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BEFORE THE ARIZONA CORPORATI

IN THE MATTER OF:

FIVE STAR TREE SERVICE AND
LANDSCAPING, LLC, an Arizona limited
liability company,

RICHARD MCCULLUM, JR., a married man,

LEAH ATWOOD, a married woman,

Respondents.

)
)
) DOCKET NO.
) S-20715A-09-0564
)
)

) PREHEARING
) CONFERENCE
)
)

At: Phoenix, Arizona

Date: March 30, 2010

Filed: **APR 07 2010**

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 100 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:31 a.m., on the 30th day of
6 March, 2010.

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BEFORE: MARC E. STERN, Administrative Law Judge

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APPEARANCES:

11

12 For the Arizona Corporation Commission Securities
13 Division:

13

14 Ms. Wendy Coy
15 Senior Counsel, Securities Division
16 1300 West Washington Street
17 Phoenix, Arizona 85007

16

17 For Leah Atwood and Five Star Tree Service and
18 Landscaping, LLC:

18

19 Ms. Leah Atwood, Pro per
20 5746 South Estrella Road, No. 2
21 Gold Canyon, Arizona 85118

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22

23

KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

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1 ALJ STERN: We will go on the record in the
2 matter of Five Star Tree Service, et al., in Docket
3 No. S-20715A-09-0564.

4 My name is Marc Stern. I will preside this
5 morning. And at this time we'll take appearances.

6 And on behalf of the Division?

7 MS. COY: Windy Coy.

8 ALJ STERN: Okay. And on behalf of Respondent
9 Leah Atwood?

10 MS. ATWOOD: Leah Atwood.

11 ALJ STERN: Okay, you did a real good job.

12 And I don't know whether you're appearing on
13 behalf of this Five Star Tree Service and Landscaping,
14 LLC --

15 MS. ATWOOD: Yes.

16 ALJ STERN: I think you may be able to now but
17 I'm not certain. I have to check the Supreme Court
18 rules.

19 MS. ATWOOD: Okay.

20 ALJ STERN: There was a change, and I think you
21 can for the limited purpose of this proceeding if
22 it's -- you're not practicing law, and you're not doing
23 this on a regular basis.

24 Are you familiar with the Rule 31?

25 MS. COY: You know, I looked at it recently but

1 didn't retain any of it at this point.

2 ALJ STERN: Okay.

3 MS. COY: Sorry.

4 ALJ STERN: And where is Mr. McCullum, ma'am?

5 MS. ATWOOD: He's in California.

6 MS. COY: Your Honor?

7 ALJ STERN: Yes, ma'am.

8 MS. COY: I don't know if this has made it to
9 docket yet. Mr. McCullum has been in contact with us
10 and indicated that he was going to request a hearing.

11 I have a copy of what he claims he sent, along
12 with 13 copies that we can go ahead -- if I can
13 approach, I'll give you a copy.

14 ALJ STERN: Well, if it's been docketed -- I
15 don't know if it's been docketed.

16 MS. COY: I don't know if it's been docketed,
17 but we can go ahead and docket it.

18 ALJ STERN: Until it -- if it gets docketed,
19 we'll take official notice and we will have to schedule
20 another prehearing conference.

21 Probably want to redact his social security
22 number. See it there on the first line?

23 MS. COY: Oh, I didn't even notice it.

24 ALJ STERN: Yeah, you don't want to have that
25 get filed in the docket.

1 MS. COY: No, we'll do that.

2 ALJ STERN: Okay. It says here, I'm requesting
3 a hearing, been in the hospital, medical care, and he's
4 going to get an attorney, denies all charges. Okay.

5 Are you still married to Mr. --

6 MS. ATWOOD: I am, but I'm going to be getting
7 an annulment.

8 ALJ STERN: Okay. Have you had a chance to -- I
9 don't know what your situation is with respect to the
10 allegations here -- have you had a chance to discuss the
11 matter with Ms. Coy at all?

12 MS. ATWOOD: Just for five minutes before --

13 ALJ STERN: Ms. Coy, do you want to have a
14 chance to talk to the lady here?

15 MS. COY: We will talk to her, but what we
16 request right now is go ahead and set up a hearing date
17 for this, and then we are going to talk to Ms. Atwood
18 after the proceeding and discuss ways to resolve this.

19 ALJ STERN: You could discuss her involvement,
20 you said? Okay.

21 Yeah, I'm not quite sure, are you alleging she's
22 an actual participant in this or is she just named for
23 purposes of the marital community issue.

24 MS. COY: Purposes of the marital community.

25 ALJ STERN: Okay. So she's not actually a --

1 MS. COY: Well, we did allege that she was
2 active in the entity at this point, but based on
3 information we received that could change.

