protection of Arizona's investment community. *Id.*

17
18 Moreover, there is no general constitutional, statutory, or common law rule which bars
19 simultaneous prosecution of separate actions by different governmental agencies and regulatory
20 organizations such as the NASD. Parallel proceedings instituted by different governmental
21 agencies and regulatory entities are not uncommon occurrences because of the overlapping nature
22 of self regulatory, administrative, civil, and penal laws. The simultaneous prosecution of such
23 matters is generally unobjectionable because government and self regulatory organizations are
24 entitled to vindicate the different interests promoted by different regulatory provisions – even
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1 though several interests may be vindicated simultaneously in different forums. S.E.C. v. First
2 Financial Group of Texas, Inc., 659 F.2d 660, 666-667 (5th Cir. Tex., 1981).

3 The Respondents' request should be denied in this regard because they have not asserted any
4 specific facts nor have they demonstrated, in any specific manner, how they will be substantially
5 prejudiced if not allowed to obtain their requested stay. Johnston v. Harris County Flood Control
6 Dist., 869 F.2d 1565, 1571 (5th Cir. Tex., 1989).

7 ***3. Judicial Economy Cannot be had by Staying the Administrative Hearing of this Matter***

8 The Respondents' arguments for judicial economy fail for the same reasons their arguments
9 concerning overlapping issues in the separate litigations fail. The facts overlap but the objectives
10 of each action have separate ends. Ultimately, separate trial and resolution of the administrative
11 hearing, civil litigation, and NASD arbitration must occur. The end objective for each proceeding
12 is different and the trial of one action will not dispose the need for trial of the others. Kellerman,
13 493 N.E.2d at 1053-1053. While principles of comity and courtesy amongst courts, Peck, 522
14 F.Supp. at 247, bespeak a need to avoid a multiplicity of forums, Simmons, 214 P.2d at 849, the
15 nature of the claims and rights asserted in the various parallel proceedings will necessarily preclude
16 any party's obtaining complete relief in any one jurisdiction. Jam Productions, Ltd., 458 N.E.2d 1
17 at 102-103. Thus, to the extent this forum's adjudication will affect the outcomes in the arbitration
18 and the civil action the Respondents cannot said to be subject to undue harm and prejudice,
19 Lanova Corp., 64 A.2d at 420-421, because the Respondents are entitled to an affirmative legal
20 defenses of collateral estoppel, Bonneville Auto. Ins. Co., 632 P.2d at 800-801, as that defense
21 may arise to protect them from prejudice in the separate parallel proceedings.
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24 ***4. A Prolonged Stay in this Matter May In-fact Unduly Prejudice the Division and will***
25 ***Certainly Harm the Public Interest***
26

1 Mr. Stockbridge is in his mid 70's, Ms. Coleman has been under around the clock supervision
2 since before the Division's filing of *Notice* on this matter and she is incompetent to testify. Ms.
3 Coleman's Sister Elizabeth Mooney, trustee and named claimant to the civil litigation and NASD
4 arbitration as-well-as potential witness, has recently passed away. Clearly, the likelihood that the
5 Division will suffer prejudice by the delay in the hearing of this matter is significant due to the age
6 and physical health of the parties involved.

7 The Respondents argue the Division has not diligently prosecuted this case. To the contrary,
8 the Division has actively monitored the parallel proceedings of this matter. In the interim, the
9 Division has fulfilled separate public records requests in relation to the parallel proceedings and the
10 Division fulfilled all reasonable and legal discovery requests by the Respondents including Ms.
11 Coleman's confidential medical records. Upon learning the civil trial of Ms. Coleman's case was
12 to be put on the Superior Court's inactive calendar; the Division instituted renewed settlement
13 discussions with the Respondents and then motioned the Commission to set a hearing date upon
14 failure of those discussions. Despite the Respondents' protestations of lax prosecution, the parallel
15 civil and arbitration proceedings were filed after the Division instituted its action and the
16 Division's case should be adjudicated first, General Foods Corp., 198 A.2d at 683-683. Moreover,
17 as Counsel for the Respondents has already testified, neither the civil trial nor the arbitration are at
18 an advanced stage of being set for hearing or trial. The civil action has been stayed with respect to
19 the Respondents' interests and no firm hearing date has been set for the arbitration. Generally, a
20 matter that is at an advanced stage of litigation should not be stayed for a matter which is still in its
21 preliminary phases of litigation. I. J. A., Inc., 524 F.Supp. at 198-199.

