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BEFORE THE ARIZONA CORPORATI

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- 11 **Commissioner**

2004 AUG 11 P 4:18

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF

DOCKET NO. S-03482A-03-0000

INTERSECURITIES, INC.
570 Carillon Parkway
St. Petersburg, FL 33716-1202
CRD #16164

**INTERSECURITIES, INC.'S MOTION
FOR ORDER ALLOWING
DEPOSITION OF WENDY COY**

GREGORY RUSSELL BROWN and JANE
DOE RUSSELL, husband and wife
16417 South 15th Drive
Phoenix, AZ 85045
CRD #2233684

Arizona Corporation Commission
DOCKETED

AUG 11 2004

Respondents.

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Pursuant to A.A.C. R14-4-109 (P) and Rule 30(a) of the Arizona Rules of Civil Procedure,
Respondent InterSecurities, Inc. ("ISI") submits its Motion for an Order allowing the deposition of
Wendy Coy.

I. Factual Background.

In order to lend proper context to this Motion, ISI will first provide a brief overview of the facts.

The Securities Division alleges that ISI failed to supervise registered representative Gregory Brown in connection with his sales of pay telephones. In addition, the Division alleges that the pay telephones were securities and that ISI, along with Mr. Brown, offered and sold the pay phones in violation of the Arizona Securities Act.

1 Gregory Brown was a registered representative with ISI from August 1995 until October
2 2001. In April of 1999, Mr. Brown submitted an Outside Business Activity request to ISI's
3 Compliance Department for the approval of the sale of ETS and Phoenix pay telephones. Mr.
4 Brown presented Rod Tidwell, Assistant Vice President of ISI's Compliance Department at the
5 time, with due diligence Mr. Brown had conducted on the companies and answered questions that
6 Mr. Tidwell had regarding the products. Mr. Tidwell had been a compliance officer of ISI since
7 October 1995. At the time, Mr. Tidwell had been licensed in the industry since 1956 and had
8 served in various supervisory capacities for at least 18 years. Mr. Tidwell asked Mr. Brown to
9 contact the Division to obtain more information about the companies. Specifically, Mr. Tidwell
10 requested assurances that the Division did not consider the products to be securities.

12 Mr. Brown called the Division and spoke with attorney Wendy Coy. According to Mr.
13 Brown:

14 April 27th of 1999, I spoke to Wendy on the telephone. I asked her
15 if she knew anything about ETS and Phoenix Telecom. She, I
16 said, I asked her if there had been any problems or complaints, if
17 she knew anything about this program, if there was any problems
18 with it being a security. She first of all said she didn't know of any
19 problems with the companies. She did tell me this. She says, "I've
20 just completed prosecuting two pay phone companies, Pinnacle
21 Pay Phones and Paramount Pay Phones, that were structured as a
22 limited partnership." And she says, "Is it structured as a limited
23 partnership?" No it is not. It is actually filed as a business
24 opportunity, the client owns the asset, and it's not a limited
25 partnership. She said, "Well then, I don't have a problem." It's
26 basically, you know, she said as long as it is not a limited
27 partnership is what basically she really emphasized, and that was
the discussion I had with her.

24 Testimony of Brown, 54:20-25 to 55:1-16. Brown conveyed this information to ISI Compliance,
25 which approved Mr. Brown's sale of the pay telephones.

1 Ms. Coy was and is an attorney in the enforcement section of the Division. She has been
2 with the Division since 1990, and was very experienced in securities matters when she spoke with
3 Brown. Upon information and belief, on the day that Ms. Coy spoke with Brown she was
4 designated as the individual with authority to respond on behalf of the Division to inquiries from
5 the general public. At no time did Ms. Coy tell Brown that he could not rely on her
6 representations. Had the Division advised Brown of any possibility of problems with these
7 companies, Brown would not have sold the pay telephones and ISI would not have approved this
8 activity as an outside business activity.
9

10 In sum, the Division represented to Brown that the pay telephones were not securities. ISI,
11 in reliance on this representation, approved Brown's sales of the pay telephones as an outside
12 business activity.

