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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 MAY -1 P 12: 44

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

MAY - 1 2009

DOCKETED BY 

Docket No. S-20631A-08-0503

In the matter of:

ROBERT FRANKLIN HOCKENSMITH, JR.,
CRD #1798614

Respondent.

**RESPONDENT ROBERT F.
HOCKENSMITH, JR.'S**

**MOTION TO QUASH
HOCKENSMITH SUBPOENA**

(Oral Argument Requested)

Respondent moves that the subpoena issued by the Securities Division ("Division") to Respondent Hockensmith be quashed. The subpoena interferes with the order of presentation specified in the Commission's rules, was improperly served, and failed to contain the required witness fees. Accordingly, the subpoena should be quashed under A.A.C. R14-3-109.O.

I. Order of presentation.

The Commission's rules provide for the proper order of presentation during the hearing. The order for cases prosecuted by the Division is as follows: "Commission Staff, Respondent, Intervenors." A.A.C. R14-3-109.G. By subpoenaing the Respondent, the Division is attempting to force the Respondent to testify during the Division's case-in-chief. Under the Commission's rules, the proper time for Respondent's testimony is after the testimony presented by the Division.

Moreover, the Division's attempt to subpoena the Respondent may result in undue delay. The Respondent may have to be called to testify twice - once on direct examination by the Division, and later on direct examination by his own lawyers. The ALJ has the power to limit the number of witnesses and to control the order of witnesses. A.A.C. R14-3-109.G and I. The ALJ should block this attempt to disrupt the Respondent's presentation of his case.

1 **II. Improper service.**

2 The Division improperly served the subpoena directly upon the Respondent, rather than
3 serving Respondent's counsel as required by the Commission's rules. A copy of the subpoena is
4 attached as Exhibit A, and a copy of the affidavit of service is attached as Exhibit B.

5 The subpoena – an order from the State bearing the formal seal of the Commission – is the
6 epitome of a “formal document.” The Commission's Procedure Rules require that all formal
7 documents be “filed with the Commission” and that they “shall be served upon any person who is a
8 party to the proceeding.” A.A.C. R14-3-107.A. In the case of persons represented by counsel,
9 service must be made upon counsel. A.A.C. R14-3-105.A. The Division failed to comply with
10 these requirements because it did not serve the subpoena upon the Respondent's counsel.

11 The Division is clearly aware of how to properly serve a subpoena upon a represented
12 person. Attached as Exhibit C is a subpoena issued by the Division to Ms. Marilyn Gonzini. The
13 subpoena was issued at the same time as the subpoena to the Respondent. Ms. Gonzini is
14 represented by counsel, and the subpoena was served on counsel. It is inexplicable why the
15 Division did not follow the same procedure in serving the Respondent's subpoena, which was
16 issued the same day.

17 **III. The statutory witness fees were not provided.**

18 The Commission's subpoena rule provides that “Witnesses who are summoned are entitled
19 to the same fees as are paid for like service in the courts of the state of Arizona, such fees to be paid
20 by the party at whose instance the witnesses is subpoenaed.” A.A.C. R14-3-109.O. The “same
21 fees” referenced in the rule are specified in A.R.S. § 12-303. The Division has not proffered the
22 required witness fees; and accordingly the subpoena should be quashed.

23 **IV. Conclusion.**

24 The subpoena seeks to alter the proper order of presentation at the hearing, was improperly
25 served, and failed to include the required witness fees. Accordingly, the subpoena served upon the
26 Respondent should be quashed.

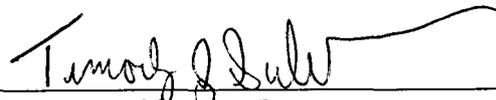
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ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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RESPECTFULLY SUBMITTED this 1st day May, 2009.

ROSHKA DeWULF & PATTEN, PLC

By 

Paul J. Roshka, Jr., Esq.
Jeffrey D. Gardner, 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 Respondent
Robert F. Hockensmith, Jr.

ORIGINAL and thirteen copies of the foregoing
filed this 1st day May, 2009 with:

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

Copy of the foregoing hand-delivered
this 1st day May, 2009 to:

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

Matthew J. Neubert
Director of Securities
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

1 Pamela T. Johnson, Esq.
2 Senior Counsel
3 Securities Division
4 Arizona Corporation Commission
5 1300 West Washington Street, 3rd Floor
6 Phoenix, Arizona 85007

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11 By *Missie Anwar*
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EXHIBIT

"A"

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:
**ROBERT FRANKLIN HOCKENSMITH JR.,
CRD# 1798614**
Respondent.

