

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

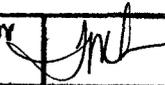
CARL J. KUNASEK
COMMISSIONER

Arizona Corporation Commission

DOCKETED

ARIZONA CORPORATION COMMISSION

JUL 01 1998

DOCKETED BY 

July 1, 1998

Alan S. Baskin, Esq.
Roshka, Heyman & DeWulf, PLC
Two Arizona Center
400 N. 5th St., Ste. 1000
Phoenix, AZ 85004

RE: In the matter of Forex Investment Services Corporation *et al.* ("FISC")
S-03177A-98-0000

Dear Alan:

On April 10th, 1998, pursuant to A. A. C. R14-3-109 (O), the Arizona Corporation Commission ("Commission") issued five administrative subpoenas requiring the appearance and production of certain records at the hearing then scheduled for May 11, 1998 in the above-referenced matter. These subpoenas were addressed respectively to the custodians of records of Respondents Eastern Vanguard Group Limited ("EVG"), Eastern Vanguard Forex Ltd. ("EVL") and Y & T Inc. dba Tokyo International Investment Ltd., and to individual Respondents To Fai Cheng and Jean Yuen. Pursuant to A. A. C. R14-3-104(D), all subpoenas were duly served thereafter upon Chris R. Youtz, Esq., your Seattle, Washington-based co-counsel of record for all the Respondents in this matter.

Almost all of the records required by the subpoenas to the EVG and EVL custodians were identical to records required by investigative subpoenas issued and served by the Commission's Securities Division (Division") in August, 1997. Mr. Youtz refused to produce any of these records, except for a set of substantially incomplete and/ or poor-quality copies from EVF of account statements from Golden Profit Development Ltd.

On that same April 10th, pursuant to A. A. C. R14-3-109 (P), I docketed notices of deposition and requests for documents to the same persons addressed by the above subpoenas. These were also duly served upon Mr. Youtz, and required the appearance of and production by all deponents at the Division offices on April 27th, 1998. I explained to Mr. Youtz at the time that all deponents except Jean Yuen could appear telephonically for the limited purpose of testifying about the origin and authenticity of any records produced as well as reasons why any records were not produced. I also told Mr. Youtz at that time that I wished to depose Respondent Yuen more generally about her background and role in this matter, and would permit her to appear and testify telephonically.

On April 24th, the Hearing Division granted Respondents' motion for a continuance of the hearing until July 13, 1998. On April 27, 1998, at the request of Mr. Youtz, the notice of deposition of Respondent Yuen was amended to continue her appearance and records production



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July 1, 1998

Page 2

until May 11th. On April 30th, Mr. Youtz docketed written objections to all the notices and requests issued on April 10th, but failed to move for any protective order or other relief from the Hearing Division. By stipulation between Mr. Youtz and myself, and despite Mr. Youtz's filed objections of April 30th, the Yuen deposition was thereafter continued until May 27th, on which date Yuen appeared with Mr. Youtz and was deposed telephonically. She produced no records.

On June 10th, I e-mailed a message to Mr. Youtz that I would be out of the office until June 23rd, reminded him that no records had yet been produced by Respondent Cheng and the three Respondent custodians despite the April 27th noticed deadline, and requested a statement of intention as to such production. By letter to me dated June 12th, Mr. Youtz's office acknowledged receipt of my e-mail message.

On June 17th, in the knowledge that I would not be back in the office until June 23rd, you served upon the Division a request for production of documents within twenty calendar days of service, or by about July 7th. This request included "[c]opies of transcripts of all Examinations Under Oath of Respondents and the exhibits thereto." By separate letter dated June 17th from you to Robert A. Zumoff, you reiterated your request for copies of examination under oath ("EUO") transcripts and attached exhibits. By reply letter dated June 18th, Mr. Zumoff advised that your request for transcripts would be deferred for consideration by me upon my return.

Your June 17th request for production was not limited to the proposed exhibits to be offered by the Division at the hearing in this matter, but included many other categories of records that could be in the custody or possession of the Division.

In phone conversations between us this week after my return on June 23rd, I explained that the Division's proposed hearing exhibits would be made available to you next week in the usual practice followed by the Division in all administrative hearings. I also explained that most of the Division's proposed exhibits would be documents obtained from or already in the possession of the Respondents. However, I also voiced my concern about the unfairness of responding to your requests for non-exhibit production in view of the failure of the three Respondent custodians and of Respondent To Fai Cheng to produce any documents at all pursuant to the Division's notices/requests from last April. I also indicated my inclination to docket a prehearing motion to compel production by these Respondents of the records requested two months ago. You urged me to await a pre-hearing conference on production matters in lieu of filing such a motion. I tentatively agreed, and in response to a special request from you and Mr. Youtz, I provided you on June 26th with a unmarked copy of the transcript and related exhibits for the EUO of Respondent Simmons, noting in my accompanying letter of transmittal that by producing these items the Division did not thereby waive any objections to your requested production of other records. As I also stated by telephone to you and Mr. Youtz separately at that time, I anticipate offering the Simmons EUO transcript and exhibits as hearing exhibits, and therefore made them available in advance of formal production of the Division's marked exhibits as a whole.

In view of our ongoing communication and my expectation of a request by you to the Hearing Division for a pre-hearing conference to discuss production issues, I was surprised to received your letter dated June 29th. After acknowledging receipt of the Simmons EUO items, you requested me to provide "copies of the hearing[?] transcripts at your earliest convenience." You letter then threatened that unless you receive "the transcripts by 5 p.m. on June 30, 1998,"

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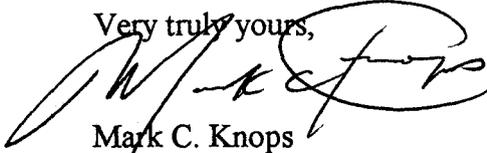
July 1, 1998

Page 3

you will "seek to preclude the Division from using these transcripts at the hearing, either as substantive evidence or for impeachment purposes." In my subsequent telephone conversation to you regarding this demand, you indicated that you actually wanted copies of the transcripts and attached exhibits for all other EUO's of Respondents in this matter. I replied that your June 17th request for production did not require Division delivery until next week, in view of which the June 29th demand letter was inappropriate and unreasonably heavy-handed. Nevertheless, since I intend to offer the other EUO transcripts as hearing exhibits, I would make available unmarked copies to you by July 1st at the latest and subject to the same waiver disclaimer as the Simmons items. Enclosed you will find the remaining EUO transcripts and exhibits, for Respondents Wing Tam And Michael Cho. As before, the production of these items is not intended to waive any objections by the Division to producing other items specified in your June 17th request. Moreover, you must be aware that your co-counsel Mr. Youtz was present at each EUO as attending counsel for these examinees and took personal notes during the examinations. Therefore there is nothing is these transcripts and exhibits of which your co-counsel is not already quite familiar.

As I related to you by telephone earlier today, I will copy the Hearing Officer with this letter in view of our conference with her next Monday morning to review prehearing discovery and disclosure issues.

Very truly yours,



Mark C. Knops
Senior Counsel

:mck

Enc.

cc: Chris R. Youtz, Esq. (telefax only)
Barbara M. Behun, Hearing Officer