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BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of: Richard Bradford (CRD# 2706290) and Cindy Bradford (a.k.a. Cindy White), husband and wife; Respondents.	DOCKET NO. S-20605A-08-0377 **CLOSING BRIEF** **Assigned to Administrative Law Judge Marc E. Stern**

Respondent Cindy White (formerly known as Cindy Bradford) ("White"), by and through counsel undersigned, hereby submits this Closing Brief.

I. INTRODUCTION

White was formerly married to Richard Bradford ("Bradford") during the time of his fraudulent conduct that is the subject of Arizona Corporation Commission ("Commission") Decision No. 70545. Though White was married to Bradford at the time of the underlying conduct, White was not involved in the conduct. In fact, the Securities Division's ("Division") Notice of Opportunity for Hearing ("Notice") did not allege a single act or any violations by White. Rather, the Division only named White in the Notice because it mistakenly believed it was required to do by A.R.S. § 44-2013.

White, believing she was being granted immunity and that the matter would be fully resolved as to her, signed a Consent Order, which the Commission accepted in Decision No.

70544. When White was subsequently contacted by the Attorney General's office to collect, White filed a letter requesting that the Commission reconsider Decision No. 70544. Pursuant to the direction by the Commission at an executive session on March 16, 2009, the Division requested a procedural conference to discuss the matter. A hearing was held on July 7, 2009.

For the reasons that follow, White asks the Commission to vacate Decision No. 70544 to enter an order dismissing her from this docket.

II. THE LEGAL BASIS FOR WHITE'S LIABILITY ASSERTED IN THE NOTICE DID NOT APPLY AS OF THE TIME THE NOTICE WAS ISSUED OR THEREAFTER

In its Notice, the Division named White "solely for the purposes of determining the liability of the marital community."[1] Further, the only relief the Notice sought from White was that "the marital communities (sic) of [Bradford] and [White] be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215."[2] White should be dismissed from this proceeding, because as a matter of law, the Notice does not state a legally cognizable basis for her to be liable for an administrative penalty or restitution.

First, as of the date of the Notice, there was no "marital community" which the Commission could ultimately determine to be liable for an administrative penalty or restitution. At the time a divorce decree is entered, the marital community is severed, and all community assets and liabilities are transmuted to separate assets and liabilities. A.R.S. § 25-318(A) ("In a proceeding for the dissolution of the marriage...the court...shall divide the community... property equitably..."); A.R.S. § 25-318(D) ("[t]he community...property...for which no provision is made in the decree shall be from the date of the decree held by the parties as tenants in common..."). This is true even if property or debt were intentionally omitted from a stipulated

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1 Notice at paragraph 4.
2 Notice at paragraph 59.

divorce decree. *Thomas v. Thomas*, 220 Ariz. 290, 292-93 ¶ 10, 205 P.3d 1137, 1139-40 (App.2009).

The marital community of Bradford and White was severed on March 2, 2008, when the superior court entered the divorce decree. Exh. S-2. As of that date, all assets and liabilities formerly of the community were transmuted to separate property. When the Division filed its Notice on July 23, 2008, there was no "marital community" to be held liable.

Second, the Division's Notice alleges that A.R.S. § 25-215 is the basis for the marital community's liability. Notice at para. 59. The Notice does not allege any other basis for liability of the community other than A.R.S. § 25-215.[1]

However, Arizona case law is clear that A.R.S. § 25-215 cannot serve as the basis for a determination of and ex-spouse's liability after a divorce decree has been entered. Therefore, the only legal basis for White's liability on which the Division's Notice was based was, and is, legally insufficient to impose liability on White.

A.R.S. § 25-215(D) provides:

> Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.

The Arizona Court of Appeals has confirmed that A.R.S. § 25-215 only governs the spouses' liability for community and separate debts for spouses who are still married and for debts collected while the spouses remain married. *Community Garden Bank v. Hamlin*, 182 Ariz. 627, 630, 898 P.2d 1005, 1008 (App.1995). Had the Division issued its Notice prior to White's divorce decree being entered, it would have put her on notice of a legally cognizable basis for her alleged liability. However, after White's divorce from Bradford, A.R.S. § 25-215

[1] Paragraph 4 of the Notice cites A.R.S. § 44-2031(C), which speaks to the Commission's jurisdiction to enter an order against a marital community. The Notice does not allege (nor could it properly allege) that A.R.S. § 44-2031(C) is the basis for liability.

cannot serve as the basis for imposing on White liability for the Commission's post-divorce restitution or penalty order against Bradford.

The Division's Notice did not provide White with notice of a valid basis for her alleged liability. Therefore, the Commission should dismiss White from this matter.

