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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

OCT 26 2009

COMMISSIONERS

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

DOCKETED BY

In the matter of:
SIR MORTGAGE & FINANCE OF
ARIZONA, INC., an Arizona corporation,
GREGORY M. SIR (a/k/a "GREG SIR"), and
ERIN M. SIR, husband and wife,
Respondents.

DOCKET NO. S-20703A-09-0461

**SECURITIES DIVISION RESPONSE TO
RESPONDENTS' MOTION TO DISMISS**

The Securities Division ("Division") of the Arizona Corporation Commission responds to respondents' Motion to Vacate Temporary Order to Cease and Desist ("Motion") and requests that it be denied.

Respondents' unprecedented request for the Administrative Law Judge ("ALJ") to summarily vacate the September 24, 2009 Temporary Order to Cease and Desist ("TC&D") and to support their continued offer and sale of unregistered securities in violation of the Arizona Securities Act ("Act") is not supported by the plain language of the Act, case law interpreting the Act or the policy purpose underlying the Act.

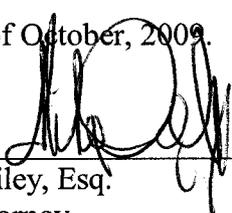
Dismissal at this stage of litigation without having considered evidence would harm the Arizona investing public, especially in light of: (1) the fraud allegations specified in the TC&D; and (2) the large dollar amounts at issue. (*See e.g.*, TC&D, ¶¶38-41). The Division respectfully requests the ALJ to set the evidentiary hearing requested by respondents.¹

¹ Undersigned requested respondents' counsel to agree to ask an evidentiary hearing date on October 19, 2009. To date, he has not responded. The Division believes that it can present the evidence identified in the TC&D in approximately two to three days.

1 The letter attached to respondents' Motion lacks merit and ignores vital facts alleged in
2 the TC&D including, without limitation, that: (1) respondents share all monthly loan payments
3 with investors (vertical privity); (2) investors pay their money to respondents, who then pool
4 their money together to fund a single loan (horizontal privity); (3) respondents retain interests in
5 the fractionalized notes and/or deeds of trust assigned to often multiple investors (vertical
6 privity); (4) each investment involves several deeds of trust and fractionalization precluding
7 reliance on A.R.S. § 44-1843(A)(10); and (5) the investments are passive and involve a large
8 volume of services provided by respondents for investors through even the resolution of bad loan
9 investments. Respondents cite no authority for the proposition that the Department of Financial
10 Institutions has exclusive jurisdiction over claims against licensed mortgage bankers; there is
11 none. Similarly, the State Bar does not have exclusive jurisdiction over claims against attorneys,
12 and the State Board of Accountancy does not have exclusive jurisdiction over claims against
13 certified public accountants.

14 Respondents have a duty to comply with the Act. Regarding the public welfare,
15 respondents' Motion appears to be based on the proposition that they cannot operate their
16 business without a constant influx of investor money. Indeed, they continued to sell their
17 investments despite knowledge of the Division's investigation. Based on the foregoing, the
18 Division requests that the Motion be denied.

19 **RESPECTFULLY SUBMITTED** this 26th day of October, 2009.

20
21 
22 _____
23 Mike Dailey, Esq.
24 Staff Attorney
25 Securities Division
26 1300 West Washington, Third Floor
Phoenix, Arizona 85007

1 **ORIGINAL AND THIRTEEN (13) COPIES**
2 **of the foregoing filed this ~~26th~~ day of**
3 **October, 2009 with:**

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

8 **Copy of the foregoing hand-delivered this ~~26th~~ day of**
9 **October, 2009 to:**

10 Marc E. Stern, Administrative Law Judge
11 Arizona Corporation Commission
12 Hearing Division
13 1200 West Washington
14 Phoenix, Arizona 85007

15 **Copy of the foregoing mailed this ~~26th~~ day of**
16 **October, 2009 to:**

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