



0000099775

1 BEFORE THE ARIZONA CORPORATIO

2

3 IN THE MATTER OF: )

4 RADICAL BUNNY, L.L.C., an Arizona )  
limited liability company, )

DOCKET NO.  
S-20660A-09-0107

5 HORIZON PARTNERS, L.L.C., an )  
6 Arizona limited liability company, )

7 TOM HIRSCH (aka TOMAS N. HIRSCH) )  
and DIANE ROSE HIRSCH, husband and )  
8 wife, )

9 BERTA FRIEDMAN WALDER (aka BUNNY )  
WALDER), a married person, )

10 HOWARD EVAN WALDER, a married )  
11 person, )

12 HARISH PANNALAL SHAH and MADHAVI )  
13 H. SHAH, husband and wife, )

Respondents. )

PREHEARING  
CONFERENCE

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Arizona Corporation Commission  
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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of said  
4 Commission, 1200 West Washington Street, Phoenix, Arizona,  
5 commencing at 10:30 a.m., on the 16th day of June, 2009.

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8 BEFORE: LYN FARMER, Chief Administrative Law Judge

9

10 APPEARANCES:

11

12 For the Arizona Corporation Commission Securities  
Division:

13

14 Ms. Julie Coleman  
15 Staff Attorney, Securities Division  
1300 West Washington Street  
Phoenix, Arizona 85007

16

17 For the Respondent:

18

HEURLIN SHERLOCK PANAHI  
19 By: Bruce R. Heurlin, Attorney at Law  
1636 North Swan Road, Suite 200  
Tucson, Arizona 85712  
20 (Appearing via teleconference.)

21

22

KATE E. BAUMGARTH, RPR  
Certified Reporter  
Certificate No. 50582

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1 CALJ FARMER: Let's go ahead and go on the  
2 record.

3 Good morning. Welcome to the Arizona Corporation  
4 Commission. We here this morning for a procedural  
5 conference in the matter of Radical Bunny, LLC; Horizon  
6 Partners, LLC; Tom Hirsch and Diane Rose Hirsch, husband  
7 and wife; Berta Walder and Howard Walder; and Harish and  
8 Madhaviah Shah, respondents. The docket number is  
9 S-20660A-09-0107.

10 My name is Lyn Farmer, and I'm the presiding ALJ  
11 in this matter.

12 At this time let me take appearances of counsel,  
13 and let me begin with the attorney for the respondents.

14 Sir, are you on the line?

15 MR. HEURLIN: Yes. Bruce Heurlin.

16 CALJ FARMER: Thank you.

17 And for the Division?

18 MS. COLEMAN: Julie Coleman, on behalf of the  
19 Division.

20 CALJ FARMER: Okay. Thank you.

21 As you know, this is the date set for the  
22 procedural conference in this matter, and before we get to  
23 some other questions, I just have noticed that although it  
24 appears that the Securities Division has noticed the  
25 entity Radical Bunny, LLC, I don't see any service of

1 notice -- notice of service to them as a respondent.

2 So let me ask the Division, is this matter  
3 intending to proceed against Radical Bunny, LLC?

4 MS. COLEMAN: It is. At this point in time  
5 Radical Bunny as an entity is in bankruptcy, and there is  
6 a Chapter 11 trustee who has been appointed. They are  
7 represented by Squire Sanders.

8 We had served the notice on them. They accepted,  
9 and we anticipate that there will be a consent at some  
10 point in time. Although it's not subject to bankruptcy  
11 rules for the Commission to sign a decision, it will  
12 affect the estate, so there are some logistical details  
13 that we have to work out with them.

14 CALJ FARMER: Okay. Well, let me ask you this  
15 then, what is the status of this matter today? Are the  
16 parties -- have you had discussions to explore the  
17 possibility of any resolution by agreement?

