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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2009 MAR 17 P 4: 27

DOCKETED

COMMISSIONERS:
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

MAR 17 2009

DOCKETED BY *ALA*

In the matter of:

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an
Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an
Arizona limited liability company;

Respondents.

Docket No. S-20600A-08-0340

RESPONDENTS
MICHAEL J. SARGENT
AND PEGGY L. SARGENT'S

MOTION TO QUASH
SUBPOENA

(Oral Argument Requested)

Respondents Michael J. Sargent and Peggy L. Sargent (collectively, the "Sargents") respectfully move to quash the subpoena dated February 18th, 2009 and attached as Exhibit A. The subpoena is overbroad. It was also was improperly served, and fails to contain the required legal notices. Accordingly, the subpoena should be quashed. The Administrative Law Judge has the power to quash the subpoena under A.A.C. R14-3-109.O.

I. The subpoena is overbroad.

The subpoena is directed to the "Custodian of Records" of "3 Gringos Mexican Investments, LLC." But it does not simply ask for company records of 3 Gringos. Instead, it requests a long list of information relating to 3 Gringos and twenty-one other entities. Any requests related to those 21 other entities should be directed to the custodian of records of those other entities. Moreover, the subpoena requires "all documents... in your personal possession or that you

1 are reasonably able to obtain, incident or relating to” the 22 entities (3 Gringos and an additional
2 21). It is difficult to conceive of a more overbroad subpoena. It literally asks for every single
3 document related to a lengthy list of companies. The Commission’s rules specify that subpoenas
4 “must specify” the “documents desired” as “clearly as possible” and that an “unreasonable or
5 oppressive” subpoena may be quashed. A.A.C. R14-3-109.O, incorporated by reference through
6 A.A.C. R14-4-301. It has long been understood that parties have an obligation to “take reasonable
7 steps to avoid imposing undue burden or expense on a person subject to” a subpoena. *See e.g.*
8 Arizona Rule of Civil Procedure, Rule 45(c)(1). Here, the Division has filed to meet that duty by
9 failing to make any effort to limit the scope of the subpoena. Again, the Division requests every
10 single document relating to 22 separate entities. The subpoena is overbroad in that it (1) seeks
11 documents relating to the 21 entities other than 3 Gringos; and (2) makes no effort to limit the
12 scope of documents requested. Thus, the subpoena should be quashed.

13 **II. The subpoena was improperly served.**

14 The subpoena was directed to the “Custodian of Records” of “3 Gringos Mexican
15 Investments, LLC” at an address which is the Sargents’ home.

16 Mr. Sargent was one of three members of 3 Gringos. He was never appointed custodian of
17 records, nor did he ever accept responsibility for that position. If anyone should be considered the
18 custodian of records of 3 Gringos, it is Mr. Bosworth. Mr. Bosworth signed the Articles of
19 Organization, controlled 3 Gringos and took the leading role in all matters relating to 3 Gringos.
20 Mr. Sargent denies being the custodian of records. Thus, it was improper to send the subpoena to
21 him.

22 The Division chose to serve the subpoena by mail. The subpoena was mailed to the
23 Sargents’ home. But the Commission’s rules for investigative subpoenas requires that, when such
24 subpoenas are served by mail, the subpoena be mailed “to the last known business or mailing
25 address” of the entity. A.A.C. R14-4-303.E.4. The Sargents’ home has never been the business or
26 mailing address of 3 Gringos. Thus, the subpoena has not been properly served, and should be
27 quashed.

