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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
CARL J. KUNASEK
Commissioner

DOCKETED

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In the matter of the offer and sale of securities by

INTERACTIVE TECHNOLOGIES WEST, INC.

LOUIS F. CONANT
6218 East Pinchot Avenue

KYLE E. GILLMAN
9624 Bain Bridge Court
Manassas, Virginia 22110

DOCKET NO S 0057-1996

RESPONDENTS' MOTION FOR STAY AND IN THE ALTERNATIVE TO SCHEDULE HEARING AFTER FEDERAL CRIMINAL CASE IS RESOLVED

Respondents LOUIS F. CONANT and INTERACTIVE TECHNOLOGIES WEST, INC. move for a stay of this proceeding and for the hearing on the merits of this matter to be scheduled and heard after the parallel Federal criminal case is completed. An indictment is expected to be made against Respondents by pursuant to the criminal investigation by the Securities Division of the Arizona Corporation Commission, which is expected to result in the indictment of Respondents on Federal charges involving facts and issues identical to those alleged by the Securities Division in this proceeding.

Filed this 20th day of December, 1996

RON KENT HOOPER, Counsel For RESPONDENTS Conant & Interactive
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MEMORANDUM OF POINTS AND AUTHORITIES

Respondents were served with said NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION AND ADMINISTRATIVE PENALTIES by agents of the Federal Government, contemporaneous with a criminal search warrant issued by Federal Magistrate BARRY SILVERMAN and a subpoena requiring RESPONDENTS to appear before Grand Jury proceedings on December 10, 1996. The U.S. Attorney in Phoenix has targeted Respondents for indictment, using evidence, analysis, opinions and conclusions obtained during an aggressive, threatening and intimidating investigation of RESPONDENTS by the SECURITIES DIVISION.

BRIAN J. SCHULMAN and agents of the SECURITIES DIVISION conducted threatening, aggressive and intimidating depositions, in the fall of 1994 and on June 26, 1996. The SECURITIES DIVISION investigated Respondents and related entities for over two years, contacting and interviewing numerous persons and entities, building a complex criminal case against Respondents and timing the service of the notice and allegations in this case to be contemporaneous with the exercise of Federal criminal jurisdiction over Respondents. The SECURITIES DIVISION cooperated with Federal agents in getting Respondents records and office equipment seized pursuant to a Federal Search warrant, having these Respondents served by Federal Agents with notice of this proceeding and being subpoenaed by Federal Agents before said grand jury.

It's obvious that the Securities Division timed the service of notice of these proceedings and made a deliberate attempt to get these Respondents contemporaneously indicted, to deprive Respondents of the funds, records and means to defend in this proceeding on the merits. BRIAN J. SCHULMAN even had Federal Agents serve BRIAN J. SCHULMAN'S SECURITIES DIVISION business card in a heavy-handed power play, during a coordinated invasion of Respondents home and business and confiscation of Respondents records and office equipment. The SECURITIES DIVISION has deprived RESPONDENTS of the financial means, records and office equipment essential to adequately prepare for the hearing on the merits in this proceeding before the Federal case is resolved.

The facts and issues that will be adjudicated in the Federal Case are expected to be identical to most of the facts and many of issues that must be adjudicated in this proceeding. If convicted in said Federal case, Respondents will face long mandatory prison sentences of approximately twenty years. Respondents can not present their defense in this proceeding without incriminating themselves in said Federal criminal case.

Resolution of said Federal criminal case would eliminate much of the Commissions work in this so called civil matter. White v. Mapco Gas Products, 116 F.R.D. 498, 499. (E.D. Ark. 1987). If Respondents are convicted in said Federal case, they would be precluded from denying essential allegations of the predicate offenses alleged in this proceeding. Taylor v. State Farm Mutual Auto Insurance, 182 Ariz. 39, 893 P.2d 39 (Div. 1, Ct. Appeals 1995); Standage Ventures v. State Of Arizona, 114 Ariz. 480, 562 P.2d 360 (Arizona Supreme Court, 1977).

The answers that Respondents are compelled to give to mitigate the damages, restitution and penalties requested by the Securities Division necessarily embrace facts and issues which alone may be sufficient to support a conviction on the expected Federal charges. This proceeding is the equivalent of the enforcement of criminal law and Respondents Fifth Amendment privileges are applicable. Doherty v. U.S., 500 F.2d, 540, 544. These proceedings are quasi-criminal in character, thus triggering constitutional protections. U.S. v. One Mercedes Benz, 708 F.2d 444, 448 (1983); U.S. v. U.S. Currency, 626 F.2d 11, 15 (6th Cir. 1980).

Respondents have demonstrated justified fear of imminent Federal prosecution on these very same issues. Affleck v. Third Judicial District, 655 P.2d 665, 667. The privileges against self incrimination of Respondents and their witnesses collide with their need for testimony. The Ninth Circuit Court of Appeals in U.S. v. Thirteen Machine Guns, 689 F.2d 861, 864 (1982), found that "courts must seek to accommodate Defendant's right self-incrimination in the civil ... proceeding".