**DOCKET NO. S-20631A-08-0503
ADMINISTRATIVE SUBPOENA**

**TO: Robert Franklin Hockensmith, Jr.
Robert F. Hockensmith, P.C.
10851 N. Black Canyon Hwy #670
Phoenix, Arizona 85029**

**YOU ARE HEREBY COMMANDED, pursuant to Ariz. Rev. Stat. Ann § 44-1823 and
A.A.C. Rule R14-3-109 to appear at the Office of the Arizona Corporation Commission, 1200 West
Washington, First Floor, Room No. 100, Phoenix, Arizona on the 19th day of May, 2009 at 10:00
a.m., to testify under oath in connection with the Administrative Hearing in the above-captioned
action.**

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///**

1 DISOBEDIENCE OF THIS SUBPOENA MAY SUBJECT YOU TO FURTHER
2 PROCEEDINGS AND PENALTIES UNDER LAW, INCLUDING, BUT NOT LIMITED TO,
3 CONTEMPT OF COURT.

4 DATED this 24th day of April

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8 MICHAEL P. KEARNS
9 INTERIM EXECUTIVE DIRECTOR
10 Arizona Corporation Commission

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

"B"

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STATE OF ARIZONA
County of Maricopa

AFFIDAVIT OF SERVICE

I, Ronald Baran, for the Securities Division of the Arizona Corporation Commission, hereby certify that on the 30th day of April, 2009 at 1:02 P.M., I served a copy of ADMINISTRATIVE SUBPOENA, Docket No. S-20631A-08-0503, upon Robert Franklin Hockensmith, Jr. at 10021 N. Metrocenter Parkway, Phoenix, Arizona, by: Personal Service.

Ronald Baran
AFFIANT

04/30/2009
DATE

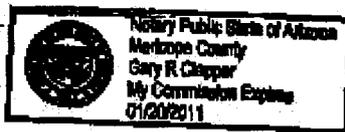
SUBSCRIBED AND SWORN TO BEFORE me this 30th day of

April, 2009.

Gary R. Clapper
NOTARY PUBLIC

My Commission Expires:

1/20/2011



Arizona Corporation Commission
DOCKETED
APR 30 2009

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2009 APR 30 P 2:25
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EXHIBIT

"C"

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) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdlv@azcc.gov

ARIZONA CORPORATION COMMISSION

April 29, 2009

RECEIVED

APR 30 2009

BY CERTIFIED MAIL

Salvador Ongaro
TIFFANY & BOSCO, P.A.
2525 East Camelback Road, Third Floor
Phoenix, Arizona 85016

TIFFANY & BOSCO, P.A.

Re: *In the matter of Robert Franklin Hockensmith, Jr.*
Docket No. S-20631A-08-0503
Your client: Marilyn K. Gonzini

Dear Mr. Ongaro:

Enclosed is an Administrative Subpoena ("Subpoena"), requesting the appearance of Marilyn Gonzini at the administrative hearing scheduled for the matter of Robert Franklin Hockensmith, Jr., Docket No. S-20631A-08-0503. Please forward this Subpoena to your client Marilyn Gonzini.

The hearing will begin on May 19, 2009, and continue through May 20, 21, and 22. Although the hearing is scheduled to begin on May 19, 2009, Ms. Gonzini may actually be called at any time between May 19 and May 22. You will be provided with a more specific date and time as we get closer to the trial date.

If you have any questions, you may contact me at (602) 542-0206 or attorney Pam Johnson at (602) 542-0702.

Sincerely,


Veronica Sandoval
Legal Assistant, Securities Division

/vs
Enclosure

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In the matter of:

ROBERT FRANKLIN HOCKENSMITH JR.,
CRD# 1798614

Respondent.

DOCKET NO. S-20631A-08-0503

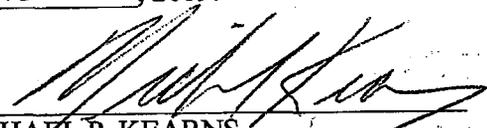
ADMINISTRATIVE SUBPOENA

TO: Marilyn K. Gonzini
c/o Salvador Ongaro
TIFFANY & BOSCO P.A.
2525 East Camelback Road, Third Floor
Phoenix, Arizona 85016

YOU ARE HEREBY COMMANDED, pursuant to Ariz. Rev. Stat. Ann § 44-1823 and A.A.C. Rule R14-3-109 to appear at the Office of the Arizona Corporation Commission, 1200 West Washington, First Floor, Room No.100, Phoenix, Arizona on the 19th day of May, 2009 at 10:00 a.m., to testify under oath in connection with the Administrative Hearing in the above-captioned action.

DISOBEDIENCE OF THIS SUBPOENA MAY SUBJECT YOU TO FURTHER PROCEEDINGS AND PENALTIES UNDER LAW, INCLUDING, BUT NOT LIMITED TO, CONTEMPT OF COURT.

DATED this 24th day of April, 2009.


MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR
Arizona Corporation Commission

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