

ORIGINAL



0000014711

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

19

2005 FEB -8 P 3: 38

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

AZ CORP COMMISSION
DOCUMENT CONTROL

FEB 0 8 2005

DOCKETED BY *cat*

In the matter of:
SCOTT ERICK LANGFITT, individually
10175 Hoover Woods Road
Galena, OH 43021
CRD# 1695817
Respondent.

DOCKET NO. S-03576A-04-0000

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

The Securities Division of the Arizona Corporation Commission ("Division") hereby requests that the presiding Administrative Law Judge recognize as admitted each of the allegations brought by the Division against respondent in this action on the grounds that the respondent failed to request a hearing and failed to submit an Answer to the Division's Notice of Opportunity for Hearing, as required by rules of procedure governing this action.

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

MEMORANDUM OF POINTS AND AUTHORITY

Procedural History

On December 22, 2004, the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice of Opportunity") with respect to Respondent Scott Erick Langfitt ("Langfitt" or "Respondent"). The Division served the Notice of Opportunity on Langfitt via certified mail, return receipt requested, on January 3, 2005. See copy of Affidavit of Service

1 attached hereto as Exhibit "A." Respondent failed to request a hearing. Respondent's deadline for
2 requesting a hearing in this matter expired on or about January 13, 2005.

3 On February 7, 2005, approximately 25 days following the expiration of Respondent's
4 deadline for requesting a hearing (35 days after Respondent was served the Notice of Opportunity),
5 the Division received a letter from an attorney representing Respondent in the state of Ohio, which the
6 Division filed with Docketed Control. That letter dated February 3, 2005 requested only that the
7 Presiding Officer *grant relief* from the requirement to file an Answer. Neither the Respondent nor his
8 counsel has made any attempt to file any other administrative papers or make any other appearance
9 before the Commission.

10 ***Discussion***

11 The filing requirements applicable to respondents in administrative actions brought by the
12 Division are provided within the Arizona Administrative Code ("A.A.C."). One such requirement
13 is the timely request for a hearing. Pursuant to A.A.C. Rule R14-4-306(B), a respondent is
14 permitted to request a hearing in writing within 10 business days after his receipt of the Notice of
15 Opportunity. Another such requirement is the timely submission of an "Answer." Pursuant to
16 Title 14 of the A.A.C., a respondent who has requested an administrative hearing shall file in the
17 record and serve upon the Division an Answer to a Notice of Opportunity within 30 calendar days
18 after the date of service of the Notice of Opportunity. *A.A.C. Rule R14-4-305(A).*

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

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

3 In this instance, Respondent ignored all filing obligations.¹ Not only did Respondent miss
4 the deadline for requesting a hearing, but he then made no effort to either explain this failure or to
5 pursue a filing extension. Respondent's disregard for this entire administrative action was further
6 displayed when Respondent failed to file any Answer.

7 Respondent's only articulated purpose for requesting relief from the requirement to file an
8 Answer is to delay this proceeding to permit him an opportunity to pay restitution to his customer.
9 There is no authority for such relief from the requirements for Respondent to request a hearing or
10 to file an Answer under administrative rules governing this proceeding. Moreover, the Division's
11 investigation has revealed that Respondent's dealer, Wachovia Securities, LLC, has already paid
12 Respondent's Arizona customer the full amount of her investment.

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

18 **Conclusion**

19 Under applicable law, Respondent has failed to make the requisite filings to preserve his
20 right to challenge the Division's Notice of Opportunity in this matter. As a consequence of this
21 failure, the presiding Administrative Law Judge should facilitate the resolution of this matter by
22

23 ¹ There is no reason to believe that Respondent was somehow unaware of the necessity to request a hearing
24 and to file an Answer to the Division's allegations in this matter. The specifics of the opportunity for
25 hearing and the answer requirement, including the amount of time available to make the necessary filings,
26 the mandatory nature of the Answer, and the consequences of not complying with these requirements, were
all explicitly provided to the Respondents in Sections VIII and IX of the Division's Notice of Opportunity.

1 entering an order recognizing as admitted all allegations brought against the Respondent 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
8 RESPECTFULLY SUBMITTED this 8th day of February, 2005.

9 ARIZONA CORPORATION COMMISSION
10 SECURITIES DIVISION

11 By: Pamela Johnson
12 Pamela T. Johnson
13 Attorney for the Securities Division

14
15 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
16 filed this 8th day of February, 2005, with

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, AZ 85007

21 COPY of the foregoing hand-delivered this
22 8th day of February, 2005, to:

23 ALJ Marc Stern
24 Arizona Corporation Commission/Hearing Division
25 1200 West Washington
26 Phoenix, AZ 85007

1 COPY of the foregoing mailed
2 this 5th day of February, 2005, to:

3 Respondent Scott E. Langfitt
4 10175 Hoover Woods Road
5 Galena, OH 43021

6 Kenneth A. Gamble
7 Gamble Hartshorn Johnson, LLC
8 One East Livingston Avenue
9 Columbus, Ohio 43215-5700

10 By: Pamela Johnson
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

1 STATE OF ARIZONA)
2 County of Maricopa)

AFFIDAVIT OF SERVICE
2005 JAN 28 A 9 29

AZ CORP COMMISSION
DOCUMENT CONTROL

3
4 I, Lindsay Gardner, for the Securities Division of the Arizona Corporation Commission,
5 hereby certify that on the 3rd day of January, 2005, the Securities Division served a copy of a
6 Notice of Opportunity for Hearing upon Scott Erick Langfitt at 10175 Hoover Woods Road,
7 Galena, Ohio 43021, by Certified Mail. I further certify that the original return receipt is in the
8 custody of the Arizona Corporation Commission Securities Division, a copy of which is attached
9 hereto as Exhibit A.

12
13 Lindsay Gardner 1/28/05
14 AFFIANT DATE

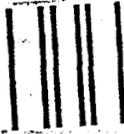
16 SUBSCRIBED AND SWORN TO BEFORE me this 28th day of
17 January, 2005.

19
20 Jerry E. Lowe
21 NOTARY PUBLIC

My Commission Expires:

22  Notary Public State of Arizona
23 Maricopa County
24 Jerry E Lowe
25 Expires September 24, 2005
26

UNITED STATES POSTAL SERVICE



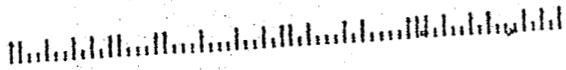
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

REGULATIVE
JAN 10 2005
ARIZ. CORP. COMM.
SECURITIES DIVISION

Arizona Corporation Commission
Securities Division
1300 W. Washington - 3rd Floor
Phoenix, AZ 85007

Pam J.



SENDER: COMPLETE THIS SECTION

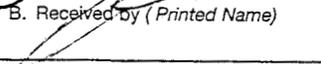
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Scott Erick Langfitt
10175 Hoover Woods Road
Galena, OH 43021

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
  Addressee

B. Received by (Printed Name) C. Date of Delivery
  1-3-05

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7003 2260 0003 3129 3447

EXHIBIT A