

ORIGINAL



0000107003

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

200 JAN 27 P 2:43

DOCKETED

JAN 27 2010

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DOCKETED BY	<i>MLC</i>
-------------	------------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

SIXTH  
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, pointed out that the Automatic  
3 Stay did 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.<sup>1</sup>

9 On December 3, 2009, by Procedural Order, counsel for the Cottle Respondents in the  
10 proceeding was permitted to withdraw, and absent a specific stay from the bankruptcy court which  
11 ordered the Commission to stay its action herein, the parties were ordered to appear for the hearing as  
12 scheduled.

13 On January 5, 2010, a Notice of Appearance of Counsel for Respondents was filed.

14 On January 7, 2010, a teleconference was held with the Division and Respondents represented  
15 by counsel. A discussion related to the exchange of Witness Lists and Exhibits took place and  
16 Respondents requested a continuance which was denied.

17 On January 19, 2010, Respondents filed an Expedited Motion for Order to Disclose  
18 Information by Securities Division Re-Urging of Original Motion to Continue ("Expedited Motion").

19 On January 27, 2010, the Division filed its response to Respondents' Expedited Motion. The  
20 Division cited relevant law to deny the Expedited Motion.

21 Accordingly, Respondents' Expedited Motion should be denied as should the request to  
22 continue the proceeding.

23  
24 <sup>1</sup> 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 THEREFORE ORDERED that Respondents' Expedited Motion and request for a  
2 continuance is hereby denied.

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

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

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

10 IT IS FURTHER ORDERED that the **Division and Respondents** shall exchange copies of  
11 their **Witness Lists** and copies of their **Exhibits** by **as agreed on January 7, 2010**, with courtesy  
12 copies provided to the presiding Administrative Law Judge, as previously ordered.

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

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

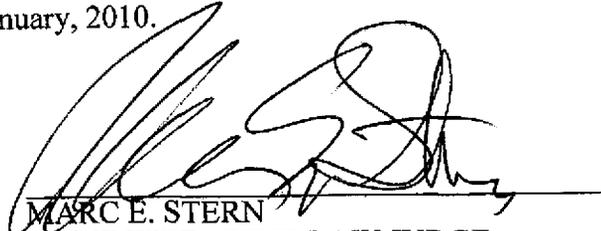
21 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
22 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
23 *pro hac vice*.

24 ...  
25 ...  
26 ...  
27 ...  
28 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

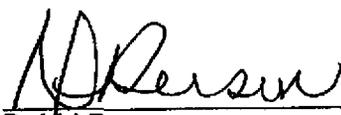
DATED this 27<sup>th</sup> day of January, 2010.

  
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 27<sup>th</sup> day of January, 2010 to:

Michael S. Baker  
THE BAKER LAW FIRM, LLC  
702 E. Coronado Road  
Phoenix, AZ 85006  
Attorney for Respondents

Matt Neubert, Director  
Securities Division  
ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
Phoenix, AZ 85007

By:   
Debbi Person  
Secretary to Marc E. Stern