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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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MAY 13 2009

AZ CORP COMMISSION  
DOCKET CONTROL

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

DOCKET NO. S-20631A-08-0503

SECURITIES DIVISION'S  
RESPONSE TO RESPONDENT'S  
MOTION TO CONTINUE

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby responds to the Respondent's Motion to Continue the hearing scheduled to commence May 19, 2009, which was filed today, May 13, 2009. Respondent is attempting to use the Division as an excuse for his own devices to delay the scheduled hearing. The Division has complied in a timely manner with all discovery Orders properly issued by the Administrative Law Judge ("ALJ") pursuant to the rules and law governing this proceeding. The Respondent could have initiated his discovery requests in a timely manner to allow for adequate time to review documents and prepare for hearing.

Discussion

The Division served Respondent with a subpoena in this matter on June 17, 2008, and took his examination under oath on August 26, 2008. The Division filed its Notice against Respondent on September 30, 2008. Respondent did not file any request for discovery in this case until the afternoon of March 31, 2009. Now Respondent is using his own self-imposed time constraints as grounds for continuance of a hearing that has been scheduled since early November 2008.

Initially, at a pre-hearing conference held on November 6, 2008, Respondent delayed the scheduling of any hearing in this matter for several months until after the end of April 2009, to allow

1 him to complete his tax preparation season. Then, inexplicably, Respondent waited until the last day  
2 of March 2009, to send the Division a Request for Production of Documents. The Division objected  
3 to voluntary production of its confidential investigatory files on the grounds of law, and informed  
4 counsel for Respondent that Respondent must abide by legally prescribed procedures for such  
5 discovery in this administrative forum. Respondent then followed the rules of this administrative  
6 forum by requesting an Order from the ALJ. The ALJ considered Respondent's request and ordered  
7 the Division to produce a portion of the requested documents. The Division timely complied with the  
8 ALJ's proper Order finding Respondent's need for such production. Now Respondent, predictably, is  
9 attempting to use its own strategic delay in requesting documents against the Division to get a  
10 continuance of the hearing, for which there are no reasonable grounds at this time. Respondent's  
11 Motion to Continue should be denied.

12         The Division did provide documents from its investigative file, mostly documents related to  
13 Respondent's regulatory compliance issues with his former dealer and his alleged unauthorized  
14 conduct involving FOMAC. These documents were not necessary for Respondent's defense, and the  
15 Division did not "grudgingly" comply with this court's Order. Most important, however, is the fact  
16 that if Respondent had wanted these documents sooner, he should not have delayed so long in making  
17 a proper discovery request. His only apparent purpose for such tardiness was to make this frivolous  
18 argument for a continuance, attempting to blame the Division in order to further delay the scheduled  
19 hearing.

20         Respondent has multiple lawyers representing him in this matter, including extremely  
21 competent counsel who formerly worked at the Commission. Respondent has shown no exigent or  
22 persuasive reason for this court to continue the hearing in this matter.

23         ALJ Mark Stern has already addressed the procedure for Respondent and his counsel to follow  
24 if Respondent is called to assist in Disaster Assistance. *See* Transcript of Prehearing Conference on  
25 April 23, 2009, at pages 41-44. To date, we have received no notification of conflict with the hearing  
26 dates.

1 Finally, the Division's witnesses, some of whom have suffered great harm as a result of  
2 Respondent's alleged misconduct, have made scheduling arrangements to appear at the designated  
3 time for the hearing. Some of them would be inconvenienced by a delay. Others have made special  
4 arrangements to be available. Respondent has shown no hardship or necessity for reallocating the  
5 burden of delay and rescheduling on those who have already born the burdens of his choices.

6 **CONCLUSION**

7 The discovery rules for contested administrative proceedings in this state are expressly  
8 provided by statute and agency rule, and the principles of due process are amply preserved within  
9 these rules. The Division was not obligated to comply with Respondent's civil procedure-based  
10 "Request for Production of Documents." The Division did comply with the Orders of the ALJ.  
11 The Respondent delayed in making proper timely requests for discovery, and Respondent should  
12 not be allowed to delay these proceedings any longer. No further delay is warranted. The hearing  
13 should be conducted as scheduled.

14 RESPECTFULLY SUBMITTED this 13th day of May, 2009.

15  
16 By:



17 Pamela T. Johnson  
18 Attorney for the Securities Division of the  
19 Arizona Corporation Commission  
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23 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
24 filed this 13th day of May, 2009 with

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26 Arizona Corporation Commission  
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Phoenix, AZ 85007

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COPY of the foregoing hand-delivered this  
13th day of May, 2009 to:

Mr. Marc Stern  
Hearing Officer  
Arizona Corporation Commission/Hearing Division  
1200 West Washington  
Phoenix, AZ 85007

COPY of the foregoing emailed this *and mailed*  
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By:           *PHJ*