



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 KRISTIN K. MAYES
 GARY PIERCE

In the matter of:

DOCKET NO. S-20476A-06-0557

Trend Management Group, Inc., a Nevada
 corporation
 8601 Six Forks Road, Suite 400
 Raleigh, NC 27615

Scott Renny Bogue, Sr. (CRD# 1588216) and
 Arlene Jane Bogue, husband and wife
 12308 Camberwell Court
 Raleigh, NC 27614

Ryan James Herndon and Lori Darlene Herndon
 (a.k.a. Lori J. Herndon a.k.a. Lori Jordan),
 husband and wife
 609 East Silverwood Drive
 Phoenix, AZ 85048

Trend Capital, LLC, an Arizona limited liability
 company
 4025 East Chandler Blvd. Suite 70F15
 Phoenix, AZ 85048

Linda Bryant Jordan (a.k.a. Linda Van Vranken
 a.k.a. Linda Jordan-Van Vranken), a married
 person, individually and doing business as
 The Trend Group, Inc.
 3641 East Park Avenue
 Phoenix, AZ 85044

Russell Langdon Van Vranken, husband of Linda
 Bryant Jordan
 3641 East Park Avenue
 Phoenix, AZ 85044

Easy Street Financial Group, Inc., an Arizona
 corporation
 9949 West Bell Road #202

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**RESPONSE TO MOTION FOR
 SUMMARY JUDGEMENT RE: ARLENE
 BOGUE**

Arizona Corporation Commission
DOCKETED
 APR 24 2007

DOCKETED BY *nr*

1 Sun City, AZ 85371)
2 Christopher Ellis Marx (CRD# 2186523) and Jane)
3 Doe Marx, husband and wife,)
4 6623 West Desert Hollow Drive)
5 Glendale, AZ 85310)
6 Scot Alan Oglesby and Lori Ann Oglesby,)
7 husband and wife,)
8 36322 North 12th Avenue)
9 Desert Hills, AZ 85086)
10 Respondents.)

11 The Securities Division ("Division") of the Arizona Corporation Commission
12 ("Commission") hereby responds to Arlene Bogue's Motion for Summary Judgment on all claims
13 against her. For the reasons outlined in the attached MEMORANDUM OF POINTS AND
14 AUTHORITIES, the Division requests that the court deny Arlene Bogue's motion.

15 RESPECTFULLY SUBMITTED this 24th day of April, 2006.

16 ARIZONA CORPORATION COMMISSION

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18 _____
19 By: LeRoy Johnson
20 Attorney for the Arizona Corporation Commission
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Factual and Procedural Background**

3 The Securities Division (the "Division") of the Arizona Corporation Commission ("the
4 Commission") does not disagree materially with the factual and procedural background contained in
5 the Motion for Summary Judgment Re Arlene Bogue ("Motion") and Separate Statement of Facts in
6 Support of Motion ("SOF") filed in this action. Specifically, the Division agrees that the Notice filed
7 September 5, 2006, alleged that Arlene Jane Bogue ("Mrs. Bogue") was at all relevant times the
8 spouse of Scott Renny Bogue, Sr. ("Mr. Bogue") and at the time was a resident of the state of North
9 Carolina. SOF ¶ 3. The Division agrees that Mrs. Bogue was joined in this action under A.R.S. § 44-
10 2031(C) for purpose of determining the liability of the marital community. SOF ¶ 4. The Division
11 alleges in the Notice that at all relevant times, Mr. Bogue and Mrs. Bogue were acting for their own
12 benefit, and for the benefit, or in furtherance of, the marital community. Notice ¶ 4. The Division has
13 alleged that Mr. Bogue engaged in acts, practices and transactions, which constitute violations of the
14 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

15 The Commission adds the following facts: Mr. and Mrs. Bogue currently have a joint bank
16 account at Bank of America reflecting a North Carolina address. See Securities Division Separate
17 Statement of Facts ("DSOF") ¶ 1 filed this date. While the financial analysis on this matter is
18 continuing, it is known that funds from entity respondents, Trend Management Group, Inc. and
19 Trend Capital, LLC were deposited into the joint account of Mr. Bogue and Mrs. Bogue. DSOF ¶ 2.