13 Mr. Brown then sold the pay telephones through his independent insurance company,
14 Financial Benefits Group, Inc. ISI was not involved in the offer or sales of these products in any
15 manner. It did not receive any remuneration of any kind from these sales, and ISI did not benefit
16 in any way from the telephone transactions. It had no communications with Mr. Brown's
17 customers regarding these products.
18

19 The importance of Mr. Brown's conversation with Ms. Coy cannot be underestimated. The
20 Division specifically mentioned this conversation in the Notice. (See Notice of Opportunity for
21 Hearing, page 6 ¶ 21.) The Division alleged as follows:

22 On April 28, 1999, Brown responded to ISI that he had spoken
23 with an attorney at the Division named "Wendy," who informed
24 him that certain payphone investments offered in Arizona had
25 problems because they were sold as limited partnerships and/or
26 securities. Brown extrapolated on Wendy's cautionary statement,
27 telling ISI in his memo that, because the ETS and Phoenix
payphones were not sold as limited partnerships, these payphone
sales had no problems. Brown's interpretation was unfounded...

1
2 The Division has squarely placed Mr. Brown's conversation with Ms. Coy at issue.
3 Further, the Division's interpretation of this conversation conflicts with Mr. Brown's. Mr.
4 Brown's conversation with Ms. Coy is crucial.

5 ISI made a discovery request for Ms. Coy's notes of her conversation with Mr. Brown.
6 The Division has advised ISI that there are no notes.

7
8 **II. The Administrative Law Judge ("ALJ") Should Allow Ms. Coy's Deposition.**

9 A.A.C. R14-3-109 provides that the Commission may order depositions "in the manner
10 prescribed by law and of the civil procedure for the Superior Court of the State of Arizona." Rule
11 30(a), Arizona Rules of Civil Procedure, specifies that the testimony of parties may be taken
12 without court order. In general, no other depositions may be taken except upon agreement of the
13 parties or an order of the Court.

14 Because Ms. Coy is an employee of the Division, she is an agent of a party, and her
15 deposition may be taken as a matter of right. Rule 30(a), Ariz.R.Civ.P. The Securities Division,
16 however, has refused to make Ms. Coy available for deposition. The Division has no valid reason
17 to object to her deposition.
18

19 Rather, as set forth above, Ms. Coy's testimony is crucial. Mr. Brown spoke with Ms. Coy
20 regarding the pay telephones at issue. Again, the Division specifically included this conversation
21 in the Notice. Mr. Brown obtained advice from Ms. Coy regarding the Division's position related
22 to the pay telephones, yet the Division now claims that its attorneys are not permitted to give
23 advice to the public. Further, in response to a discovery request the Division has indicated that
24 Ms. Coy has no notes. The only way for ISI to get Ms. Coy's recollection of her conversation with
25
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27

1 Mr. Brown is to take her testimony. Taking Ms. Coy's deposition is entirely appropriate and
2 permitted by both the Commission's Rules of Practice and the Arizona Rules of Civil Procedure.

3 Finally, as mentioned above Rod Tidwell was ISI's Assistant Vice President of Compliance
4 who approved Mr. Brown's sales of the pay telephones. Mr. Tidwell is no longer employed by
5 ISI. The Securities Division wishes to take Mr. Tidwell's deposition, along with the deposition of
6 Ronald Klimas, another former employee of ISI. ISI cannot compel these individuals to appear for
7 their depositions. ISI, however, is cooperating with the Division to arrange their depositions, and
8 contacting Mr. Klimas and Mr. Tidwell to see if they will agree to have their depositions taken.
9 ISI recognizes that Mr. Tidwell and Mr. Klimas may have discoverable information, and sees no
10 reason to oppose the depositions.
11

12 By contrast, the Division opposes Ms. Coy's deposition despite making her conversation
13 with Mr. Brown an integral component of the Notice. No valid basis exists to object to Ms. Coy's
14 deposition.
15

16 Attached is the correspondence between the parties related to this issue, along with an
17 affidavit of undersigned counsel indicating that the parties have been unable to resolve their
18 dispute regarding Ms. Coy's deposition.