18 MS. COLEMAN: ALJ Farmer, the Division has been  
19 dealing with Mr. Heurlin for approximately a year with  
20 regard to these matters. They have not approached us, but  
21 the Division is always willing to sit down and try to  
22 resolve this matter amicably or enter into a consent. So  
23 we are ready any time.

24 CALJ FARMER: Okay. Mr. Heurlin, do you feel  
25 like you have had an opportunity to explore the

1 possibility of a resolution of this matter?

2 MR. HEURLIN: Well, not yet. If you want I'll  
3 explain that.

4 CALJ FARMER: Okay.

5 MR. HEURLIN: My involvement in this,  
6 representing all the respondents other than Radical Bunny,  
7 started, as Ms. Coleman said, about a year ago, and at  
8 that time things were going rather quickly. The primary  
9 involvement that I had until this proceeding started was  
10 to represent my clients as to ACC interviews, which were  
11 quite lengthy and went over -- after a period of different  
12 scheduling issues went over a period of time, for months.  
13 Some of my clients testified under oath for days, and  
14 Ms. Coleman attended the interviews.

15 And during that process I both learned exactly  
16 what the -- or, to my best knowledge, what the allegations  
17 were, briefly saw some of the documents that I had not  
18 seen; although, I had seen some of the documents. And I  
19 heard and encouraged the ACC lawyers to vigorously  
20 interrogate my clients to resolve all of this.

21 At the same time, as the Court may know, there  
22 were ongoing bankruptcy proceedings both with Mortgages  
23 Limited and with Radical Bunny, and I had some brief  
24 involvement in the bankruptcy proceedings representing the  
25 same people. And the bankruptcy proceedings -- I'm not a

1 bankruptcy lawyer -- I have understood somewhat that the  
2 bankruptcy proceedings have continued on, and there are a  
3 number of different issues that I'm not sure I understand  
4 thoroughly and a number of different claims made against  
5 nonparties who are not parties in this proceeding.

6           So I think that really I have learned myself a  
7 lot more about the facts, the allegations, the issues  
8 through this process that has taken months -- a year, and  
9 I still -- I think there are still issues to be resolved  
10 preliminary with the bankruptcy court.

11           So I think this is all proceeding along, but it  
12 wasn't until very recently that I felt like I really  
13 understood what the allegations were, what the facts were,  
14 what different people were saying, et cetera. And because  
15 of the ACC rules, they somewhat operate pursuant to  
16 regulations that require nondisclosure of certain things.  
17 And so there have been literally hundreds of exhibits and  
18 documents that have been displayed and different people  
19 have been interviewed.

20           And so as of right now I don't have access to all  
21 of the documents that my clients did not have; other  
22 parties -- other people provided documents. And some of  
23 them I saw at the interviews when my clients were asked  
24 about them. I'm sure that there are some that I didn't  
25 see, and the ones that I saw that I don't have, I still

1 don't have. And I don't know what other people who were  
2 interviewed by the ACC said because I wasn't there.

3 And so I think that I have learned a lot more  
4 through this process. It's taken a long time, and there  
5 are still things that I do not know as far as what people  
6 are saying. And I'm convinced that in order for me to  
7 properly advise my clients, I need to know more.

8 That is a long answer, I know, but that gives you  
9 the background of where I am with this.

10 CALJ FARMER: Okay. Thank you for that  
11 explanation.

12 Well, let me ask you this -- let me ask the  
13 Division: Where do you see this process is and where it  
14 should be going?

15 MS. COLEMAN: I think the Division at this point  
16 in time since we filed our notice, we are ready to go to  
17 hearing. However, I do appreciate Mr. Heurlin's desire to  
18 have some time in which to review exhibits that we intend  
19 to use at hearing.

20 So what I was going to suggest, and perhaps to  
21 avoid what is seemingly a flurry of last-minute motions  
22 before hearing that we have been seeing as of late, what I  
23 would like to do is set some deadlines perhaps to have the  
24 Division disclose its witness and exhibit list, get the  
25 exhibits out to counsel. And then should he desire and

1 should he be able to show need to move for -- move to  
2 issue a procedural order allowing him to depose people as  
3 he sees fit pursuant to the APA.