1 The Division may respond that the defects in service are mere technicalities. But rules have
2 the force of law, and the Commission must follow its own rules. *Gibbons v. Arizona Corp.*
3 *Comm'n*, 95 Ariz. 343, 347, 390 P.2d 582, 585 (1964). Moreover, proper service of a subpoena is
4 no technicality, but serves important policies. Service of a subpoena constitutes “compulsory
5 process,” a direct command by the government to comply or face sanctions. *Federal Trade*
6 *Comm'n v. Compagnie de Saint-Gobain-Pont-a-Mousson*, 636 F.2d 1300, 1311-12 (D.C. Cir.
7 1980). Thus, proper service (normally personal service) is required, and mere notice is insufficient.
8 *Id.* The same principles apply to agency investigatory subpoenas. *Id.*

9 **III. The subpoena lacks the required legal notices.**

10 Because the subpoena represents a mandatory order from the government, it is important
11 that the public be informed of their rights and obligations under the subpoena. Thus, the Rules of
12 Civil Procedure require that each subpoena contain a list of rights and obligations. Arizona Rules
13 of Civil Procedure, Rule 45(a)(1)(D), incorporated by reference in A.A.C. R14-3-101, as further
14 incorporated in A.A.C. R14-4-301. The Division’s subpoena does not contain the required notices,
15 and it should therefore be quashed.

16 **IV. Conclusion.**

17 The subpoena constitutes a command by the government to someone within its territorial
18 jurisdiction. It is backed by the force and power of the State. For this reason, the law requires
19 certain safeguards for its use. Those safeguards include requiring that the subpoena not be
20 overbroad, that the subpoena be properly served, and that the recipient be informed of their rights
21 and obligations. The Division failed to observe these important safeguards, and its subpoena
22 should be quashed.

23 In addition, Mr. Sargent has never been the custodian of records for 3 Gringos Mexican
24 Investments, LLC.

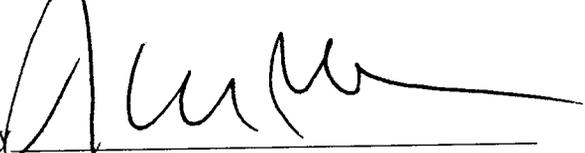
ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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RESPECTFULLY SUBMITTED this 17th day of March, 2009.

ROSHKA DeWULF & PATTEN, PLC

By 

Paul J. Roshka, Jr., Esq.
Timothy J. Sabo, Esq.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
602-256-6100 (telephone)
602-256-6800 (facsimile)
Attorneys for Respondents
Michael J. Sargent and Peggy L. Sargent

ORIGINAL and thirteen copies of the foregoing
filed this 17th day of March, 2009 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 17th day of March, 2009 to:

Marc E. Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Aaron S. Ludwig, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
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TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

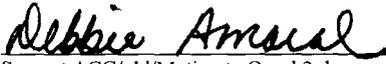
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Copy of the foregoing mailed
this 17th day of March, 2009 to:

Robert D. Mitchell, Esq.
Joshua R. Forest, Esq.
Julie M. Beauregard, Esq.
Mitchell & Forest, P.C.
1850 North Central Avenue, Suite 1715
Phoenix, Arizona 85004
Attorneys for Respondent Robert Bornholdt

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Keyt Law Offices
3001 East Camelback Road, Suite 130
Phoenix, Arizona 85016
Attorneys for Respondents
Stephen G. and Diane V. Van Campen

Mark W. and Lisa A. Bosworth
18094 North 100th Street
Scottsdale, Arizona 85255
Pro Per



Sargent.ACC/pld/Motion to Quash3.doc

EXHIBIT

"A"

ARIZONA CORPORATION COMMISSION
1200 W. WASHINGTON
PHOENIX, ARIZONA 85007

DIVISION: SECURITIES DIVISION

CERTIFIED MAIL

7007 1490 0000 26

049 2033 336

\$05.490

03/19/2009

Return From 85007

US POSTAGE

Custodian of Records
3 Gringos Mexican Investments, LLC
77 E Missouri St. #3
Phoenix, AZ 85012

8501281378 0072



COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 642-4242
FAX: (602) 694-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

February 18, 2009

Via Certified Mail, Return Receipt Requested

Custodian of Records
3 Gringos Mexican Investments, LLC
77 E. Missouri St. #3
Phoenix, AZ 85012

Re: Mark Bosworth, et. al.