19 **III. Conclusion.**

20 For the forgoing reasons, ISI respectfully requests that the ALJ permit ISI to take Ms.
21 Coy's deposition at a time convenient to all parties.
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1 RESPECTFULLY SUBMITTED this 14 day of August, 2004.

2 FOWLER WHITE BOGGS BANKER P.A.
3 Burton W. Wiand
4 501 East Kennedy Blvd., Suite 1700
5 Tampa, Florida 33602

6 AND

7 BADE & BASKIN PLC

8 By 
9 Alan S. Baskin
10 80 East Rio Salado Parkway, Suite 515
11 Tempe, Arizona 85281

12 Attorneys for Respondent
13 InterSecurities, Inc.
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1 ORIGINAL and thirteen copies of the foregoing
hand-delivered this 11th day of August, 2004 to:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, AZ 85007

5 COPY of the foregoing hand-delivered
6 this 11th day of August, 2004 to:

7 Matthew Neubert
8 Director of Securities
9 Securities Division
Arizona Corporation Commission
10 1300 W. Washington Street
Phoenix, AZ 85007

11 Marc Stern
12 Administrative Law Judge
Arizona Corporation Commission
13 1200 W. Washington Street
Phoenix, AZ 85007

14 COPY of the foregoing mailed
15 this 11th day of August, 2004 to:

16 Pamela Johnson
17 Securities Division
Arizona Corporation Commission
18 1300 W. Washington, 3rd Floor
Phoenix, AZ 85007

19 Brian J. Schulman
20 Greenberg Traurig, LLP
21 2375 E. Camelback Rd., Suite 700
Phoenix, AZ 85016-9000
22 Attorneys for Gregory Russell Brown
and Karen Brown

23 
24 _____
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27



Alan S. Baskin
Email: baskin@badebaskin.com

July 20, 2004

VIA FACSIMILE
& U.S. MAIL

Pamela Johnson, Senior Counsel
Phillip Hofling, Chief Counsel of Registration and Compliance
Securities Division
Arizona Corporation Commission
1300 West Washington, 3rd Floor
Phoenix, AZ 85007

Re: *In the matter of InterSecurities, Inc., et al.*
Docket No. S-03482A-03-0000

Dear Pam and Philip:

I am writing so that we may schedule Wendy Coy's deposition. Because Ms. Coy is an agent of a party, ISI believes it is entitled to take her deposition without seeking an order from the Administrative Law Judge. A.A.C. R14-3-109(P); Rule 30(a), Ariz. R. Civ. P. Mr. Wiand would like to take Ms. Coy's deposition in August when he returns from his vacation. Please give me some dates in the last half of August when Ms. Coy will be available for her deposition.

If the Division objects to ISI taking Ms. Coy's deposition please let me know at your earliest convenience so that we may file the appropriate motion.

I also write to request any documents and/or information indicating whether any individual or entity besides Mr. Brown who is or was a party to a Commission proceeding has claimed that they spoke with and/or relied upon Ms. Coy or the Division regarding any investment program and/or security. In particular, we are interested in any claims similar to Mr. Brown's, namely that the Division told a respondent that a particular program was not a security, or that the respondent could sell that program.

Ms. Johnson
Mr. Hofling
July 20, 2004
Page 2

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'ABL' with a long horizontal flourish extending to the right.

Alan Baskin
For the Firm

ASB/cim

cc: Burton Wiand
Maya Wolfe
Teresa Rooney

intersecurities.acc/ltr/johnson&hofling01.doc

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

BRIAN C. McNEIL
EXECUTIVE SECRETARY



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
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E-MAIL: accsec@ccsd.cc.state.az.us

ARIZONA CORPORATION COMMISSION

July 27, 2004

VIA FACSIMILE: 480-968-6255 & U.S. Mail

Alan S. Baskin, Esq.
Bade & Baskin PLC
80 East Rio Salado Parkway, Suite 515
Tempe, Arizona 85281

Re: In the matter of InterSecurities, Inc., et al.
Docket No. S-03482A-03-0000



Dear Alan:

As you know, I was out of the office on vacation from July 15 until yesterday. I am now responding to your letter dated July 20, 2004.