4           So I think I would really like to get some  
5 concrete dates set so that we don't have misunderstanding  
6 about time frames. I think, as far as the Division goes,  
7 we could get our witness list and exhibit list out to him  
8 within 30 days.

9           CALJ FARMER: Out within 30 days?

10          MS. COLEMAN: Yes.

11          CALJ FARMER: So by -- July 16th is a Thursday.  
12 So you want to have a deadline of July 16th to provide him  
13 with your exhibits and the list of witnesses?

14          MS. COLEMAN: Sure.

15          CALJ FARMER: Okay. Mr. Heurlin, would that  
16 help?

17          MR. HEURLIN: Yes. And I would add that, first,  
18 I have been through this before, and, secondly, I would  
19 like to expedite the process and not delay or obstruct any  
20 of this.

21                 And I would add that as soon as I get the  
22 exhibits, I would be willing -- and I would want to look  
23 at the exhibits, and if I think that I would stipulate  
24 that the exhibits be admitted into evidence, I would do  
25 that. And so, not just foundation or relevancy, but just

1 putting them into evidence, I would stipulate to do that.

2 And so what I would like to do is, after I get  
3 the exhibits -- and I'm thinking -- and I assume, from my  
4 experience -- that there will be a lot of exhibits, that I  
5 have some time to look over the exhibits, talk to my  
6 clients. And, for instance, if there is a letter signed  
7 by one of my clients, I want to show them the letter and  
8 say, is this a letter, and if he said yes, it's a letter,  
9 then I will stipulate in writing that that particular  
10 document with that number be admitted into evidence.

11 CALJ FARMER: Okay. Thank you.

12 Now, let's go to the next step.

13 Did the Division have another date that you  
14 wanted to propose for the next step?

15 MS. COLEMAN: I'm not sure how long Mr. Heurlin  
16 would need, but I would like to have a firm date for him  
17 to complete his review.

18 CALJ FARMER: Okay. Mr. Heurlin, how long do you  
19 think you would need for that review?

20 MR. HEURLIN: Let me just look at the calendar  
21 here.

22 Of course, what I would like to do -- and I agree  
23 with what Ms. Coleman said. And what I would like to do  
24 is like on June 16th -- is that when I would receive the  
25 exhibits or would we receive it sometime after that?

1 CALJ FARMER: Well, the July 16th would be a  
2 by-no-later-than date. They could provide it to you  
3 earlier.

4 MR. HEURLIN: Okay. Then, of course, without  
5 talking with my clients, I would like July 30th to look  
6 at -- make sure that I can meet with my clients, show them  
7 the exhibits, and then file something. I would file  
8 something with the Division or the Court by then.

9 CALJ FARMER: That seems fairly ambitious to me,  
10 but I don't know how many exhibits.

11 Let me ask the Division, how many exhibits do you  
12 think you would have?

13 MS. COLEMAN: Including transcripts, because I  
14 think at this point in time it would be appropriate to go  
15 ahead and release transcripts of depositions of  
16 individuals that may be testifying. In fairness, I think  
17 it will take some time for Mr. Heurlin to review these.  
18 Like he indicated, there has been days and days of  
19 testimony, not only by his clients, but by witnesses who  
20 will be testifying at the time of hearing.

21 So I think I agree that it's a little ambitious.  
22 I want to make sure that he has adequate time.

23 MR. HEURLIN: Yes, I agree. And I think the  
24 transcripts really change things for the time period.

25 CALJ FARMER: I would say that you -- this is

1 Judge Farmer. I would think you would need at least as  
2 long as the Division will have to provide it to you for  
3 you to review them and maybe even a little bit longer.