20 **II. Legal Argument**

21 The Division disagrees with Mrs. Bogue that the facts and procedural history in anyway give
22 rise to Mrs. Bogue being entitled to a judgment as a matter of law on all claims against her. The law
23 supports the Commission's right to obtain a judgment against the marital community of Mr. Bogue
24 and Mrs. Bogue in this action.

1 The only way to obtain a judgment against the marital community under Arizona law is to
2 name Mrs. Bogue. Mrs. Bogue in her motion confuses the Commission's right to a judgment against
3 the marital community and the Commission's ability to collect on such a judgment in a non-
4 community property state.

5 **A. Issue**

6 The issue raised by Mrs. Bogue is whether the Commission may obtain a final judgment for
7 restitution or for administrative penalties against an out-of-state spouse in an action alleging violations
8 of the Securities Act. The law supports that the Commission may issue an appropriate order for
9 restitution or penalties against Mr. Bogue and Mrs. Bogue which can be transferred to a judgment of
10 the Superior Court and enforced against the separate assets of Mr. Bogue and the community assets of
11 Mr. Bogue and Mrs. Bogue.

12 The issue of collection on such a judgment is separate and apart from whether judgment can
13 be validly issued by the Arizona courts and will be controlled by local law of the forum. None of the
14 cases cited by Mrs. Bogue actually addresses the real issue of whether the Commission can properly
15 obtain a judgment against an out-of state spouse that could be enforceable against community assets if
16 such assets exist now or in the future.

17 **B. The Commission May Issue an Order Against a Non-Resident Spouse**

18 Mrs. Bogue's principal argument is that because Mrs. Bogue resides in North Carolina and
19 North Carolina is not a community property state that the Commission cannot obtain a judgment
20 against the marital community in Arizona. Mrs. Bogue confuses the right of the Commission to
21 obtain a judgment against the marital community in Arizona and the ability of the Commission to
22 enforce that judgment in North Carolina. Specific statutes control the Commission's ability to obtain
23 a judgment against community assets. A.R.S. §§ 44-2031(C), 44-2036(C) and 25-215(D).

24 A.R.S. § 44-2031(C) states "[t]he commission may join the spouse in any action authorized by
25 this chapter to determine the liability of the marital community." A.R.S. § 44-2036(C) states that any
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1 Commission "order requiring the payment of restitution or administrative penalties may be filed in the
2 office of the clerk of the superior court . . . and the clerk shall treat the commission order in the same
3 manner as a judgment of the superior court." Pursuant to A.R.S. § 25-215(D) "spouses *shall* be sued
4 jointly and the debt or obligation satisfied: first, from the community property, and second, from the
5 separate property of the spouse contracting the debt or obligation." (Emphasis added) Mr. Bogue's
6 alleged actions in violating the Securities Act subjects any existing community assets to liability to
7 satisfy any ultimate Commission judgment. *Cadwell v. Cadwell*, 126 Ariz. 460, 463, 616 P.2d 920,
8 923 (App. 1980) (stating that intentional torts or crimes committed while spouse was acting to some
9 extent for the benefit of community subjects community assets to satisfy judgment).

10 While the Commission has alleged that Mr. Bogue engaged in acts, practices and transactions,
11 which constitute violations of the Securities Act, if the Commission did not name Mrs. Bogue, the
12 Commission may be prohibited from including her at a later date if, for example, the Bogues were to
13 move to Arizona or another community property state. A.R.S. § 25-215(D) (spouses *shall* be sued).
14 In *Alberta Securities Com'n v. Ryckman*, 200 Ariz. 540, 549, 30 P.3d 121, 130 (Ct. App. 2001) the
15 court did not require the Alberta Securities Commission to have named the spouse in its action to hold
16 the community responsible when the couple moved to Arizona. In permitting the community to be
17 held responsible even though the spouse was not named in original lawsuit the court specifically
18 addressed A.R.S. § 25-215(D) and held that the court may not impress Arizona's law upon a foreign
19 judgment. *Ryckman*, 200 Ariz. at 549, 30 P.3d at 130. An Arizona court may indeed, and likely
20 would, impress Arizona law upon the Commission if it failed to name Mrs. Bogue in this action.

