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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2010 MAY 21 P 2: 34

Arizona Corporation Commission

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

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

MAY 21 2010

DOCKETED BY [Signature]

In the matter of:
MARK W. BOSWORTH and LISA A. BOSWORTH, husband and wife;
STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN, husband and wife;
MICHAEL J. SARGENT and PEGGY L. SARGENT, husband and wife;
ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;
MARK BOSWORTH & ASSOCIATES, L.L.C., an Arizona limited liability company;
3 GRINGOS MEXICAN INVESTMENTS, L.L.C., an Arizona limited liability company;
Respondents.

DOCKET NO. S-20600A-08-0340

SECURITIES DIVISION'S OBJECTION TO RESPONDENT BOSWORTH'S LIST OF WITNESSES AND EXHIBITS AND MOTION TO COMPEL PRODUCTION OF INFORMATION REGARDING WITNESSES AND COPIES OF EXHIBITS OR, IF PRODUCTION IS NOT MADE, TO PRECLUDE ADMISSION INTO EVIDENCE

(Assigned to the Honorable Marc E. Stern)

The Securities Division ("the Division") of the Arizona Corporation Commission hereby objects to Respondent Bosworth's List of Witnesses and Exhibits ("the LWE") because it does not comply with the procedural order issued by Administrative Law Judge Stern on August 21, 2009 ("Procedural Order") that required Bosworth to "provide copies of [his] Witness List and copies of [his] Exhibits to the Division by January 18, 2010, with courtesy copies provided to [ALJ Stern]." The LWE filed May 3, 2010 is untimely; it falsely accuses the Division of failing to provide its witness list to Bosworth; it contains the names of two of Bosworth's attorneys and a forensic accountant; and, it not only does not include copies of any exhibits, it falsely accuses the Division of refusing to accept Bosworth's disclosure of exhibits. The Division requests that ALJ Stern

1 compel Bosworth to immediately produce information regarding certain of his witnesses and
2 copies of all of his exhibits or, if production is not made, preclude admission of the testimony of
3 those witnesses and the exhibits into evidence.

4 The untimely LWE fails to comply with the Procedural Order in that it does not include
5 copies of any exhibits and it falsely accuses the Division of refusing to accept Bosworth's
6 disclosure of exhibits. In communications between Bosworth and the Division, Bosworth raised
7 the issue of the cost of copying the documents in his possession because he is in bankruptcy. The
8 Division questioned Bosworth about his bankruptcy attorney or the bankruptcy estate bearing the
9 cost of copying, then the Division suggested that it may be able to do some copying. Thereafter,
10 communication regarding Bosworth's exhibits stopped. However, in a more recent communication
11 from Bosworth, he indicated that he has over 800,000 documents to produce as exhibits.

12 Bosworth, not the Division, requested the hearing and, pursuant to the Procedural Order, he
13 was to have provided copies of his exhibits to the Division and ALJ Stern by January 18, 2010. It
14 is not the Division's responsibility to ensure Bosworth's production of his hearing exhibits. It is
15 Bosworth's responsibility and, regardless of whether he has one exhibit consisting of a single page
16 or hundreds of exhibits amounting to 800,000 pages, he has failed to provide a single exhibit. As
17 for the 800,000 page amount, the Division contends that Bosworth should be compelled not just to
18 copy and provide all 800,000 pages, but to review his documents and produce only those exhibits
19 that are relevant and tend to prove or disprove the facts alleged in this matter. Pursuant to the Rules
20 of Practice and Procedure, *R14-3-101, et seq.*, ALJ Stern has the authority to simplify the issues,
21 admit documents that will avoid unnecessary proof, consolidate evidence, limit the number of
22 witnesses, etc. With the hearing set to begin in just a few days on June 7, 2010, the Division
23 requests that, if immediate production is not made, ALJ Stern preclude the admission of any
24 Bosworth exhibits into evidence.

25 In response to Bosworth's allegation that the Division has not disclosed its witness list to
26 Bosworth, the Division would like to point out that it provided its witness list to ALJ Stern and all

1 parties to this proceeding, including Bosworth, at the same time it provided copies of its exhibits. The
2 Division's exhibits were provided in six, three-ring binders and its witness list was placed in the inside
3 pocket of the first binder/the binder containing the first set of exhibits. Neither ALJ Stern nor any of
4 the other parties has notified the Division that its witness list was absent from the binder pocket. Thus,
5 it would seem that Bosworth's allegation is false. Also, since the filing of the LWE containing
6 Bosworth's allegation, the Division has emailed another copy of its witness list to Bosworth.

7 The LWE contains the names of two of Bosworth's attorneys (David Farney and Allan
8 NewDelman) and a forensic accountant (Peter Davis). Mr. Farney appeared on behalf of Bosworth
9 in this matter then withdrew and he has represented Bosworth in other matters. Mr. NewDelman
10 currently represents Bosworth in his bankruptcy case and Mr. Davis is well known to the Division
11 as a forensic accountant. The Division is aware of some involvement by Mr. Davis in Bosworth's
12 bankruptcy case.

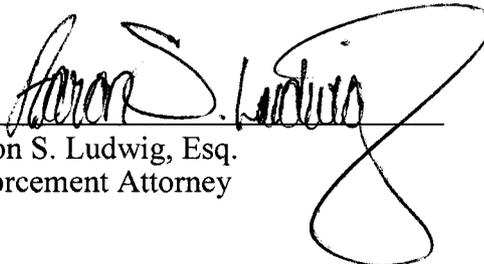
13 The LWE contains no indication whether Bosworth intends these individuals to present
14 expert testimony and, regarding the attorneys, whether Bosworth waives any attorney-client
15 privilege. To properly and fully prepare for the hearing, the Division requests that ALJ Stern
16 compel Bosworth to state whether Bosworth waives any attorney-client privilege and whether he
17 intends these prospective witnesses ("the Witnesses") to present expert testimony. If so, the
18 Division further requests that ALJ Stern compel Bosworth to immediately produce the following
19 information regarding the Witnesses: 1) all documents provided to the Witnesses; 2) the subject
20 matter about which the Witnesses are expected to testify; 3) the opinions expected to be rendered
21 by the Witnesses; 4) a summary of the grounds for each opinion; 5) copies of any reports prepared
22 by the Witnesses; and, 6) copies of all authoritative texts, papers, articles, or other documents
23 referenced and relied upon by the Witnesses in preparation for their testimony, report, or analysis.

24 Based on the foregoing, the Division requests that ALJ Stern compel Bosworth to
25 immediately produce information regarding the Witnesses and copies of all of his exhibits or, if
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1 production is not made, preclude admission of the testimony of the Witnesses and the exhibits into
2 evidence.

3 RESPECTFULLY SUBMITTED this 21st day of May 2010.

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5 **SECURITIES DIVISION of the**
6 **ARIZONA CORPORATION COMMISSION**

7 
8 Aaron S. Ludwig, Esq.
9 Enforcement Attorney

10 **ORIGINAL and 8 COPIES** of the foregoing filed
11 this 21st day of May 2010 with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 W. Washington St.
15 Phoenix, AZ 85007

16 **COPY** of the foregoing mailed/delivered
17 this 21st day of May 2010 to:

18 The Honorable Marc E. Stern
19 Hearing Division
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