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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

2009 NOV 24 P 4: 03

DOCKETED

KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

NOV 24 2009

DOCKETED BY [Signature]

In the matter of:

Docket No. S-20703A-09-0461

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.

**RESPONDENTS' REPLY TO
SECURITIES DIVISION'S RESPONSE
TO REQUEST TO ALTER SCHEDULE
IN SECOND PROCEDURAL ORDER
AND
RESPONSE TO MOTION FOR
MOTION PRACTICE SCHEDULING
ORDER**

On November 4, 2009, Respondents requested that the Administrative Law Judge ("ALJ") alter the schedule contained in the Second Procedural Order regarding the simultaneous exchange of Witness and Exhibit Lists. This was not a controversial request.

The Division has the burden of proof. Consequently, it is logical that the Division produce its Witness and Exhibit List prior to the Respondents having to do the same. After all, it is only after the Division makes those filings that the Respondents can intelligently select the witnesses and exhibits to prepare a defense.

For example, on August 21, 2009, the Ninth Procedural Order in another matter, Docket No. S-20600A-08-0340, was issued by the ALJ. For convenience purposes, this Procedural Order is attached as Exhibit A. On page 5 thereof, the ALJ wrote:

IT IS FURTHER ORDERED that the Division shall provide copies of its Witness List and copies of its Exhibits to the Respondents by November 19, 2009, with courtesy copies provided to the presiding Administrative Law Judge.

IT IS FURTHER ORDERED that the Respondents shall provide copies of their Witness Lists and copies of their Exhibits to the Division by January 18, 2010, with courtesy copies provided to the presiding Administrative Law Judge.

(Lines 16—21.)

1 This schedule, of course, makes perfect sense. In the Respondents' Request to Alter
2 Schedule in the Second Procedural Order in this matter, the Respondents merely sought to correct
3 what appeared to them to be an oversight. The simultaneous exchange of witnesses and exhibits is
4 uncommon in Commission, Superior Court and District Court proceedings. In this matter, it is also
5 prejudicial. As noted above, Respondents cannot possibly adequately prepare a Witness and
6 Exhibit List until they see what the Division perceives its case to be.

7 To further complicate matters, the Division also notes in its pleading that it intends to file
8 an objection to Respondents' Request for Production of Documents and Issuance of Subpoenas for
9 Testimony and Documents. On November 12, 2009, the Division made that filing. On
10 November 20, 2009, the Division filed an Objection and Motion to Quash Respondents' First
11 Request for Production of Documents.

12 The Division not only asks that the Respondents be unfairly placed in a position of filing
13 their Witness and Exhibit List prior to having an opportunity to review and respond to the
14 Division's Witness and Exhibit List, the Division also objects to the Respondents obtaining
15 subpoenas through the Executive Secretary to collect documents and testimony to prepare a
16 defense. The Division also objects to the Respondents' ability to obtain documents from the
17 Division through a Document Production Request even though these Respondents have been put
18 through a burdensome and time consuming process of responding to the Division's subpoenas,
19 letters, emails and oral requests for information for many months.

20 The Division's tactics in seeking to prevent the Respondents from being able to defend
21 themselves are ludicrous. The Division is a party to every securities administrative proceeding
22 brought at the Commission. The Division knows that the ALJ routinely permits Respondents to
23 issue subpoenas and take depositions. The ALJ is aware that the Division has responded to
24 Requests for Production of Documents. Respondents ask the ALJ to take judicial notice of the
25 numerous times over the past twenty years that requests similar to the ones the Respondents make
26 in this action have been granted.

27

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Frankly, the Division's opposition to these long-standing basic rights in a Commission proceeding border on the abusive. They have caused the Respondents to incur unnecessary legal fees. They have required the ALJ to commit unnecessary resources to hear these matters. In a time of budgetary strain, they reflect misdirected Division's resources.

