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Arizona Corporation Commission
DOCKETED

JAN 24 2007

Attorneys for Respondents AGRA-
Technologies, Inc.; William Jay
and Sandra Lee Pierson; William
H. and Patricia M. Baker

Lonnie J. Williams, Jr. (#005966)
Carrie M. Francis (#020453)

DOCKETED BY	<i>WJ</i>
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BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:

AGRA-TECHNOLOGIES, INC. (a/k/a ATI),
a Nevada corporation,
5800 North Dodge Avenue, Bldg. A
Flagstaff, AZ 86004-2963;

DOCKET NO. S-20484A-06-0669

WILLIAM JAY PIERSON (a/k/a BILL
PIERSON) and SANDRA LEE PIERSON
(a/k/a SANDY PIERSON), husband and wife,
6710 Lynx Lane
Flagstaff, AZ 86004-1404;

**MOTION TO SET EVIDENTIARY
HEARING**

RICHARD ALLEN CAMPBELL (a/k/a
DICK CAMPBELL) and SONDRÁ JANE
CAMPBELL, husband and wife,
8686 West Morten Avenue
Glendale, AZ 85304-3940;

WILLIAM H. BAKER, JR. (a/k/a BILL
BAKER) and PATRICIA M. BAKER,
husband and wife,
3027 N. Alta Vista
Flagstaff AZ 86004

JERRY J. HODGES and JANE DOE
HODGES, husband and wife,
1858 Gunlock Court
St. George, UT 84790-6705;

LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE) and JANE DOE PAILLE,
husband and wife,
220 Pinon Woods Drive
Sedona, AZ 85351-6902;

Respondents.

AZ CORP COMMISSION
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1 Respondents AGRA-TECHNOLOGIES, INC., WILLIAM JAY PIERSON (a/k/a
2 BILL PIERSON) and SANDRA LEE PIERSON (a/k/a SANDY PIERSON), and
3 WILLIAM H. BAKER, JR. (a/k/a BILL BAKER) and PATRICIA M. BAKER
4 (hereinafter jointly referred to as "Respondents") request that an evidentiary hearing be set
5 to resolve the Arizona Corporation Commission's (the "Commission") entry of a
6 Temporary Cease and Desist Order ("Temporary Order"). On October 18, 2006, the
7 Commission issued a Temporary Order requiring Respondents to "cease and desist from
8 any violations of the Securities Act" as outlined therein. The Temporary Order sets forth
9 that it is effective immediately and for 180 days "unless sooner vacated, modified or made
10 permanent by the Commission." *See* Temporary Order, at Section VII, pg. 12.

11 The Temporary Order was served on Respondents on October 20, 2006. On
12 November 3, 2006, Pursuant to A.R.S. § 44-1972 and A.C.C. Rule 14-4-307(C) and (D),
13 Respondents timely requested an evidentiary hearing on the Commission's Temporary
14 Order. The Commission did not set an evidentiary hearing as required by Rule 14-4-
15 307(C) and (D), however, the Administrative Law Judge, Marc E. Stern, set a Pre-Hearing
16 Conference for December 20, 2006. The parties attended and participated in that Pre-
17 Hearing Conference, however, a date for an evidentiary hearing was not set, despite
18 Respondents' renewed request for such a hearing under Rule 14-4-307(C) and (D).
19 Instead, a date of January 29, 2007, was set for an additional Pre-Hearing Conference to
20 allow the Commission additional time to complete its investigation.

21 Respondents and their counsel met with Commission Securities Division
22 representatives on January 4, 2007 to discuss, among other things, setting an evidentiary
23 hearing on the Temporary Order. Respondents asked counsel for the Commission, Mike
24 Dailey ("Dailey"), to provide dates for the evidentiary hearing as required by Rule 14-4-
25 307(C) and (D), and he refused to do so. Dailey refused to even provide a general time
26 frame for a future evidentiary hearing, and could not say whether it would be six months
27 or two years before the ACC would conclude its investigation. Respondents informed
28 Dailey that until an evidentiary hearing was held on the Temporary Order, Respondents'

1 business could not operate. Dailey stated that he expected a prolonged investigation
2 period, and suggested Respondents could challenge his refusal to agree to an evidentiary
3 hearing as required by Rule 14-4-307(C) and (D).

4 As a result of Respondents' failed efforts to come to an agreement with the
5 Commission on a date for an evidentiary hearing, Respondents submit this Motion in
6 order to enforce their right to an evidentiary hearing on the Temporary Order.
7 Respondents' original request for an evidentiary hearing was made on November 3, 2006,
8 and according to the rule, the evidentiary hearing is required to occur within 30 days of
9 that date.

10 The status of the Commission's investigation into this matter is irrelevant with
11 regard to setting and evidentiary hearing under Rule 14-4-307(C) and (D). Furthermore,
12 the items that Dailey is investigating, as listed in the Temporary Order, all pertain to
13 alleged acts and events occurring more than three years ago, starting in 2002. The
14 Commission has had sufficient time to determine the facts surrounding those allegations
15 in the three months that have passed since the Temporary Order was issued, and during
16 their investigation prior to issuing the Temporary Order.

17 The Arizona Supreme Court has firmly held that with regard to Commission
18 investigations following a Temporary Order, the Commission is "not at liberty to act
19 unreasonably." *Polaris v. A.C.C.*, 652 P.2d 1023, 1029, 133 Ariz. 500, 506 (1982). That
20 Court explained: "[I]f an administrative agency's investigation becomes a tool of
21 harassment and intimidation rather than a means to gather appropriate information, the
22 appropriate court may intrude and stop the incursion into the constitutional liberties of the
23 parties under investigation." *Id.* at 1030, 507. The Commission's refusal to agree to a date
24 for an evidentiary hearing, refusal to comply with Rule 14-4-307(C) and (D), desire for a
25 prolonged investigation into old matters, and inability to say whether the investigation
26 may continue for six months or two years illustrates the Commission's improper use of the
27 investigation and the scope of the Temporary Order.

28 ...