21 In this day and age, society moves and owns property and assets in potentially various
22 locations. As the *Ryckman* court noted "[w]e live in a mobile society: it is commonplace for people
23 to move from state to state as they pursue job opportunities and better living conditions." *Id.* at 550,
24 30 P.3d at 131. Therefore, a judgment may issue against Mrs. Bogue, however, the enforcement of
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1 the judgment will be governed by the laws and rules of the jurisdiction in which the assets may be,
2 including Arizona or any other community property state.

3 **C. Enforcement of an Arizona Judgment Against a Non-Resident Spouse**

4 Under the full faith and credit provision of the U.S. Constitution, a foreign judgment may not
5 be attacked on the basis that it does not comply with the law of the state in which the judgment
6 creditor seeks to enforce it. *National Union Fire Insurance Company of Pittsburgh, PA v. Green*, 195
7 Ariz. 105, 107, 985 P.2d 590 (Ct. App. 1999) quoting *Saniz v. Sainz*, 36 N.C.App. 744, 245 S.E.2d
8 372 (1978). It is therefore required that North Carolina recognize any judgment of the Commission
9 against the community of Mr. Bogue and Mrs. Bogue. However, it may be that under North Carolina
10 law that the fact that community property does not in fact exist that a valid Arizona judgment may not
11 be enforced by a North Carolina court. *Id.* at 108, 985 P.2d at 593 (“The Full Faith and Credit Clause
12 does not make the laws of the rendering state applicable to enforcing the judgment: The method by
13 which a judgment of another state is enforced are determined by the local law of the forum.”); *Saniz v.*
14 *Sainz*, 36 N.C.App. 744, 748, 245 S.E.2d 372 (1978) (North Carolina court recognizing the
15 “distinction between recognition of a foreign judgment, on the one hand, and its enforcement, on the
16 other hand”). Once a foreign judgment is domesticated, the local law of the forum determines the
17 method of enforcement (i.e., what property to use). *National Bank of Arizona v. Moore*, 138 N.M.
18 496, 122 P.3d 1265 (2005).

19 A marital community does in fact exist in North Carolina and that state’s courts recognize that
20 the marital characteristic of appreciation which results from funds, talent or labor that are contributed
21 by the marital community will permit a spouse a proportionate return on their investment in property
22 not titled in that spouses name. See *Lawing v. Lawing*, 81 N.C.App. 159, 176, 344 S.E.2d 100, 112
23 (1986); *Breightol v. Beightol*, 90 N.C.App. 58, 61, 367 S.E.2d 347, 349 (1988); *McLoed v. McLoed*,
24 74 N.C.App. 144, 153, 327 S.E.2d 910, 915 (1985) (marital community entitled to an equitable lien
25 for its contribution of separate property).

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1 In North Carolina property can be titled in a husband and wife's name as tenants by the
2 entirety, and lands so titled are not subject to levy or execution on a judgment against either the
3 husband or wife alone. *Edwards v. Arnold*, 250 N.C. 500, 505, 109 S.E.2d 205, 209 (1959) (voiding
4 sheriff's sale as judgment was only against husband). Therefore, whether North Carolina will permit
5 execution on specific property based on a Commission judgment may well hinge on whether Mrs.
6 Bogue is named in this action.