4 MR. HEURLIN: Okay.

5 CALJ FARMER: So I would say at least 30 days.

6 MR. HEURLIN: How about August 17th?

7 CALJ FARMER: Does the Division have a problem  
8 with that?

9 MS. COLEMAN: No, Your Honor.

10 CALJ FARMER: Okay, August 17th. So exactly --  
11 let me ask the Division, what would you anticipate you  
12 would want to know by August 17th; which exhibits have  
13 been stipulated to?

14 MS. COLEMAN: Yes.

15 CALJ FARMER: Okay. And do you think you could  
16 do that, Mr. Heurlin?

17 MR. HEURLIN: Yes. As a matter of fact, I'm  
18 thinking that there are many exhibits that we will  
19 stipulate to.

20 CALJ FARMER: Okay.

21 MR. HEURLIN: There are numerous exhibits, I  
22 think, that come from us, from our side, and we will  
23 stipulate to that.

24 CALJ FARMER: But that would give you sufficient  
25 time to review the documents produced by the Division and

1 allow you to review them, consult with your clients and  
2 get back to the Division about any stipulations.

3 MR. HEURLIN: Yes.

4 CALJ FARMER: Okay.

5 MR. HEURLIN: And as a matter of fact, besides  
6 the exhibits, I would expect that it -- there would be a  
7 possibility to stipulating to testimony that are in the  
8 depositions, at least to part of the testimony anyway.

9 CALJ FARMER: Okay. All right.

10 Then the next step.

11 MS. COLEMAN: My suggestion would be then to go  
12 ahead and set another procedural conversation shortly  
13 thereafter so we can then set formal dates for respondents  
14 to tender their witness and exhibit list to the Division  
15 or to file motions, assuming that they would want to take  
16 more depositions prudent to the APA, because I know they  
17 will have to show need, but most of the time we don't  
18 object.

19 I want to make sure that, you know, at that date  
20 we will set a more firm date and we can set the hearing as  
21 well.

22 CALJ FARMER: Okay. I have a hearing that starts  
23 on August 19th, so let's -- Mr. Heurlin, how does  
24 August 18th for another procedural conference look for  
25 you?

1 MR. HEURLIN: Well, that is a day after I -- my  
2 due date to get back, and I have no problem with that, as  
3 long as the Court and Ms. Coleman don't.

4 MS. COLEMAN: We have no objection.

5 MR. HEURLIN: But I am thinking that maybe if I  
6 take all that time and get back on August 17th, that  
7 August 18th would be too soon to digest this.

8 CALJ FARMER: Okay. And also I would like to  
9 give you a little time to have an opportunity to discuss  
10 between yourselves whether you could come to a resolution  
11 for this. At this time you will have looked at all the  
12 evidence that they have and you may be in a position to  
13 enter into those discussions.

14 So let me take a moment here. I will consult the  
15 calendar, and I will see if I can come up with another  
16 date for the procedural conference.

17 I apologize, but our hearing calendar is very  
18 full. I think that probably the first available time  
19 after August 17th would be on Thursday, September 3rd.  
20 That would give you just a little over two weeks to talk.

21 How is September 3rd for everyone?

22 MR. HEURLIN: It's fine with me.

23 MS. COLEMAN: It's fine with the Division as  
24 well.

25 CALJ FARMER: Okay. Then let's make a

1 procedural -- our next procedural conference on  
2 September 3rd. I will put out a procedural order with the  
3 time and location, but it will be here at the Commission.

4 Okay. Anything else that we need to discuss at  
5 this point?

6 MR. HEURLIN: Well, on September 3rd, I may or  
7 may not want to do that telephonically.

8 CALJ FARMER: Okay.

9 MR. HEURLIN: And I may want to come to Phoenix  
10 because it may help in dealing with different issues.

11 CALJ FARMER: I think that is a good idea.  
12 Sometimes it's easier to discuss these things when you are  
13 face-to-face.

