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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

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

IN THE MATTER OF:

SECURE RESOLUTIONS, INC., an Arizona corporation,

DOUGLAS COTTLE and KYLA COTTLE, husband and wife,

Respondents.

DOCKET NO. S-20677A-09-0256

FIFTH
PROCEDURAL ORDER

BY THE COMMISSION:

On May 21, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Secure Resolutions, Inc. ("SRI") and Douglas Cottle and Kyla Cottle, husband and wife (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 stock, notes, warrants and/or investment contracts.

The Respondents were duly served with copies of the Notice.

On June 8, 2009, a request for hearing was filed by the Respondents, Douglas and Kyla Cottle. A request for hearing was also filed on behalf of SRI, but it cannot be determined by whom the request was filed, whether it was by a company official or an attorney licensed to practice law in Arizona.

On June 12, 2009, by Procedural Order, a pre-hearing conference was scheduled on June 30, 2009.

On June 24, 2009, the Cottle and SRI Respondents filed a Motion for a Continuance in order to obtain legal counsel and to file an Answer. The Division did not object to this request.

On June 26, 2009, by Procedural Order, the pre-hearing conference was continued to July 23, 2009.

1 On July 23, 2009, at the pre-hearing conference, the Division appeared with counsel and
2 Respondents appeared on their own behalf. The parties indicated that they are discussing a possible
3 resolution of the proceeding by means of a Consent Order and requested that a status conference be
4 scheduled in approximately 45 days. By Procedural Order, a status conference was scheduled on
5 September 24, 2009.

6 On September 22, 2009, Notice of Appearance of counsel for Respondents was filed and
7 subsequently corrected to indicate that only the Cottle Respondents were being represented by
8 counsel.

9 On September 24, 2009, the Division and Cottle Respondents appeared through counsel.
10 Counsel for the Division indicated that a settlement has not yet been concluded between the parties
11 and requested that a status conference be scheduled in approximately 45 days. The parties also
12 agreed to the scheduling of a hearing in February 2010 to last approximately two weeks, if they are
13 unable to conclude a form of Consent Order for Commission approval.

14 On September 25, 2009, by Procedural Order, dates for a status conference and hearing and
15 other procedural matters were ordered.

16 On November 17, 2009, counsel for the Cottle Respondents filed an application to withdraw
17 as their counsel indicating that the Cottle Respondents had been notified in writing of the status of the
18 case including the dates and times of all proceedings and all procedural matters. It was further
19 indicated that Respondents had sought Chapter 7 bankruptcy protection and no longer desired legal
20 representation in this proceeding.

21 On November 18, 2009, the bankruptcy attorney for the Cottles filed a Notice of Automatic
22 Stay pursuant to 11 USC § 362(a)(1) of the United States Bankruptcy Code with respect to the Cottle
23 Respondents.

24 On November 19, 2009, at the status conference, the Division appeared with counsel and the
25 Respondents' attorney who had filed an application to withdraw as their counsel appeared.
26 Respondents were not present. A brief discussion ensued and the proceeding was recessed.

27 On November 20, 2009, the Division filed its Response to Respondents' Petition to Enforce
28

1 Automatic Stay. With the filing of its Response, the Division caused a copy of its filing to be mailed
2 to the Cottles' bankruptcy counsel. The Division, in its Response, points out that the Automatic Stay
3 does not preclude the Commission's action regarding possible violations of the Act because the
4 Division's action on behalf of the Commission falls within its police or regulatory powers, and are
5 exempt from the Automatic Stay pursuant to 11 USC § 362(b)(4). Further, the Division cited a
6 number of cases in support of its position and also included a copy of a previously secured release of
7 an Automatic Stay granted on January 26, 2006, by the United States Bankruptcy Court as an exhibit
8 to its filing in this proceeding before the Commission.¹

9 As of the date of this Procedural Order, the Cottles' bankruptcy attorney has not filed any
10 response in opposition to the Division's arguments.

11 Under the circumstances, counsel for the Cottle Respondents in this proceeding should be
12 permitted to withdraw. Further, absent a specific stay from the bankruptcy court which orders the
13 Commission to stay its action herein, this proceeding should go forward as scheduled.

14 IT IS THEREFORE ORDERED that counsel for the Cottle Respondents in this proceeding is
15 hereby permitted to withdraw as counsel.

16 IT IS FURTHER ORDERED that that this proceeding should go forward as previously
17 scheduled absent a specific order from the U.S. Bankruptcy Court which stays this proceeding

18 IT IS THEREFORE ORDERED that a **hearing shall be held on February 8, 2010, at 10:00**
19 **a.m.**, or as soon thereafter as practicable, at the Commission's offices, 1200 West Washington Street,
20 Room 100, Phoenix, Arizona, as previously ordered.

21 IT IS FURTHER ORDERED that the parties shall also set aside **February 9, 10, 11, 16, 17,**
22 **and 18, 2010, for additional days of hearing**, if necessary, as previously ordered.

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24 ¹ This release had been secured with respect to another proceeding in Docket No. S-03550A-04-0000 in which the
25 Respondents, Arthur B. Cooper and Linda A. Cooper, sought bankruptcy protection. Therein, the Court found as follows:
26 "1) The Arizona Corporation Commission is a governmental agency enforcing its police and regulatory power;
27 2) Pursuant to 11 U.S.C. § 362(b)(4), police and regulatory actions commenced by the Arizona Corporation
28 Commission are not stayed by these bankruptcy proceedings; and,
3) The Arizona Corporation Commission may proceed with their investigation, and also proceed to exercise their
regulatory powers as provided by law.

Specifically, the Court recognizes the authority of the Arizona Corporation Commission to enter Orders in
administrative and civil proceedings, including but not limited to, those that provide for injunctive relief, for penalties, for
restitution and for the revocation of licenses as provided by law; however, the Arizona Corporation Commission may not
attempt to execute upon any monetary judgment so long as the Bankruptcy Court has jurisdiction over the debtor."

1 IT IS FURTHER ORDERED that the **Division and Respondents** shall exchange copies of
2 their **Witness Lists** and copies of their **Exhibits** by **January 8, 2010**, with courtesy copies provided
3 to the presiding Administrative Law Judge, as previously ordered.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
5 Communications) applies to this proceeding as the matter is now set for public hearing.

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

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

15 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
16 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
17 ruling at hearing.

18 DATED this 3rd day of December, 2009.

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22 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

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25 Copies of the foregoing mailed/delivered
this 3rd day of December, 2009 to:

26 Douglas Cottle, President
27 SECURE RESOLUTIONS
28 P.O. Box 13475
Mesa, AZ 85216

1 Douglas and Kyla Cottle
2 2792 East Santa Rosa Drive
3 Gilbert, AZ 85234

3 Robert D. Mitchell
4 Julie M. Beauregard
5 Sarah K. Deutsch
6 MITCHELL & ASSOCIATES
7 1850 North Central Avenue, Suite 1715
8 Phoenix, AZ 85004

7 James Portman Webster
8 JAMES PORTMAN WEBSTER, P.L.L.C.
9 935 East Main Street, Suite 204
10 Mesa, AZ 85203
11 Bankruptcy Attorney for Douglas and Kyla Cottle

10 Matt Neubert, Director
11 Securities Division
12 ARIZONA CORPORATION COMMISSION
13 1300 West Washington Street
14 Phoenix, AZ 85007

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14 By: 
15 Debra Broyles
16 Secretary to Marc E. Stern
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