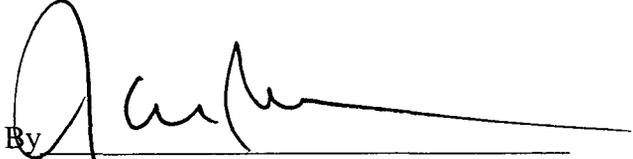
With regard to the Motion for a Motion Practice Scheduling Order, the Respondents regard the Motion as one for a pre-hearing conference. The Respondents have no objection to scheduling motion deadlines and suggest that a pre-hearing conference be set to coincide with the December 8, 2009 oral argument on other matters pending in this action.

CONCLUSION

The Respondents are entitled to see the Division's Witness and Exhibit List before having to submit their own. Respondents have no objection to a pre-hearing conference to discuss the timing of any motions, responses and replies.

RESPECTFULLY SUBMITTED this 24th day of November, 2009.

ROSHKA DeWULF & PATTEN, PLC

By 

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ORIGINAL and thirteen copies of the foregoing
filed this 24th day of November, 2009 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 24th day of November, 2009 to:

Marc E. Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mark Dinell
Assistant Director of Securities
Securities Division
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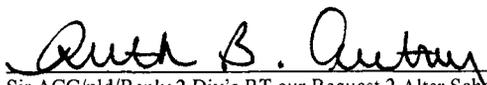

Sir.ACC/pld/Reply 2 Div's RT our Request 2 Alter Scheduling in 2nd Proc. OR.doc

Exhibit A

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

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

2009 AUG 21 P 2:45

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

DOCKET NO. S-20600A-08-0340

MARK W. BOSWORTH and LISA A. BOSWORTH, husband and wife;
STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN, husband and wife;
MICHAEL J. SARGENT and PEGGY L. SARGENT, husband and wife;
ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;
MARK BOSWORTH & ASSOCIATES, LLC, an Arizona limited liability company;
3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.



NINTH
PROCEDURAL ORDER

BY THE COMMISSION:

On July 3, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Mark W. Bosworth and Lisa A. Bosworth, husband and wife; Stephen G. Van Campen and Diane V. Van Campen, husband and wife; Michael J. Sargent and Peggy L. Sargent, husband and wife; Robert Bornholdt and Jane Doe Bornholdt, husband and wife; Mark Bosworth & Associates, LLC ("MBA"); and 3 Gringos Mexican Investments, LLC ("3GMI") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and investment contracts.

Respondents were duly served with copies of the Notice. Requests for hearing were filed by

1 all Respondents except 3GMI. Subsequently, Answers were filed by all Respondents.¹

2 On August 6, 2008, by Procedural Order, a pre-hearing conference was scheduled for
3 September 18, 2008.

4 On August 15, 2008, Respondents the Sargent Respondents filed a 12(b)(6) Motion to
5 Dismiss the Alleged Violations of A.R.S. § 44-1991 ("Motion to Dismiss").

6 On August 21, 2008, the Sargent Respondents filed a Motion to Stay and requested oral
7 argument on the Motion ("Motion to Stay").²

8 On August 28, 2008, the Division filed a Motion to Extend Due Date for Response to the
9 Sargent Respondents' 12(b)(6) Motion to Dismiss the Alleged Violations of A.R.S. § 44-1991.

10 On August 28, 2008, the Van Campen Respondents filed Joinder to the Sargent Respondents'
11 Motion to Stay and also filed a Motion to Quash Subpoena.

12 On September 5, 2008, the Division filed its Response to the Motion to Dismiss and also filed
13 its Response to the Motion to Stay.

14 On September 9, 2008, the Sargent Respondents filed a Notice of Intent to File Reply Briefs
15 in Support of their (1) Motion to Stay and (2) 12(b)(6) Motion to Dismiss.

16 On September 11, 2008, the Division filed its Response the Van Campen Respondents'
17 Motion to Quash Subpoena and also filed its Response to the Joinder of the Van Campen
18 Respondents in the Sargent Respondents' Motion to Stay Proceedings.

