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Arizona Corporation

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

AUG 09 2000

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CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

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In the matter of )  
 )  
SUCCESSFUL FINANCE, INC. )  
2200 North Scottsdale Road, Suite R )  
Scottsdale, Arizona 85257 )  
 )  
MARY KERSEY )  
7979-32 East Princess Drive )  
Scottsdale, Arizona 85255, )  
 )  
Respondents. )

DOCKET NO. S-03264A-00-0000

**MOTION TO ALLOW TELEPHONIC  
TESTIMONY AT HEARING**

The Securities Division (the "Division") of the Arizona Corporation Commission ("Commission") hereby moves for leave to allow telephonic testimony during the scheduled hearing in this matter, as supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY submitted this 9<sup>th</sup> day of August, 2000.

GRANT WOODS, Attorney General  
Consumer Protection and Advocacy Section

Mark Dinell  
Special Assistant Attorney General

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. FACTS**

The hearing in this matter is currently set to commence on August 29, 2000.

The Division anticipates calling James Carpenter as a witness. Mr. Carpenter was an investor in Successful Finance. His testimony will show that he invested a total of \$50,000 in securities sold to him by Respondents Successful Finance and Mary Kersey, along with other testimony probative of the Division's allegations against Respondents in this matter.

Mr. Carpenter lives in Geneva, Illinois. Mr. Carpenter has requested that he be allowed to testify telephonically due to personal scheduling and other time constraints. Additionally, travel to Arizona to attend a hearing as a witness would be unduly burdensome and costly.

**II. ARGUMENT**

The purpose of administrative proceedings is to provide for the fair, speedy and cost effective resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested cases. The evidence submitted in an administrative hearing need not rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable and probative." The Commission's rules of practice and procedure ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.,* A.A.C. R-14-30-101(B); R14-3-109(K). Allowing Mr. Carpenter to testify by telephone retains all indicia of reliability and preserves Respondents' rights to cross-examination.

Telephonic testimony has in fact been routinely allowed in prior administrative hearings before the Commission in actions brought by the Division. *See, e.g., In the matter of Joseph Michael Guest, et al.,* S-03280A-00-0000 (testimony of investor Lyle R. Mader and expert Dr. Boris Kozolchyk); *In the matter of the Offering of Securities by Vincent James Liuzzi, III et al.,* S-3042-I/S-3154-I (testimony of investor Elsie Ayres).

1 Courts in other states have acknowledged that telephonic testimony in administrative and civil  
2 proceedings is permissible and consistent with the requirements of procedural due process. *See Babcock*  
3 *v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved Oregon Employment  
4 Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of Vilas*, 124 Wis. 2d  
5 238, 369 N.W. 2d (1985) (court permitted telephonic expert testimony in commitment hearing). Both of  
6 these courts concluded that fundamental fairness weighed in favor of permitting telephonic testimony.

7 III. CONCLUSION

8 Permitting Mr. Carpenter to testify telephonically at the hearing facilitates the presentation of  
9 relevant witness evidence that is expected to be substantial, reliable and probative, overcomes the hardship  
10 and expense of travel and does not compromise Respondents' due process rights. Therefore, the Division  
11 respectfully requests that its motion to allow the telephonic testimony of Mr. Carpenter be granted.

12 RESPECTFULLY submitted this 9th day of August, 2000.

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14 GRANT WOODS, Attorney General  
Consumer Protection and Advocacy Section

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Mark Dinell  
18 Special Assistant Attorney General  
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1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 9th day of August, 2000, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed this  
8 9th day of August, 2000 to:

9 Successful Finance, Inc.  
10 P.O. Box 9852  
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12 Successful Finance, Inc.  
13 C/o William Hood, Statutory Agent  
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