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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 JAN 15 P 2:33

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

SECURITIES DIVISION
DOCKET CONTROL

In the matter of:

KYLE SCHMIERER, individually and
doing business as AMADIN, and JANE
DOE SCHMIERER, husband and wife,

Respondents.

DOCKET NO. S-20651A-09-0029

RESPONSE TO DEMAND TO
DISMISS CASE & IMPOSE
SANCTIONS.

On January 14, 2010, Respondent filed a Demand to Dismiss Case & Impose Sanctions.

The basis of this Demand has been addressed previously by the Securities Division. In addition, the Administrative Law Judge has issued Procedural Orders that have denied the Respondent's prior Motions on the same topics. This Demand should be denied for the reasons outlined in the attached Memorandum of Points and Authorities.

Respectfully submitted this 15th day of January, 2010.

By:

Wendy Coy

Wendy Coy
Attorney for the Securities Division of the
Arizona Corporation Commission

Arizona Corporation Commission

DOCKETED

JAN 15 2010



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Procedural History**

3 On January 29, 2009, the Securities Division of the Arizona Corporation Commission
4 ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for
5 Hearing, ("TC&D") with respect to Respondent Kyle Schmierer.

6 On February 19, 2009, Respondent filed a Request for Hearing.

7 On February 24, 2009, by Procedural Order, a pre-hearing conference was scheduled for
8 March 23, 2009.

9 On February 26, 2009, Respondent filed an Answer.

10 On March 23, 2009, the pre-hearing conference was held. Administrative Law Judge Stern
11 ("ALJ Stern") recommended that the parties meet and discuss a resolution to this matter. Further, ALJ
12 Stern suggested that the matter be arbitrated or mediated. The parties were to file a motion to either
13 set a hearing date or to set an arbitration/mediation date after meeting to discuss the issues.

14 On March 31, 2009, the Securities Division filed a Motion to Set Hearing. On April 2,
15 2009, Respondent filed a Motion to Set Mediation. A procedural conference was held on April 30,
16 2009. On May 19, 2009, the Third Procedural Order was issued. The Third Procedural Order
17 scheduled a hearing to be held on August 31, 2009 and the exchange of witness and exhibit lists on
18 June 19, 2009.

19 On June 10, 2009, Respondent filed a Motion For Release of Essential Information Before
20 Mediation and a Motion for Mediation.

21 On June 12, 2009, the Securities Division filed Responses to the motions filed on June 10,
22 2009 by Respondent. On June 19, 2009, the Fourth Procedural Order was issued addressing
23 Respondent's motions. The Fourth Procedural Order denied Respondent's Motion For Release of
24 Essential Information and held in abeyance the Motion for Mediation.

25 On June 19, 2009, the Securities Division made its witness list and exhibits available to
26 Respondent.

1 Also on June 19, 2009, ALJ Stern issued the Fourth Procedural Order denying
2 Respondent's Motion for Release and holding in abeyance Respondent's Motion for Mediation.
3 Further, ALJ Stern granted Respondent's request for additional time to produce his witness and
4 exhibit list. The Fourth Procedural Order affirmed the August 31, 2009 as the hearing date.

5 On June 24, 2009, Respondent filed three motions essentially requesting a rehearing on the
6 issues of disclosure of investigative materials, mediation and the demand for an investigation of the
7 Securities Division.

8 On July 2, 2009, the Securities Division filed a Response to Respondent's motions filed on
9 June 24, 2009. In the Response, the Securities Division stated that the issues raised in the June 24,
10 2009 motions had all been addressed in the Response the Securities Division filed on June 12,
11 2009.

12 On July 9, 2009, Respondent filed a Preliminary Witness and Exhibit List. In addition, on
13 July 9, 2009, Respondent also filed a Motion to Delay Deadline for Witness and Exhibits and the
14 Trial and a Motion To Begin A Formal Investigation Into The Abuse Of Power And Extortion By
15 The Securities Division Immediately. The issue of an investigation against the Securities Division
16 was addressed in the Responses filed by the Securities Division on June 12, 2009 and July 2, 2009.

17 On August 12, 2009, Respondent filed a Motion: Oral Contract of Mediation Option Must
18 Be Upheld. In addition, Respondent filed a Motion to Dismiss Hearing/Jury Trial for my Case and
19 re-filed the Motion to Delay Deadline for Witness and Exhibits and The Trial and Motion to begin
20 a formal investigation into the abuse of power and extortion by the Securities Division Immediately
21 and Motion: Demand that Promise of Mediation Option be Upheld. The Securities Division
22 responded to the Motion for Mediation on June 12, 2009. In addition, the Securities Division
23 addressed Respondent's motion for jury trial and an investigation into the Securities Division in the
24 June 12, 2009 Response. Furthermore, the Securities Division again addressed these same issues
25 with its July 2, 2009 Response.
26

1 On August 21, 2009, Respondent filed a Motion for Continuance for New Trial Date and
2 Motion to Compel Discovery. The Securities Division responded on August 25, 2009.

3 On August 24, 2009, Respondent filed a Motion to Dismiss This Case and Sanctions for
4 Malicious Prosecution, Motion for Sanctions for Failure to Comply with Discovery and Motion to
5 Assert My Constitutional Rights and Demand for a Jury Trial. The Securities Division filed its
6 Response to the Motions on August 27, 2009.

