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BEFORE THE ARIZONA CORPORATION 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

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ARIZONA CORPORATION COMMISSION
SECRET CONTROL

7 IN THE MATTER OF:

DOCKET NO. S-20660A-09-0107

8 RADICAL BUNNY, L.L.C., an Arizona limited
9 liability company,

10 HORIZON PARTNERS, L.L.C., an Arizona limited
liability company,

11 TOM HIRSCH (aka TOMAS N. HIRSCH) and
12 DIANE ROSE HIRSCH, husband and wife,

13 BERTA FRIEDMAN WALDER (aka BUNNY
WALDER), a married person,

14 HOWARD EVAN WALDER, a married person,

15 HARISH PANNALAL SHAH and MADHAVI H.
16 SHAH, husband and wife,

17 Respondents.

Arizona Corporation Commission
DOCKETED

FEB 26 2010

DOCKETED BY

PROCEDURAL ORDER

18 **BY THE COMMISSION:**

19 On March 12, 2009, the Securities Division ("Division") of the Arizona Corporation
20 Commission ("Commission") filed a Notice of Opportunity for Hearing against Radical Bunny,
21 L.L.C., Horizon Partners, L.L.C., Tom Hirsch (aka Tomas N. Hirsch), Berta Friedman Walder (aka
22 Bunny Walder), Howard Evan Walder, Harish Pannalal Shah, and Madhavi H. Shah, in which the
23 Division alleged multiple violations of the Arizona Securities Act in connection with the offer and
24 sale of securities in the form of notes and investment contracts.

25 On March 26, 2009, a request for hearing was filed on behalf of Horizon Partners, L.L.C.,
26 Tom Hirsch, Diane Rose Hirsch, Berta Friedman Walder, Howard Evan Walder, Harish Pannalal
27 Shah and Madhavi H. Shah ("Respondents"). The request for hearing requested a hearing date after
28 April 22, 2009.

1 On April 9, 2009, by Procedural Order, a pre-hearing conference was scheduled for May 8,
2 2009.

3 On May 6, 2009, Respondents filed a Request to Continue the May 8, 2009, pre-hearing
4 conference. The Request indicated that Respondents' counsel and counsel for the Division had
5 agreed to several dates for resetting the date of the pre-hearing conference.

6 By Procedural Order issued May 7, 2009, the procedural conference was rescheduled for June
7 16, 2009.

8 The procedural conference was held as scheduled and procedural dates were established for
9 the Securities Division to provide exhibits and list of witnesses, and for a subsequent procedural
10 conference.

11 On August 18, 2009, the Division filed a Stipulation to Continue the Procedural Conference
12 Scheduled for September 3, 2009, requesting a 30 day continuance.

13 On August 24, 2009, by Procedural Order, the procedural conference was rescheduled to be
14 held on October 7, 2009.

15 On October 6, 2009, Respondents filed in the Commission's Tucson office, a Request to
16 Continue the October 7, 2009 Procedural Conference, indicating that additional time was needed to
17 review documents provided by the Securities Division.

18 By Procedural Order issued October 6, 2009, the procedural conference was rescheduled for
19 November 3, 2009.

20 On November 3, 2009, the procedural conference was held to discuss procedural issues,
21 including hearing dates. The Securities Division estimated that at least 25 days of hearing would be
22 required for this case. The parties were encouraged to engage in discussions to see whether a
23 settlement could be reached in this case, and it was agreed that a date for hearing should be
24 established.

25 On November 3, 2009, a Procedural Order was issued scheduling the hearing to commence on
26 March 8, 2010.

27 On February 8, 2010, Respondents filed a Motion for Continuance and a Stipulation and
28 Motion for Substitution of Counsel. The Stipulation and Motion for Substitution of Counsel

1 requested that the firm of LaVelle & LaVelle PLC, Michael J. LaVelle and Matthew K. LaVelle, be
2 substituted in place and stead of Bruce R. Heurlin, the current attorney for Respondents Tom Hirsch,
3 Berta Walder, Howard Walder, and Harish P. Shah. The Motion for Continuance requested that
4 because the new counsel has just appeared and cannot be ready for hearing with reasonable effort;
5 because the matter may not require 20 days for hearing and may be partially resolved by motion; and
6 because the current hearing date is burdensome for the public accountant respondents and for the
7 school principal respondent, the hearing should be rescheduled to commence sometime this summer,
8 with a motion deadline of one month prior to hearing.

