



0000044081

19

BEFORE THE ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JIM IRVIN
Commissioner-Chairman
RENZ D. JENNINGS
Commissioner
CARL J. KUNASEK
Commissioner

JUL 6 9 11 AM '98

DOCKET CONTROL

In the matter of

FOREX INVESTMENT SERVICES CORPORATION
2700 N. Central Ave., Suite 1110
Phoenix, AZ 85004

EASTERN VANGUARD FOREX LTD.
2700 N. Central Ave., Suite 1110
Phoenix, AZ 85004

c/o HWR Services Limited, Registered Agent
P. O. Box 71, Craigmuir Chambers
Road Town, Tortola
British Virgin Islands

EASTERN VANGUARD GROUP LIMITED
c/o AMS Trustees Limited, Registered Agent
Creque Building, Main Street, P. O. Box 116
Road Town, Tortola
British Virgin Islands

K. (DAVID) SHARMA
Eastern Vanguard Forex Ltd.
P. O. Box 71, Craigmuir Chambers
Road Town, Tortola
British Virgin Islands

SAMMY LEE CHUN WING
Eastern Vanguard Group Limited
Creque Building, Main Street, P. O. Box 116
Road Town, Tortola
British Virgin Islands

PETER SUEN SUK TAK
Eastern Vanguard Group Limited
Creque Building, Main Street, P. O. Box 116
Road Town, Tortola
British Virgin Islands

DOCKET NO. S-03177A-98-0000

MOTION TO ALLOW TELEPHONIC TESTIMONY

Arizona Corporation Commission

DOCKETED

JUL 06 1998

DOCKETED BY *[Signature]*

1 JAMES CHARLES SIMMONS, JR.
5045 N. 58th Ave. #23A
Glendale, AZ 85301

2 MICHAEL E. CHO
3 839 Faxon Avenue
4 San Francisco, CA 94112

5 TO FAI CHENG
1800 Van Ness, 2nd Fl.
6 San Francisco, CA 94109

7 JEAN YUEN
439 3rd Avenue
8 San Francisco, CA 94118

9 Y & T INC. dba TOKYO
INTERNATIONAL INVESTMENT LTD.
1800 Van Ness Ave., 2nd Fl.
10 San Francisco, CA 94109

11 WING MING TAM
c/o Tokyo International Investment Ltd.
12 1800 Van Ness Ave., 2nd Fl.
San Francisco, CA 94109

13 GUO QUAN ZHANG
14 c/o Tokyo International Investment Ltd.
1800 Van Ness Ave., 2nd Fl.
15 San Francisco, CA 94109

16 **Respondents.**

17
18 The Securities Division ("Division") of the Arizona Corporation Commission
19 ("Commission") hereby moves for leave to allow telephonic testimony by prospective Division
20 witness Joseph Saxon ("Saxon") during the scheduled hearing in the above-referenced matter.

21
22 **I.
FACTS**

23 The Division anticipates calling Saxon as a witness. He invested in a foreign exchange
24 trading account with Respondent Eastern Vanguard Forex Ltd. that was traded on his behalf by
25 Respondent Michael Cho through Respondent Forex Investment Services Corporation, and can
26 provide testimony probative of the Division's allegations in this matter. Saxon is now living in

1 California and suffering severe economic hardship as a result of the loss of almost his entire
2 investment with Respondents. His economic situation precludes him from paying for the cost of
3 his airfare to Arizona, and his susceptibility to back pain makes impracticable driving to Phoenix
4 by automobile.

5 **II.**
6 **ARGUMENT**

7 The purpose of administrative proceedings is to provide for the fair, speedy and cost
8 effective resolution of administratively justiciable matters. To effectuate that purpose, the
9 legislature provided for streamlined proceedings and relaxed application of the formal rules of
10 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of
11 contested cases. The evidence submitted in an administrative hearing need not rise to the level of
12 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."
13 In addition, the Commission promulgated rules of practice and procedure to ensure just and
14 speedy determination of all matters presented to it for consideration. *See, e.g.*, A.A.C. R-14-3-
15 101(B); R14-3-109(K). Allowing Saxon to testify by telephone retains all indicia of reliability
16 and preserves Respondents' right to cross-examination.

17 Courts in other states have acknowledged that telephonic testimony in administrative and
18 civil proceedings is permissible and consistent with the requirements of procedural due process.
19 *See Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved
20 Oregon Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v.*
21 *County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted expert testimony in
22 commitment hearing). Both of these courts concluded that fundamental fairness weighed in
23 favor of permitting telephonic testimony.

24 Public policy also favors allowing Saxon to testify telephonically. The Division is able to
25 judiciously allocate its limited resources to best serve and protect the Arizona investing public.
26 The Division will save the costs of air travel, lodging, meals and incidentals for two days.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**III.
CONCLUSION**

Permitting Saxon to testify telephonically at the hearing allows the Division to present relevant witness evidence that is expected to be substantial, reliable and probative, overcomes the hardship and burden of travel and does not compromise Respondents' due process rights. Therefore, the Division respectfully requests that its motion for leave to present the telephonic testimony of Saxon be granted.

RESPECTFULLY SUBMITTED this 6th day of July, 1998.

GRANT WOODS
Attorney General
Consumer protection & Antitrust Section

BY: 

MARK C. KNOPS
Special Assistant Attorney General
ROBERT A. ZUMOFF
Assistant Attorney General
Attorneys for the Securities Division of
The Arizona Corporation Commission

1 ORIGINAL AND TEN (10) COPIES of the foregoing
2 filed this 6th day of July, 1998, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed and/or faxed this
8 6th day of July, 1998 to:

9 Chris R. Youtz, Esq.
10 Sirianni & Youtz
11 Columbia Center
12 701 Fifth Ave., Suite. 3410
13 Seattle, WA 98104

14 and

15 Paul J. Roshka, Jr., Esq.
16 Alan S. Baskin, Esq.
17 Roshka Heyman & DeWulf, PLC
18 Two Arizona Center
19 400 N. 5th St., Ste. 1000
20 Phoenix, AZ 85004

21 ATTORNEYS FOR ALL RESPONDENTS

22 By: Michael C. [Signature]

23
24
25
26