II. A.R.S. § 44-2031(C) DOES NOT REQUIRE THE COMMISSION TO NAME BOTH MEMBERS OF A MARITAL COMMUNITY WHEN SUCH A MARITAL COMMUNITY EXISTS, NOR DOES IT EMPOWER THE COMMISISON TO NAME AN EX-SPOUSE AFTER A MARITAL COMMUNITY HAS BEEN DISSOLVED

The Division argues in its brief that it was required to join White to impose liability on the marital community. Even if the Division had filed its Notice before the entry of the divorce decree that severed the marital community, A.R.S. § 44-2031(C) does not mandate that the Division seek to impose liability on a marital community. Further, the statute does not authorize the Division to name an ex-spouse to impose liability on the post-divorce separate property of the ex-spouse.

A.R.S. § 44-2031(C) states that "The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community." At most, the statute gives the Commission authority to name a current spouse as a party. But the statute does not require the Commission to do so if the Commission chooses not to. Even if the Division had issued its Notice prior to White's divorce from Bradford, it could have declined to name White due to her own status as a victim of Bradford's fraudulent conduct. *See infra.*

Further, as discussed above, after spouses have been divorced, there is no longer a marital community on which liability could be imposed. Nothing in the language of A.R.S. § 44-2031(C) suggests that it grants the Commission authority to name an ex-spouse or grants the Commission jurisdiction to adjudicate the alleged liability of a former spouse.

After White and Bradford's divorce decree was entered on March 3, 2008, A.R.S. § 44-2031(C) neither required, nor authorized, the Division to name White as a Respondent when she

herself was had not violated the Securities Act or the Investment Management Act.

III. EVEN IF THE COMMISSION HAD THE AUTHORITY TO IMPOSE LIABLITY ON WHITE, IT COULD AND SHOULD CHOSE TO FOREGO IMPOSING SUCH LIABILITY ON HER IN THIS INSTANCE

White was not a participant in the fraudulent activity of Bradford, nor was she aware that Bradford's claims to potential investors were in fact misrepresentations. Rather, White herself was a victim of Bradford's misconduct. White invested $42,000 of her sole and separate property proceeds from the sale of a house she purchased prior to the marriage. Tr. at 118-19. White's investment was made in 2005, prior to the opening of the Scottrade account in March 2006, and thus was outside the scope of the Division's financial analysis in Exhibit S-9. *Id.*

Of the over $1.2 million invested by the six investors identified by the Division's review of the Scottrade account, over $1 million was lost pursuant to trading losses. Exh S-9. Thus, the Division has not even demonstrated that Bradford himself was enriched by the bulk of the funds lost by those six investors.

The Division identified only four checks, totaling a mere $21,200, that were written to White. The Division's analysis in Exhibit S-9 was only an analysis of a single account into which the six investor's funds were deposited. It did not reflect a complete review of all transactions between Bradford and White during the course of their marriage. Such a review would have also revealed that White transferred to Bradford over $124,000 over the period 2005 to 2008. Tr. at 97. When Bradford wrote checks to White from the Scottrade account, White viewed it as merely a return of funds she had previously transferred to Bradford. Tr. at 140.

White maintained an extremely frugal lifestyle while married to Bradford. White and Bradford's close friend Karen Mandarino confirmed that White and Bradford lived paycheck to paycheck. Tr. at 154-55. Further, White's own income was sufficient to support the meager lifestyle White and Bradford maintained. Tr. at 123. Additionally, nearly half of the funds ($10,000) which White received from the Scottrade account, was immediately transferred to

serve as a down payment on the house for which the sale never closed. Because White was not unjustly enriched from the proceeds of Bradford's wrongful conduct, the Commission should exercise its discretion and not find White responsible for restitution or an administrative penalty.

Finally, from the moment she learned that Bradford's actions were not on the up and up, White has cooperated with authorities in their investigations. Immediately upon learning of Bradford's possible illegal conduct, White turned Bradford's laptop over to the City of Mesa Police Department. Tr. at 143; Exh. R-4 at 12 (not admitted). Further, from the outset of this proceeding, White attempted to cooperate with the Division.

IV. CONCLUSION

White cannot be found liable for restitution or an administrative penalty under A.R.S. § 25-215, as that statute only establishes liability of a spouse during the pendancy of a marriage. The Division has alleged no other basis for White to be liable for the restitution or administrative penalty imposed on Bradford. In addition, the Commission is not required under A.R.S. § 44-2031(C) to name a current spouse of a respondent against whom violations of the Securities Act or Investment Management Act are alleged. Even if the Division had alleged a legally cognizable basis for White to be liable, the Commission should exercise its discretion to decline to impose such liability, as White herself was an investor who lost money in Bradford's scheme, and she was not unjustly enriched by the proceeds of other investors' funds. Therefore, White requests that the Commission vacate Decision No. 70544 and issue an order dismissing White from this docket with prejudice.

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Dated this 16th day of November, 2009.

RIDENOUR, HIENTON & LEWIS, P.L.L.C.

By _____

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