7 On August 31, 2009, 8:51 a.m., (the day of the scheduled hearing schedule do to begin at
8 10:00 a.m.) Respondent filed the following: Motions: Motion for Immediate Dismissal and Severe
9 Sanctions, Motion My Constitutional Rights to a Jury Trial Remain Inviolable and Motion for
10 Continuance ~ Future Jury Trial Date or Case Must be Dismissed Immediately.

11 On August 31, 2009, after Respondent failed to appear at the scheduled hearing, ALJ Stern
12 granted the Motion to Continue over the objections of the Securities Division.

13 On September 3, 2009, the Securities Division filed a Response to: 1) Motion: My
14 Constitutional Rights to A Jury Trial Remain Inviolable; and 2) Motion for Continuance – Future
15 Jury Trial Date or Case Must Be Dismissed Immediately. Also on September 3, 2009, the
16 Securities Division filed a Response to: Motion for Immediate Dismissal & Severe Sanctions.

17 On October 16, 2009, ALJ Stern issued the Fifth Procedural Order (Reschedules a
18 Hearing). Through the Fifth Procedural Order, ALJ Stern denied all previous Motions filed by
19 Respondent except the Motion to Continue filed on August 31, 2009. The Fifth Procedural Order
20 rescheduled the administrative hearing to January 21, 2010.

21 On November 23, 2009, the Respondent filed the following Motions: 1) Motion for Second
22 Continuance; 2) Fourth Motion to Compel Discovery; and 3) Motion for Jury Trial.

23 On December 8, 2009, the Securities Division filed a Response to: 1) Motion for Second
24 Continuance; 2) Fourth Motion to Compel Discovery; and 3) Motion for Jury Trial.

25 On December 9, 2009, ALJ Stern issued the Sixth Procedural Order denying Respondent's
26 previous Motions and affirming the scheduled hearing date.

1 On January 6, 2010, Respondent filed a Motion to Demand Information Required for a
2 Defense and a Motion to Dismiss Case & Impose Sanctions. The Securities Division filed a
3 Response on January 8, 2010.

4 On January 14, 2010, Respondent filed a Demand to Dismiss Case & Impose Severe
5 Sanctions.

6 **II. Demand to Dismiss Case & Impose Sanctions**

7 The Respondent's Demand to Dismiss Case & Impose Sanctions has been addressed in
8 previous Responses¹ and by ALJ Stern².

9 Respondent, in his Demand to Dismiss Case & Impose Sanctions, attacks the Securities
10 Division and its personnel asserting that the Securities Division has some how violated his rights to
11 "raise money for his business." The Securities Division alleges that Respondent's internet offerings
12 violate the Arizona Securities Act ("Act"). The Securities Division filed its TC&D to stop the
13 alleged violations of the Act and give the Respondent the opportunity to have the matter heard by
14 the Administrative Law Judge. An evidentiary hearing is set for January 21, 2010. At the hearing
15 the Securities Division will present evidence and testimony it believes will support its allegations.
16 The Respondent will have the opportunity to "confront his accusers" and to present evidence and
17 testimony he believes will prove he did not violate the Act.

18 The issues raised in Respondent's latest Motion have been in addressed in previous
19 Procedural Orders.

20 Respondent's Demand must be denied.

21 **V. Conclusion**

22 An evidentiary hearing is scheduled for January 21, 2010 to address the underlying issue of
23 whether the Respondent violated the Arizona Securities Act when he sought investors over the
24 internet.

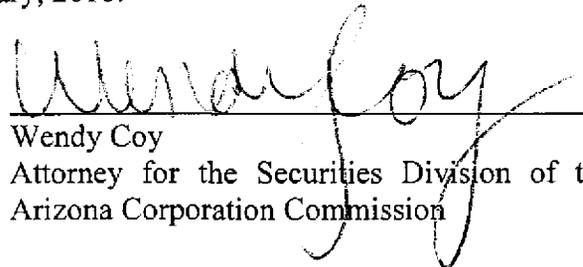
25 _____
26 ¹ See Securities Division Responses filed on June 12, 2009, July 2, 2009, August 27, 2009, September 3, 2009 and
January 8, 2010.

² See Fifth Procedural Order dated October 16, 2009.

1 Respondent's due process rights have not been violated. Respondent has the opportunity to
2 question the witness and challenge the evidence presented by the Securities Division related to the
3 allegations set forth in the TC&D that was filed on January 29, 2009 at the scheduled hearing.
4 Respondent's latest motion should be denied.

5 Respectfully submitted this 15th day of January, 2010.

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7 By:


Wendy Coy
Attorney for the Securities Division of the
Arizona Corporation Commission

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1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
2 filed this 15th day of January, 2010 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 filed this 15th day of January, 2010 to:

9 Mr. Marc E. Stern
10 Administrative Law Judge
11 Arizona Corporation Commission/Hearing Division
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed
15 this 15th day of January, 2010 to:

16 Kyle Schmierer
17 220 West Behrend Dr.
18 Phoenix, AZ 85027

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