19 On September 12, 2008, a Procedural Order was issued stating that due to the unavailability
20 of the Administrative Law Judge ("ALJ") assigned to hear this matter, that no substantive motions
21 would be heard at the September 18, 2008, pre-hearing conference, but at that time, discussions
22 would be held to schedule a subsequent pre-hearing conference to address the motions filed in this
23 matter.

24 On September 17, 2008, the Sargent Respondents filed their Reply in Support of Motion to
25 Stay and request for oral argument. Additionally, the Sargent Respondents filed their Reply in
26

27 ¹ The Bosworth Respondents filed a joint Answer with MBA and 3GMI. Mr. Bosworth signed the Answer individually
and as the managing member of MBA and as a member of 3GMI.

28 ² On February 24, 2009, the Sargent Respondents made an additional filing in support of their Motion to Stay arguing
issues related to a subpoena to the Custodian of Records of 3GMI.

1 Support of the 12(b)(6) Motion to Dismiss.

2 On September 18, 2008, the pre-hearing conference was held as scheduled. Respondents and
3 the Division appeared through counsel, and dates for the purpose of resetting the pre-hearing
4 conference were discussed. During the discussions, counsel for the Securities Division informed the
5 ALJ that Attorney David Farney was to represent the Bosworth Respondents. Mr. Farney had not
6 filed Notice of Appearance in this docket on behalf of his clients.

7 On September 22, 2008, by Procedural Order, the pre-hearing conference was re-scheduled
8 for October 17, 2008, and Mr. Farney was directed to file a Notice of Appearance.

9 On October 1, 2008, the Van Campsen Respondents filed their Answer to the Division's
10 Notice.

11 On October 2, 2008, Mr. Farney filed a Notice of Appearance on behalf of the Bosworth and
12 MBA Respondents.

13 On October 17, 2008, at the pre-hearing conference, the Division and Respondents appeared
14 through counsel. Mr. Bosworth was also present. Mr. Farney indicated that he was awaiting
15 approval of a Bankruptcy Court judge in a proceeding involving his clients to confirm his retention
16 by the court and that after the court's confirmation approving his retention he would file his clients'
17 Answer(s). Certain of the parties indicated that there are ongoing discussions with the Division to
18 resolve issues raised in the Notice. Additionally, Mr. Bosworth indicated that some form of response
19 might be entered on behalf of 3GMI. It was also disclosed that no indictments of any of the
20 Respondents had yet been issued. Rulings on the various pending motions were held in abeyance to
21 await the filing of the Answer(s) by Mr. Farney on behalf of his clients and the possible response by
22 3GMI after which time another pre-hearing conference would be held to address these matters.

23 On October 20, 2008, by Procedural Order, a pre-hearing conference was scheduled on
24 December 15, 2008, to address pending motions and the status of the proceeding.

25 On December 15, 2008, the Division and the Respondents who had requested hearings
26 appeared through counsel. There was no response filed on behalf of 3GMI. Mr. Farney had not been
27 approved by the Bankruptcy Court to represent the Bosworths and, as a result, he had delayed the
28 filing of the Answer(s) on behalf of his clients. Additionally, there had been no indictments of any of

1 the named Respondents and pending motions were being held in abeyance. The parties agreed to a
2 further status conference being scheduled in early 2009. By Procedural Order, a status conference
3 was scheduled for February 5, 2009.

4 On January 26, 2009, counsel for the Bosworth Respondents and MBA filed a Motion to
5 Withdraw as Attorney of Record pursuant to E.R. 1.16(b), and certified that his clients had been
6 notified of the status of the proceeding and any pending scheduled proceedings.

7 On January 27, 2009, by Procedural Order, the Motion to Withdraw as Attorney of Record for
8 the Bosworth Respondents and MBA was granted.

9 On March 10, 2009, the Division filed a response to the Sargent Respondents' filing in
10 support of their earlier filing of the Motion to Stay.