22 The Respondents argue that because Mr. Stockbridge is retired from the securities business, the
23 Division's pursuit of a hearing date can serve no purpose in barring his continuation in the
24 business. Mr. Stockbridge's licensure is not the sole interest in the Division's pursuit of this
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1 matter. The mission of the Division is to ensure the integrity of the securities marketplace through
2 its investigative actions and the registration and oversight of securities, securities dealers, and
3 securities sales personnel. In recent years, securities regulators have received increasing
4 complaints from individual investors about variable annuity insurance products. *See generally,*
5 Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable
6 Annuity Insurance Products, p.2, (June, 2004).¹ Underlying these complaints are specific concerns
7 that variable annuity products are being sold to customers without the customer understanding the
8 product and the variable annuity product being inappropriate for the customer, given his or her
9 investment objectives. *Id.*² Of increasing concern lately, is the improper sale of variable annuity
10 insurance products to senior citizens, *Id. at 8*, such as that which transpired in this instant case.
11 Thus, while Mr. Stockbridge's continuation in the securities business is a concern of the Division,
12 of greater concern to the Division is the enforcement of the antifraud provisions and prohibitions of
13 dishonest and unethical conduct within Arizona's securities laws as they apply to the sale of
14 variable annuity insurance products.
15

16 III. CONCLUSION AND PRAYER

17 The Respondents have not asserted any specific facts nor have they demonstrated, in any
18 specific manner, how they will be substantially prejudiced if this matter proceeds to hearing now.
19 As a result, the Respondents have not met their burden nor have they demonstrated a need or
20 provided a sufficient basis, in law or in fact, for granting a stay of this matter. Furthermore, it is
21 unlikely the requested stay will increase the probability of a future settlement. The Division's
22 "bottom line" has been made clear to the Respondents and they have refused to negotiate. A delay
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25 ¹ Available at <http://www.nasd.com/media/reports.asp>.

26 ² See also, Recent Enforcement Actions Involving the Sale of Variable Annuities, available at
<http://www.nasd.com/media/reports.asp> (summarizing the 25 cases upon which the aforementioned SEC/NASD report
was based).

1 in hearing this matter can only serve to perpetuate the "status quo" of the Respondents' negotiating
2 position.

3 For these reasons, the Division asks the Hearing Division to deny the Respondents' *Motion to*
4 *Stay and/or Continue* and set an initial pre-hearing conference with the Administrative Law Judge
5 present.

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7 Respectfully submitted this 23rd day of July 2004.

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John R. Proper, Staff Attorney
11 Arizona Corporation Commission – Securities Division

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1 ORIGINAL of the foregoing and 13 copies
2 filed with Arizona Corporation Commission
3 Docket Control this 23rd day of July 2004.

4 COPY of the foregoing transmitted by
5 FACSIMILE this 23rd day of July 2004 to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
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MIKE GLEASON
KRISTIN K. MAYES

VICTOR MONROE STOCKBRIDGE
[CRD # 1233627], and
G. IRENE STOCKBRIDGE
[Husband and Wife]

61 Rufous Lane
Sedona, Arizona 86336-7117

Respondents.

DOCKET NO. S-03465A-02-0000

**ORDER RE. RESPONDENTS' MOTION TO
STAY AND/OR CONTINUE**

ORDER

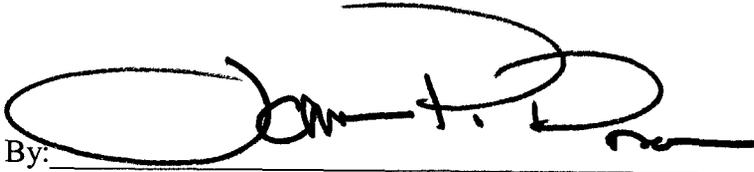
The Hearings Division, having considered Respondents Victor and G. Irene Stockbridge's motion to stay and or continue and having heard the arguments of counsel, DENIES the Respondents Victor and G. Irene Stockbridge's motion to stay and or continue and ORDERS that a pre-hearing conference shall be held on _____, 2004, at ___ : ___ __, at the Commissions' offices, 1200 W. Washington Street, Phoenix Arizona.

SIGNED on _____, 2004.

The Honorable Marc E. Stern
ADMINISTRATIVE LAW JUDGE

1 APPROVED & ENTRY REQUESTED:

2 Arizona Corporation Commission – Securities Division

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5 By:

John R. Proper, Staff Attorney

6 Arizona Corporation Commission – Securities Division

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