9 On February 10, 2010, the Division filed its Response to the Motion for Substitution of
10 Counsel and its Response to the Motion for Continuance. The Division did not have an objection to
11 the Motion for Substitution of Counsel, but noted that not all Respondents were the subject of the
12 motion. The Division objected to the Motion for Continuance on the grounds that not all
13 Respondents had requested a continuance, and the remaining Respondents may be prejudiced or
14 unreasonably burdened by the delay and because although six months have passed since the parties
15 exchanged exhibits and witness lists, Respondents have not conducted discovery nor sought to
16 narrow the issues by motion. The Division requested that, if the Motion for Continuance were
17 granted, a motion deadline of March 15, 2010, be applicable to all dispositive motions and motions
18 requesting discovery, depositions be completed by April 30, 2010, and the hearing be scheduled to
19 commence on the first available date after June 1, 2010.

20 On February 18, 2010, Respondents filed their Reply on the Motion for Continuance and also
21 filed another Stipulation and Motion for Substitution of Counsel requesting that the LaVelle firm also
22 be substituted as counsel for the remaining Respondents Diane Rose Hirsch, Madhavi H. Shah, and
23 Horizon Partners, LLC. The Reply to the Motion for Continuance stated that the March 15, 2010,
24 deadline requested by the Division is too onerous given the volume of documents to review and the
25 legal and factual research required to be conducted. Respondents request an April 30, 2010, deadline
26 for motions (excluding motions for telephonic testimony or motions to limit or exclude evidence) and
27 a hearing in the summer.

28 On February 19, 2010, the Division filed its Response to Stipulation and Motion for

1 Substitution of Counsel, indicating no objection.

2 Accordingly, the Motion for Substitution of Counsel should be granted. The Motion for
3 Continuance is reasonable given the substitution of counsel and the work schedule of the
4 Respondents and therefore the hearing should be continued and rescheduled, and new dates
5 established for motions.

6 IT IS THEREFORE ORDERED that the hearing on **March 8, 2010, is hereby continued**
7 **until June 2, 2010, at 10:00 a.m.**, or as soon thereafter as is practicable at the Commission's offices,
8 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona.

9 IT IS FURTHER ORDERED that a **pre-hearing conference** shall be held on **May 25, 2010,**
10 **at 10:00 a.m.**, or as soon thereafter as is practicable at the Commission's offices, 1200 West
11 Washington Street, Hearing Room 1, Phoenix, Arizona.

12 IT IS FURTHER ORDERED that the parties shall also **reserve June 3, 4, 7, 8, 9, 10 and 11,**
13 **2010, and additional days for hearing, if necessary.**

14 IT IS FURTHER ORDERED that all **motions (excluding motions for telephonic testimony**
15 **or motions to limit or exclude evidence) shall be made no later than April 30, 2010, and**
16 **depositions shall be completed by May 7, 2010.**

17 IT IS FURTHER ORDERED that the Motion for Substitution of Counsel is hereby granted.

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 practice of law and admission
28 *pro hac vice*.

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

3 DATED this 26th day of February, 2010.

4
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6 
7 LYN FARMER
CHIEF ADMINISTRATIVE LAW JUDGE

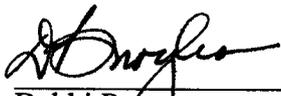
8 Copies of the foregoing mailed/delivered
9 this 26th day of February, 2010 to:

10 Bruce R. Heurlin
11 HEURLIN SHERLOCK PANAHI
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14 Michael J. LaVelle
15 Matthew K. LaVelle
16 LAVELLE & LAVELLE, PLC
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18 Phoenix, AZ 85016
19 Attorney for Respondents

20 Matt Neubert, Director
21 Securities Division
22 ARIZONA CORPORATION COMMISSION
23 1300 West Washington Street
24 Phoenix, AZ 85007

25 ARIZONA REPORTING SERVICE, INC.
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28 By: 
29 *for*  Debbi Person
Assistant to Lyn Farmer