/File No. 7844

Dear Madame/Sir:

Enclosed you will find a Subpoena Duces Tecum which requires your appearance before the Securities Division on **March 16th, 2009**. In lieu of personal appearance, you may provide the requested documents along with the enclosed Affidavit of Custodian of Records by the due date by mailing them to **Special Investigator Michael D. Brokaw**, Securities Division, Arizona Corporation Commission, 1300 West Washington Street, Third Floor, Phoenix, Arizona 85007. Testimony concerning the documents will be scheduled at a later time, if necessary.

Should your institution not have any documents responsive to the subpoena, please provide written confirmation to that effect.

Should you have any questions regarding this subpoena, please feel free to contact me at (602) 542-0205 or (602) 542-4242.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Brokaw", written over a horizontal line.

Michael D. Brokaw
Special Investigator

SUBPOENA
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

TO Custodian of Records
3 Gringos Mexican Investments, LLC
77 E. Missouri St. #3
Phoenix, AZ 85012

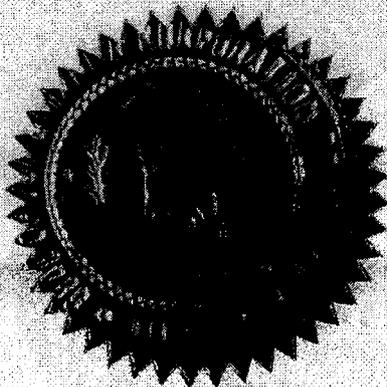
In the matter of

Mark Bosworth, et. al. file number 7844

**involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.**

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED TO

**appear before Special Investigator Michael D. Brokaw of the Securities Division of the Arizona Corporation
Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, on the 16th day of March, 2009 at
10:00 AM, to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated
by reference.**



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 18th day of February, 2009.


Julie Coleman, Chief Counsel of Enforcement
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Berlin, Executive Assistant to the Interim Executive Director, voice phone number 602/542-3931, e-mail saberlin@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Exhibit "A"

From the period beginning January 1, 2005 to the present, all documents (including, but not limited to, records, contracts, agreements, written lists, books, correspondence, e-mails, any and all papers, etc.), whether stored on electronic media or otherwise, in your personal possession or that you are reasonably able to obtain, incident or relating to:

- a. 3 Gringos Mexican Investments, LLC
- b. Mark Bosworth
- c. Lisa Bosworth
- d. Mark Bosworth and Associates, LLC
- e. Bosworth Commercial, Inc.
- f. gorenter.com, LLC
- g. Home America Corporate Leasebacks LLC
- h. G5Rainbow Valley Development, LLC
- i. www.gorenter.com, LLC
- j. Bosnel Properties, LLC
- k. Home America Property Management, LLC
- l. Property Masters of America 401K, LLC
- m. Property Masters Real Estate Trust, LLC
- n. Mark Bosworth Residential, LLC
- o. B.F.E. Properties, LLC
- p. Leverage & Acquire, LLC
- q. WYD Investments, LLC
- r. The Mark Bosworth Companies, Inc.
- s. Pinnacle Investment Partners, LLC
- t. YDD Investments, LLC
- u. Team Boz Marketing, LLC
- v. Lisa Boz Marketing, LLC

(collectively "the Persons/Entities") including, but not limited to:

1. Certificates of partnership, partnership agreements, articles of incorporation or organization, bylaws, and operating agreements, including any amendments;
2. Records of all pre-organization or corporate meetings, committee meetings, shareholder or member meetings, board of director meetings, or other business meetings, including minutes, resolutions adopted or proposed, agendas, and all information used or presented at these meetings;
3. Names, addresses, and telephone numbers of all past and present officers and directors, managing members, managers, or managing or general partners;
4. Names, addresses, telephone numbers, and position of all past and present employees, independent contractors, or other agents;