The Fifth Circuit Court of Appeals in Wehling v. Columbia Broadcasting System, 602 F.2d, 1088 pointedly concluded that a three year stay of the civil proceeding was an appropriate remedy. The supreme Court has disapproved of procedures which require a party to surrender one constitutional right in order to assert another. More specifically, the government may not circumvent a person's privilege against self-incrimination by invoking

a civil remedy to enforce criminal statutes. Childs v. McCord, 420 F. Supp. 428, 433 (D. Maryland 1976) affirmed 556 F.2d 1178 (4th Cir. 1977).

The Seventh Circuit Court of Appeals, echoing other decisions confirms the need for restraint on the government in civil proceedings parallel to criminal proceedings. Ryan v. C.I.R. 586 F.2d 531, 542, Cert. denied 439. U.S. 820, 99 S. Ct. 84, 58 L.Ed.2ed 111.

Respondents have demonstrated a "squeeze" of their constitutional rights and a stay of this proceeding is the appropriate remedy. Landis v. North American, 299 U.S. 248, 250, 57 S.Ct. 163 (1936); Wehling v. Columbia Broadcasting, 602 F.2d 1084, 1088 (5th Cir. 1979).

Even if a stay causes some inconvenience to the SECURITIES DIVISION, it is instructive to heed the comments in Corbin vs. Federal Deposit Insurance Corp., 74 F.R.D. 147, 149, 150 (1977) U.S. District Court, New York, that delaying the civil action "may cause inconvenience and delay to the plaintiffs" but the "protection of the defendant's constitutional rights against self-incrimination was the more important consideration."

This proceeding is so punitive and criminal in nature that it deprives RESPONDENTS of Due Process of Law, their Right To A Jury Trial and the Procedural Rights Established For Crimes guaranteed by the 4th, 5th, 6th, 7th, and 14th Amendments to the Constitution of the United States and The Declaration of Rights, Article 2, Sections 1, 2, 8, 9, 10, 13, 23, 24, and 30 of the Constitution of the State of Arizona. This proceeding also violates the doctrine of Separation of Powers guaranteed by the Constitution of the State Of Arizona. The penal nature of this proceeding is further demonstrated by the attached press release from the Securities Division.

The SECURITIES DIVISION has deprived RESPONDENTS of Due Process of Law, and the Procedural Rights Guaranteed For The Investigation Of Crimes, The Procedural Rights Guaranteed in Criminal and Civil Cases, and Freedom From Self Incrimination guaranteed by the 4th, 5th, 6th, 7th, and 14th Amendments to the Constitution of the United States and the Declaration of Rights, Article 2, Sections 1, 2, 8, 9, 10, 13, 23, 24, and 30 of the Constitution of the State of Arizona.

CONCLUSION

It is abundantly clear, that these proceedings should be stayed pending completion of the parallel criminal prosecution. The best interests of justice, judicial economy and protections of Respondents constitutional rights can not be achieved in any other way.

Filed this 20 day of December, 1996



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Certificate Of Service: On December ____, 1996,
a copy of the foregoing was faxed or DELIVERED to:

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By 



COMMISSION NEWS

FOR IMMEDIATE RELEASE:

December 10, 1996

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SCOTTSDALE FIRM CHARGED WITH SECURITIES FRAUD OVER INTERACTIVE VIDEO OFFERINGS

PHOENIX, AZ/December 10, 1996 -The Securities Division of the Arizona Corporation Commission has issued a Notice of Opportunity for Hearing Regarding a Proposed Order to Cease and Desist against **INTERACTIVE TECHNOLOGIES WEST, INC. (ITW)**, an Arizona corporation, **LOUIS F. CONANT, III**, formerly of Scottsdale and ITW's president, and **KYLE E. GILLMAN**, a Virginia attorney and counsel to ITW, for violating the Arizona Securities Act.

The Notice alleges that since September 1994 ITW and CONANT have defrauded investors of millions of dollars using telemarketing and other means to sell partnership units in six different partnerships. ITW and CONANT represented to investors that the partnerships would raise funds to acquire interactive and video data service (IVDS) licenses issued by the Federal Communications Commission. An IVDS license, which is commonly associated with the general concept of "interactive television," covers a narrow band of the radio spectrum and its capabilities are relatively limited. Further, it is expected that IVDS will face substantial ~~competition from large, well-financed cable and telephone companies.~~

According to the Notice, the Securities Division believes that ITW and CONANT raised over \$2 million from more than 200 investors in at least 35 states, including Arizona. The Notice also alleges that ITW, CONANT and GILLMAN used the investor funds for undisclosed and unauthorized purposes. CONANT allegedly used investor funds to build himself a home in Alpine, Arizona. CONANT and GILLMAN also allegedly schemed to sell two of the partnerships stock in Entertainment Funding Corporation, an inactive Utah company.

Dee R. Harris, Director of Securities, states "Although ITW and CONANT have received substantial commissions and other compensation, none of the investors have received a return on their investments or an interest in an IVDS license."