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BEFORE THE ARIZONA CORPORATION COMMISSION  
AZ CORP COMMISSION

CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

Arizona Corporation Commission

FEB 4 8 39 AM '00

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FEB 04 1999

In the matter of

Charles Shull,  
687 Pampas Place  
Sierra Vista, Arizona 85636

John Ebdon  
4814 Equestrian Avenue  
Sierra Vista, Arizona 85650

Cochise Financial Corp.,  
687 Pampas Place  
Sierra Vista, Arizona 85636

Respondents.

DOCKET NO. S-03312A-99-0000;

DOCKET NO. S-03375A-99-0000

(Consolidated)

MOTION TO ALLOW  
TELEPHONIC TESTIMONY

In the matter of

Carol Ebdon Garcia  
1101 E. Carmelita Drive  
Sierra Vista, Arizona 85636

Daniel Joe Garcia  
8823 N. 38<sup>th</sup> Drive  
Phoenix, Arizona 85051,

Respondents.

The Securities Division ("Division") of the Arizona Corporation Commission  
("Commission") hereby moves the Arizona Corporation Commission to allow telephonic  
testimony during the scheduled hearing in this matter.

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Respectfully submitted this 4th day of February, 2000.

**Janet Napolitano**  
Attorney General for the State of Arizona



**Anthony B. Bingham**  
Special Assistant Attorney General  
**Robert A. Zumoff**  
Assistant Attorney General  
Attorneys for the Securities Division of the  
Arizona Corporation Commission

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTS

3 The hearing in this matter is currently set to commence on February 8, 2000. The Division  
4 anticipates calling W. A. Smith and David W. Albert as witnesses. Mr. Smith and Mr. Albert can  
5 provide factual testimony probative to the allegation of fraud in this matter. The credibility of  
6 these witnesses does not appear to be at issue.  
7

8 Mr. Smith will testify regarding what he was told by Respondents Charles Shull and John  
9 Ebdon and concerning documents evidencing investments which will be exhibits at the hearing.  
10 Mr. Smith lives in Dallas, Texas. Travel to Arizona to attend the hearing as a witness would be  
11 unduly burdensome, costly and impractical in comparison to the time he is expected to testify.

12 Mr. Albert will testify regarding what he was told by Respondents Daniel Garcia, John  
13 Ebdon and Carol Ebdon and concerning documents evidencing investments which will be exhibits  
14 at the hearing. Mr. Albert lives in Lake Preston, South Dakota. Travel to Arizona to attend the  
15 hearing as a witness would be unduly burdensome, costly and impractical given the time he is  
16 expected to testify.  
17

18 II. ARGUMENT

19 The purpose of administrative proceedings is to provide for the fair, speedy and cost  
20 effective resolution of administratively justiciable matters. To effectuate that purpose, the  
21 legislature provided for streamlined proceedings and relaxed application of the formal rules of  
22 evidence. Specifically, A.R.S. §41-1062(A)(1) provides for informality in the conduct of  
23 contested cases. The evidence submitted in an administrative hearing need not rise to the level of  
24 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."  
25 The Commission's rules of practice and procedure ensure just and speedy determination of all  
26

1 matters presented to it for consideration. See, A.A.C. R14-3-101(B); R14-3-109(K). Allowing  
2 Mr. Smith and Mr. Albert to testify by telephone retains all indicia of reliability and preserves  
3 Respondents' rights to cross-examination.

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

11  
12 II. CONCLUSION

13 Permitting Mr. Smith and Mr. Albert to testify telephonically at the hearing does not  
14 compromise Respondents' due process rights. Therefore, the Division respectfully requests that  
15 Mr. Smith and Mr. Albert be permitted to give telephonic testimony in this matter.

16 Respectfully submitted this 4th day of February, 2000.

17  
18 **Janet Napolitano**

19 Attorney General for the State of Arizona

20 

21 **Anthony B. Bingham**

22 Special Assistant Attorney General

23 **Robert A. Zumoff**

24 Assistant Attorney General

25 Attorneys for the Securities Division of the  
26 Arizona Corporation Commission

1 ORIGINAL AND TEN COPIES  
2 of the foregoing hand-delivered  
3 this 4th day of February, 2000 to:

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

8 A COPY of the foregoing faxed/mailed  
9 this 4th day of February, 2000 to:

10 Jane Rodda  
11 Hearing Officer  
12 400 W. Congress Street  
13 Tucson, Arizona 85701

14 Copy of the foregoing mailed  
15 this 4th day of 2000, to:

16 Charles Shull,  
17 P.O. Box 530400  
18 Henderson, NV 89053

19 John Ebdon  
20 4814 Equestrian Avenue  
21 Sierra Vista, Arizona 85650

22 Cochise Financial Corp.,  
23 P.O. Box 530400  
24 Henderson, NV 89053

25 Carol Ebdon Garcia  
26 1101 E. Carmelita Drive  
Sierra Vista, Arizona 85636

Daniel Joe Garcia  
8823 N. 38<sup>th</sup> Drive  
Phoenix, Arizona 85051

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