11 On March 17, 2009, the Sargent Respondents filed a Motion to Quash Subpoena with respect
12 to a subpoena sent by certified mail to the "Custodian of Records" of 3GMI.

13 On March 24, 2009, the Sargent Respondents filed a reply to the Division's March 10, 2009,
14 response pointing out that the Division was seeking information on 21 entities other than 3GMI and
15 further argued Mr. Sargent was not the "Custodian of Records" of 3GMI.

16 On March 31, 2009, the Division filed its response to the Sargent Respondents' Motion to
17 Quash Subpoena citing substantial reasons why the motion should be denied.

18 On June 18, 2009, the Division filed a Motion to Set Hearing.

19 On July 7, 2009, the Sargent Respondents filed a response to the Division's Motion to Set
20 Hearing. Therein, the Sargent Respondents argued that the proceeding was not ready for hearing
21 primarily related to the underlying issue whether the Commission's administrative proceeding should
22 go forward as was argued in all prior Motions to Quash or Stay due to the possible prosecution to one
23 or more of the Respondents in an as yet unfiled criminal proceeding.

24 On July 30, 2009, by Procedural Order, it was found that there was no reasonable basis to
25 delay the proceeding further and, accordingly, a status conference was scheduled to determine a
26 hearing schedule on August 18, 2009. Additionally, the following was ordered: that the Motion to
27 Dismiss filed on August 15, 2008, by the Sargent Respondents would be taken under advisement; that
28 the Motion to Stay filed on August 21, 2008, by the Sargent Respondents was denied; that the Motion

1 to Quash and the Joinder in the Motion to Stay filed on August 28, 2008, by the Van Campen
2 Respondents was denied; and that the Motion to Quash filed on March 17, 2009, by the Sargent
3 Respondents was denied.

4 On August 18, 2009, at the status conference, the Division, the Van Campen Respondents,
5 and the Sargent Respondents were present with counsel. Mr. Bosworth was present on his own
6 behalf and indicated Mrs. Bosworth would be retaining her own attorney. Counsel for the Division
7 indicated that the Bornholdt Respondents' counsel would not be present because they are attempting
8 to resolve the issues raised in the Notice. After a discussion between the parties, it was determined
9 that a hearing should be scheduled in approximately six months.

10 Accordingly, a hearing should be scheduled on the issues raised in the Notice.

11 IT IS THEREFORE ORDERED that a **hearing** shall be held on **March 15, 2010, at**
12 **10:00 a.m.** at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix,
13 Arizona.

14 IT IS FURTHER ORDERED that the parties shall also **reserve March 16, 17, 18, 19, 22, 23,**
15 **24, 25 and 26, 2010, for additional days of hearing,** if necessary.

16 IT IS FURTHER ORDERED that the **Division shall provide copies of its Witness List and**
17 **copies of its Exhibits to the Respondents by November 19, 2009,** with courtesy copies provided to
18 the presiding Administrative Law Judge.

19 IT IS FURTHER ORDERED that the **Respondents shall provide copies of their Witness**
20 **Lists and copies of their Exhibits to the Division by January 18, 2010,** with courtesy copies
21 provided to the presiding Administrative Law Judge.

22 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
23 Communications) is in effect and shall remain in effect until the Commission's Decision in this
24 matter is final and non-appealable.

25 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
26 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
27 *hac vice*.

28

1 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
 2 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
 3 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
 4 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
 5 matter is scheduled for discussion, unless counsel has previously been granted permission to
 6 withdraw by the Administrative Law Judge or the Commission.

7 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
 8 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

9 Dated this 21st day of August, 2009.



MARC E. STERN
 ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing were mailed/delivered
 16 this 21st day of August, 2009 to:

17 Mark W. Bosworth
 18 Lisa A. Bosworth
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 and Diane V. Van Campen

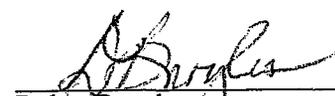
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By:



Debra Broyles
 Secretary to Marc E. Stern