4 ALJ STERN: Okay. So if we have a hearing, how
5 many witnesses are you proposing you might have?

6 MS. COY: Probably have one in person and one or
7 two telephonically.

8 ALJ STERN: How many investors are there in
9 this?

10 MS. COY: At this point we're familiar with
11 four.

12 ALJ STERN: And then if you have one or two
13 investor witnesses --

14 MS. COY: And our investigator.

15 ALJ STERN: And your investigator. Any
16 accounting witness?

17 MS. COY: Not at this time.

18 ALJ STERN: So we're talking probably a two-day
19 hearing at most, if we go to hearing?

20 MS. COY: I was thinking a day, but, yes.

21 ALJ STERN: Okay. We will schedule it for two
22 days in case somebody wants to contest this matter.

23 Okay, I was looking at some dates previously,
24 and before you were here Mr. Huynh was here, and I don't
25 have the dates offhand with me, but I know he wanted his

1 date a couple days in June, and I'm thinking that -- he
2 wanted the date in May -- and I think we have a couple
3 days in June.

4 Would that be agreeable, do you think?

5 MS. COY: Well, I have got a hearing, we have
6 got a hearing already in June.

7 ALJ STERN: Which one?

8 MS. COY: The Hogan matter.

9 ALJ STERN: Okay.

10 MS. COY: That's June 15th to the 17th.

11 ALJ STERN: And then there is one after -- there
12 is a week after that I think is when I thought I saw
13 some days. And I'm going to take a recess for a few
14 minutes and go check.

15 Okay, how does that work for you?

16 MS. COY: That would be fine. The only issue
17 would be if Mr. McCullum does file his request for
18 hearing, where we can put that in there.

19 ALJ STERN: See that's another problem. I mean,
20 his request for hearing, you say you're going to docket
21 it?

22 MS. COY: We thought we would go ahead and
23 docket it after we redact his social.

24 ALJ STERN: Okay. I normally set up a
25 prehearing after every request for a hearing, so I don't

1 know whether he will appear or not. And I don't know
2 whether -- you can't really represent him, ma'am.

3 MS. ATWOOD: No.

4 ALJ STERN: So that's a question. Do you have
5 any clue as to Mr. McCullum's health, does anyone?

6 MS. COY: At this point he did indicate that
7 about every three to four months he has some issues and
8 is back in the hospital.

9 ALJ STERN: Does he have a terminal illness, or
10 what is it?

11 MS. COY: No.

12 ALJ STERN: No.

13 MS. COY: But we did, you know, I don't know if
14 it's possible, but he could possibly appear through
15 telephonically on a prehearing conference, whether
16 that's allowable or not.

17 ALJ STERN: Well, I don't really have that big
18 of a problem with it. It's hard to set a hearing,
19 though, without him having at least some knowledge of
20 what's going on. That's why I may -- this is April --
21 well, let me, let's take a recess for a few minutes. I
22 want to look at some dates and see where we're at on
23 this.

24 MS. COY: Sounds good.

25 ALJ STERN: And I'll be back in a minute.

1 (Recess taken from 10:39 a.m. to 10:50 a.m.)

2 ALJ STERN: Let's go back on the record.

3 If you want to schedule the actual hearing, June
4 28th, 29th, 30th are open, based on the calendar.
5 Hopefully there will be a room available, we never know.
6 And at present we can probably do that, you know,
7 somewhere thereabouts. If you say you need a day for a
8 hearing, I'd probably schedule it for two days in the
9 event it runs over.

10 But is that time frame okay for you?

11 MS. COY: That works.

12 ALJ STERN: Ma'am, how about you?

13 MS. ATWOOD: That works.

14 ALJ STERN: All right. I notice, I was
15 looking -- and again, I'm not entirely sure, I know when
16 you filed your document in writing here requesting a
17 hearing and you filed an answer, I don't know what your
18 relationship is to Five Star Tree Service and
19 Landscaping, LLC. Are you -- you're a member of that?

20 MS. ATWOOD: Well, that was a company that I
21 formed with my ex, the man I was with before Richard.
22 And Richard wanted to be added to that bank account to
23 have his commissions put into.

24 ALJ STERN: Uh-huh.

25 MS. ATWOOD: And told me that it was totally

1 legitimate for him to do that and lied to me about
2 everything.

3 ALJ STERN: So --

4 MS. ATWOOD: So that's why I want to be
5 representing Five Star Tree Service, because that
6 company had nothing to do and no knowledge of his
7 actions.

8 ALJ STERN: It just sort of got dragged into
9 it --

10 MS. ATWOOD: Yes.

11 ALJ STERN: -- okay, or whatever.

12 We'll see -- you and the Division might be
13 talking -- I don't know what will happen -- and it might
14 be a part of the case or it might not be part of the
15 case.

16 In any event, subsequently I guess, you got
17 married though, you mentioned earlier, to Mr. McCullum?

18 MS. ATWOOD: Yes. We got married about a month
19 after we had a baby together.

20 ALJ STERN: Okay, all right. Well, in any
21 event, the situation with you representing the tree
22 service, I was, that's one of the things I was looking
23 at; I was looking at the rule. And the rule changed
24 January of this year. There's about 28 exceptions to
25 who can practice law in Arizona, and in certain

1 situations people can represent themselves and/or a
2 corporation or a limited liability company.