14 MR. HEURLIN: Right.

15 CALJ FARMER: Okay. So procedural conference on  
16 September 3rd. We have a deadline of August 18th for --

17 MR. HEURLIN: 17th.

18 CALJ FARMER: Did I say -- I don't know why I  
19 have the -- August 17th for Mr. Heurlin to agree to any  
20 stipulations.

21 Now, is that something that is -- and I apologize  
22 because I'm not normally doing securities cases, and you  
23 do these a little different from some of the other cases I  
24 have heard. But let me ask the Division's counsel, is  
25 this something that would be docketed or is this just a

1 communication between you two that needs to occur by  
2 August 17th?

3 MS. COLEMAN: Judge Farmer, I think typically we  
4 don't always get a lot of cases where people actually  
5 stipulate to our exhibits, so I think that it's best,  
6 since the hearing wouldn't have gone forward at that time,  
7 not to make things public while we are trying to settle  
8 things.

9 Our preference would be to not docket. And if we  
10 have an agreement as to stipulations, we can address those  
11 at the time of hearing, and then we can enter them at that  
12 point in time. But at least we have something in writing  
13 between the two of us that says what we have stipulated  
14 to. And that will also help us decide how long it would  
15 take to present evidence at hearing, if it went to  
16 hearing.

17 CALJ FARMER: Mr. Heurlin, did you understand  
18 that?

19 MR. HEURLIN: Yes, and I agree with that. What  
20 my idea would be is to send Ms. Coleman a letter saying I  
21 will stipulate to the exhibits ta-da, ta-da, ta-da.

22 CALJ FARMER: Okay.

23 MR. HEURLIN: And then we may want to talk about  
24 further stipulations, and I may be convinced to stipulate  
25 to even more.

1 CALJ FARMER: Okay. Thank you.

2 MR. HEURLIN: But I will tell you, I don't want  
3 to waste time with foundational issues that make no  
4 difference.

5 CALJ FARMER: Okay. Thank you.

6 July 16th is the no-later-than date for the  
7 Division to provide the exhibits and witness list. And I  
8 would encourage the Division to do that sooner if you can,  
9 because I would imagine that even 30 days, he may need as  
10 much time or more to be able to get back to you with a  
11 complete list of stipulations.

12 Okay. Anything further we need to put on the  
13 record here today?

14 MS. COLEMAN: Not from the Division.

15 MR. HEURLIN: No. Thank you.

16 CALJ FARMER: Thank you, both, for participating.

17 MR. HEURLIN: Thank you.

18 CALJ FARMER: And I will issue a procedural  
19 conference -- a procedural order that will memorialize  
20 this from the procedural conference, and thank you for  
21 your participation.

22 MR. HEURLIN: Okay. Thank you.

23 MS. COLEMAN: Thank you.

24 (The hearing concluded at 10:59 a.m.)

25

1 STATE OF ARIZONA )  
 ) ss.  
 2 COUNTY OF MARICOPA )

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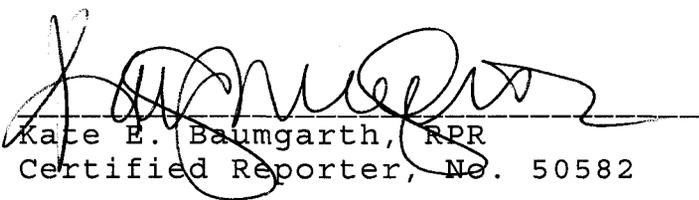
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I, KATE E. BAUMGARTH, RPR, Certified Reporter  
 No. 50582, for the State of Arizona, do hereby certify  
 that the foregoing printed pages constitute a full, and  
 accurate transcript of the proceedings had in the  
 foregoing matter, all done to the best of my skill and  
 ability.

WITNESS my hand this 23rd day of June, 2009.



Kate E. Baumgarth, RPR  
 Certified Reporter, No. 50582