5. Records of all salaries, bonuses, reimbursement, distributions, draws, loans, or any other compensation, whether monetary or otherwise, paid to the individuals listed in response to paragraphs 3 and 4;
6. All financial statements, annual and quarterly financial reports, whether audited or unaudited, with accompanying footnotes and any auditor's reports including any amendments;
7. All assets and liabilities currently held by or for the benefit of the Persons/Entities.
8. All documents filed with any governmental agency related to the conduct of business, the formation of affiliated businesses, the renewal or maintenance of status as a legal entity, or the dissolution of the business;
9. All documents submitted for the purpose of compliance, reporting, or seeking exemptions from registration with any state or federal securities agency;
10. All documents concerning inquiries, investigations, or actions by any state or federal governmental agency, including all documents concerning any civil, criminal or administrative action or lawsuit filed by or against the Persons/Entities in any federal, state, administrative or self-regulatory agency forum.
11. All state and federal tax returns prepared or filed by or on behalf of the Persons/Entities including, without limitation, any applications, forms, related documents, correspondence, or amendments;
12. All accounting records and books of original entry including but not limited to, cash receipts journal, cash disbursements journal, sales journals, general journal, subsidiary journals, general ledger, subsidiary ledgers, and chart of accounts;
13. All bank or other depository institution accounts in the name of, or for the benefit of the Persons/Entities, whether open or closed, including: (a) the name of the bank or depository institution and address of the branch at which the account is located; the name and number of each account; and (c) the names of all signatories on each account;
14. All advertisements, correspondence, circulars, offering memoranda, newsletters, prospectuses, tax opinions, legal opinions, reports, brochures, flyers, handouts, or any other records made available to potential or actual investors;
15. All advertisements, announcements, infomercials, or press releases that appeared in any media including, but not limited to, newspapers, trade journals, magazines, radio, television, or the internet;
16. All information provided through the internet including, but not limited to, copies of all web pages, addresses of web sites, news groups, and email addresses;

17. All contracts or agreements between the Persons/Entities and any person or entity identified in response to paragraphs 14 through 16 above, records of all payments made to such persons or entities, and any communications (correspondence, memoranda, etc.), whether written or electronic, by or between the Persons/Entities and such person or entity and salesman;
18. All lists of prospective investors, including sales lead lists, demographic lists, and any other source of investor names, whether drafted by, purchased by, or obtained for the benefit of the Persons/Entities;
19. All lists of persons who attended seminars, classes, or meetings held or sponsored by or on behalf of the Persons/Entities, its/their affiliates or agents;
20. Names, addresses, and telephone numbers of all individuals or entities that have been offered or sold investments in the Persons/Entities;
21. Documents relating to each individual or entity listed in paragraph 20 including any contracts, forms, subscriptions, agreements, notes, questionnaires, records of investment status, checks, wire transfers, receipts, account statements, tax information, and any correspondence, updates, or other communications;
22. The amounts and dates of each investment for each individual or entity listed in paragraph 20;
23. The amounts and dates of any interest, earnings, distributions, dividends, stock splits, spin-offs, rescission, refund, or any other form of returns to each individual or entity listed in paragraph 20;
24. Names and addresses of all shareholders, members, or partners of the Persons/Entities, including the amount of shares, units, or interest held and a sample share certificate or other evidence of ownership;
25. Records of all securities held, issued, purchased, or traded, including any brokers, underwriters, market makers, clearing firm, or other entities used in each transaction;
26. Records of any mergers, acquisitions, spin-offs, or predecessor entities; and
27. All internal reports and any reports provided to shareholders, members, or partners.
28. All employment contracts or agreements, and the records of the terms and amount of commissions, salaries, bonuses, draws, fees, loans, reimbursement, distributions, refunds, redemptions or any other compensation, benefit or consideration of any kind paid to, or obtained by the Persons/Entities.

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____)
County of _____) ss.

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of _____
_____.
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Custodian of Records

SUBSCRIBED and SWORN to before me this _____ day of _____, 200_, by _____
_____.

My Commission Expires:

NOTARY PUBLIC

(seal)