3 Depending upon the circumstances of course,
4 there is an exception for the Commission here,
5 specifically in rate cases where you're, if you're an
6 officer or a member and you're not, it's not your
7 primary duty and you're not getting paid for it, then
8 the Supreme Court says it's okay. As far as
9 representing yourself and/or a corporation or a
10 membership limited liability company in cases involving
11 the Securities Division, it's not a specific exemption
12 from the requirement that you be a lawyer. You can
13 represent yourself anytime.

14 As far as the LLC, that's not real clear, at
15 least at first looking at this. There are some other
16 areas where they allow people to do that like small
17 claims court, I think, and in cases involving certain
18 amounts of money, I think I remember being mentioned,
19 but I don't, there's certainly no specific exemption for
20 this area.

21 MS. ATWOOD: Okay.

22 ALJ STERN: So maybe you can, maybe you can't.
23 I don't know whether you're still involved with this
24 tree service and landscaping thing, so I'll leave that
25 up to you.

1 I'm not sure there's been a valid request for
2 service on behalf of the tree service, and I'm not even
3 sure from, you know, what you're saying -- and it's not
4 under oath, and the Division and you haven't had a
5 chance to talk probably -- whether the tree service is
6 involved or somehow maybe isn't involved, who knows. I
7 know this is a temporary order case and these come down
8 a little bit faster sometimes than the regular cases.

9 So in any event, what we'll do here is schedule
10 a prehearing based on this request for hearing by
11 Mr. McCullum.

12 Do we have a -- Mr. McCullum I guess is his name
13 -- do we have an address for him?

14 MS. COY: Yes.

15 ALJ STERN: What might it be, since I don't have
16 it.

17 MS. COY: I don't know if we have that with
18 you -- with us.

19 Oh, is that it?

20 ALJ STERN: If not, you know, my secretary will
21 probably call over to your office and need to speak to
22 somebody, because we'll probably schedule another
23 prehearing. And if he's going to appear telephonically,
24 that has to be arranged in advance, which we can put in
25 the procedural order.

1 MS. COY: We can get, when we get back to our
2 office, we can call your secretary and let her know.

3 ALJ STERN: All right. Ask to speak to Debra
4 Broyles. And she will only be there until 11:30, then
5 she goes to lunch, and then she'll be back after 12:30.

6 That would probably be set, you know, roughly in
7 another two to three weeks. And like I say, if he's in
8 California or in some situation where he can't appear,
9 we might make arrangements for telephonic. But even in
10 this room we are sometimes limited for telephonically,
11 so I don't know for sure.

12 And then again, we have the situation with you,
13 Ms. Atwood. You're saying, well, your marital situation
14 may change with this individual, so you'll have to
15 discuss this matter with Ms. Coy, et cetera. I don't
16 know whether it will be necessary for you to be at the
17 next prehearing conference, but I want to make sure I
18 have a good address for you. And is that 5746 South
19 Estrella Road, No. 2, in Gold Canyon?

20 MS. ATWOOD: Correct.

21 ALJ STERN: You're still there?

22 MS. ATWOOD: Yes.

23 ALJ STERN: Okay. Is there an up and operating
24 business named Five Star Tree Service and Landscaping?

25 MS. ATWOOD: No. And that hasn't been operating

1 since December of 2007.

2 ALJ STERN: Okay. Well, you can talk to the
3 Division about that. You may -- I don't know, from what
4 she's saying we don't know anything about this, whether
5 you may end up amending your notice or temporary order.

6 In any event, we'll schedule something, based on
7 his request for a hearing, for a prehearing conference.
8 And then we'll also at the same time, more likely than
9 not, schedule a hearing, and as I have discussed with
10 you, around the 28th, 29th, 30th, somewhere in there.

11 In the interim, ma'am, perhaps you'll reach some
12 sort of an agreement, which Ms. Coy can explain to you
13 one way or the other, based on what the situation is,
14 and you, maybe you won't even need to appear at the
15 prehearing and/or the hearing.

16 So, in any event, is there anything else?

17 MS. COY: No, sir.

18 ALJ STERN: Ma'am?

19 MS. ATWOOD: No, sir. Thank you.

20 ALJ STERN: Okay. Thank you.

21 That will conclude this matter at this time.

22 (The proceedings concluded at 10:58 a.m.)

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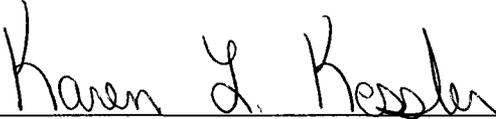
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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, KAREN L. KESSLER, RPR, Certified Reporter
 No. 50821 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, true
 and accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 3rd day of April, 2010.



 KAREN L. KESSLER, RPR
 Certified Reporter
 Certificate No. 50821