The Securities Division objects to ISI taking Wendy Coy's deposition. Any statements attributed to Ms. Coy concerning the issues in dispute in this matter are not relevant to ISI's liability under the Arizona Securities Act for the harm resulting from ISI's acts. If Ms. Coy is called as a witness at the hearing, ISI will have an opportunity to fully question Ms. Coy on all issues that are relevant to this proceeding.

As for your second request, any documents relating to the Division's position as to whether any investment program was a security, if they exist, would be available on the Division's website in the form of no-action requests and responses, which are a matter of public record. If you are asking the Division to research its historical records for any or all claims or defenses asserted in the course of any investigation, the Division objects on the grounds of relevance, and on the grounds that such a request is overly broad and unduly burdensome. In short, such a request would be incredible.

As we discussed a few weeks ago, please let me know if and when you will make Mr. Ronald Klimas and Mr. Rodney Tidwell available to the Division for interviews regarding their involvement in supervisory issues relating to ISI's approval, or denial, of requests for outside business activities relating to the sale of pay telephone contracts and related documents and procedures. Since neither of these former ISI Compliance Officers is currently associated with ISI, the Division is willing to make arrangements to contact each of them directly if ISI has

Mr. Baskin
July 27, 2004
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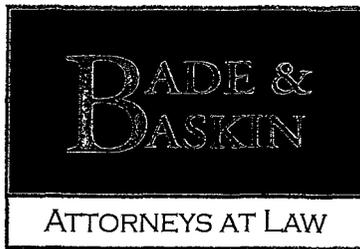
no objections to such contact. Please let me know as soon as possible if you have any objections, and if so, the basis for such objections.

If you have any questions, do not hesitate to call.

Very truly yours,

A handwritten signature in cursive script that reads "Pam Johnson". The signature is written in black ink and is positioned above the printed name.

Pamela T. Johnson
Senior Counsel



Alan S. Baskin
Email: baskin@badebaskin.com

August 11, 2004

VIA U.S. MAIL

Pamela Johnson, Senior Counsel
Securities Division
Arizona Corporation Commission
1300 West Washington, 3rd Floor
Phoenix, AZ 85007

Re: *In the matter of InterSecurities, Inc., et al.*
Docket No. S-03482A-03-0000

Dear Pam:

Enclosed is our motion for an order permitting us to take Wendy Coy's deposition.

I also write in the hope that you will reconsider your objection so that we do not expend undue time and resources litigating this issue. Both the Division's Notice and the enclosed motion demonstrate why we are entitled to take Ms. Coy's deposition. Both parties are fully aware of the importance of her testimony.

Also, the Division wishes to take the depositions of Ronald Klimas and Rod Tidwell. Neither of these gentlemen are still with ISI, and we cannot compel them to make themselves available for testimony. We will contact Mr. Klimas and Mr. Tidwell, however, and ask them if they will agree to have their depositions taken. Because neither of these gentlemen are located in Arizona please let me know if you plan on taking the depositions telephonically, by video-conference or by some other means. Should either of these gentlemen resist having their depositions taken we will let you know.

Ms. Johnson
August 11, 2004
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To the extent that it is able ISI will help the Division take the depositions of witnesses whose testimony is recognizably discoverable. All we ask from the Division is the same courtesy as it pertains to Ms. Coy, who is unquestionably a crucial witness and who is easily located.

Please withdraw your objection to our taking Ms. Coy's deposition. If you have any questions please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'AB' with a long horizontal flourish extending to the right.

Alan Baskin
For the Firm

Enclosure
ASB/cim

cc: Burton Wiand, Esq.
Maya Wolfe, Esq.
Teresa Rooney

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