7 The creation of a joint bank account in North Carolina creates an agency relationship between
8 the spouses. *Myers v. Myers*, 68 N.C.App. 177, 181, 314 S.E.2d 809, 813 (1984). Mr. and Mrs.
9 Bogue do in fact have a joint bank account and the financial analysis performed to date reflects that
10 certain funds disbursed to Mr. Bogue from the entity respondents in this action have been deposited
11 into Mr. and Mrs. Bogue's joint bank account. This fact alone may convince a North Carolina court
12 that enforcement of a Commission judgment against Mrs. Bogue is proper.

13 The Commission may ultimately obtain a valid judgment against Mrs. Bogue thereby making
14 community property available to satisfy the judgment. Whether a North Carolina court will enforce
15 the judgment as written is yet to be determined and irrelevant. However, the fact that a joint bank
16 account exists that received funds from the alleged securities violations and how other property may
17 be titled in Mr. and Mrs. Bogue's names, may lead a North Carolina court to enforce Arizona's
18 judgment. Whether there are assets to satisfy the judgment is a matter for the court in the jurisdiction
19 where the assets are held. *Ryckman*, 200 Ariz. 540, 30 P.3d 121 (Ct. App. 2001).

20 **D. Sanctions**

21 Mrs. Bogue's motion is the first formal position she has taken to obtain relief from the Notice.
22 There simply is no basis for Mrs. Bogue's request for sanctions. Mrs. Bogue is not included in this
23 action to provide the Division with a "bargaining chip" as Mrs. Bogue's Motion states. As shown
24 above, the Commission has appropriately, under the law of Arizona, named Mrs. Bogue in this action
25 so that any community assets, to the extent they now exist or exist in the future, may be available to
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1 satisfy any ultimate Commission judgment. Accordingly, there is no basis for an award of costs,
2 attorneys' fees and other relief as asked for by Mrs. Bogue.

3 **III. Conclusion**

4 Mrs. Bogue's Motion should be denied. Under Arizona law, the Commission may obtain a
5 valid legal judgment against Mr. Bogue and the community assets of Mr. Bogue and Mrs. Bogue to
6 the extent such community assets now exist or exist in the future. The collection of the judgment is a
7 separate issue that will be addressed in the states where assets or property are held.

8 Dated this 24th day of April, 2006.

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11 _____
12 LeRoy Johnson
13 Attorney for the Arizona Corporation Commission

14 Original and thirteen copies
15 of the foregoing hand-delivered this
16 24th day of April, 2007

17 Docket Control
18 Arizona Corporation Commission
19 1200 W. Washington
20 Phoenix, Arizona 85007

21 Copies of the foregoing mailed
22 this 24th day of April, 2007 to:

23 Stephen M. Dichter
24 Nathan D. Meyer
25 Harper, Christian, Dichter & Graif, P.C.
26 2700 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Attorneys for Scott and Arlene Bogue and
Trend Management Group, Inc.

Ashley Adams-Feldman
The Phoenix Law Group
8765 E. Bell Road, Suite 100
Scottsdale, AZ 85260-001
Attorney for Ryan Herndon and Trend Capital, L.L.C.

1 Charles R. Berry
2 Titus, Brueckner & Berry, P.C.
3 8377 E. Hartford Drive, Suite 110
4 Scottsdale, Arizona 85255
5 Attorneys for Linda Jordan and Russell Van Vranken

6 Stephen C. Kunkle
7 Law Office of Stephen C. Kunkle
8 111 W. Monroe St., Ste. 1212
9 Phoenix, AZ 85003
10 Attorney for Lori Jordan

11 Alan Baskin, Esq.
12 Bade & Baskin PLC
13 80 East Rio Salado Parkway, Suite 515
14 Tempe, Arizona 85281
15 Attorneys for Chris Marx and Easy Street

16 Frank R. Mead
17 Tiffany & Bosco, P.A.
18 Third Floor Camelback Esplanade II
19 2525 East Camelback Road
20 Phoenix, Arizona 85016-4237
21 Attorneys for Scot and Lori Oglesby

22 Ryan W. Anderson
23 Guttilla, Murphy, Anderson P.C.
24 4150 W. Northern Avenue
25 Phoenix, Arizona 85051
26 Attorney for Receiver