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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF:

9 SECURE RESOLUTIONS, INC., an Arizona
10 corporation,

11 DOUGLAS COTTLE and KYLA COTTLE,
12 husband and wife,

13 Respondents.

DOCKET NO. S-20677A-09-0256

SEVENTH
PROCEDURAL ORDER

14 **BY THE COMMISSION:**

15 On May 21, 2009, the Securities Division ("Division") of the Arizona Corporation
16 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Secure
17 Resolutions, Inc. ("SRI") and Douglas Cottle and Kyla Cottle, husband and wife (collectively
18 "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act
19 ("Act") in connection with the offer and sale of securities in the form of stock, notes, warrants and/or
20 investment contracts.

21 The Respondents were duly served with copies of the Notice.

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

26 On June 12, 2009, by Procedural Order, a pre-hearing conference was scheduled on June 30,
27 2009.

28 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
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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.¹

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 20, 2010, the division filed Securities Division's Motion to Allow Telephonic
20 Testimony citing relevant case law and prior Commission proceedings where such testimony had
21 been permitted.

22 On January 27, 2010, the Division filed its response to Respondents' Expedited Motion. The
23

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 Division cited relevant law to deny the Expedited Motion. Subsequently, by Procedural Order,
2 Respondents' Expedited Motion was denied as was the request to continue the proceeding.

3 Additionally, on January 27, 2010, Respondents filed Respondents' Response to Securities
4 Division's Motion to Allow Telephonic Testimony. Respondents argued that they would be denied
5 due process and cited case law in support of their position.

6 Under the circumstances, the Commission has long followed a policy permitting telephonic
7 testimony and the policy should be followed in this proceeding.

8 IT IS THEREFORE ORDERED that the Division's Motion to Allow Telephonic Testimony
9 is hereby granted.

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

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

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

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

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

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

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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 29th day of January, 2010.



MARC E. STERN
ADMINISTRATIVE LAW JUDGE

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

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Attorney for Respondents

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ARIZONA CORPORATION COMMISSION
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Phoenix, AZ 85007

By: 

Debbi Person
Secretary to Marc E. Stern