

ORIGINAL



0000112023

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 MAY 27 P 4: 55

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

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 REPLY IN SUPPORT OF ITS MOTION TO ALLOW TELEPHONIC TESTIMONY

(Assigned to the Honorable Marc E. Stern)

Arizona Corporation Commission DOCKETED

MAY 27 2010

DOCKETED BY

Handwritten signature/initials

The Securities Division ("the Division") of the Arizona Corporation Commission hereby replies in support of its motion for leave to present the telephonic testimony of out-of-town witness Robert Bornholdt during the hearing of this matter beginning on June 7, 2010. The Division acknowledges that Mr. Bornholdt's physical absence will not allow observation of the witness's demeanor, facial expressions, etc.; however, as noted in the Division's motion, courts have routinely acknowledged that telephonic testimony in administrative proceedings is permissible and consistent with the requirements of procedural due process. One Arizona court even noted that the telephonic medium "preserves paralinguistic features such as pitch, intonation, and pauses that may

1 assist the ALJ in making determinations of credibility.” *T.W.M. Custom Framing v. Industrial*
2 *Commission of Arizona*, 198 Ariz. 41, 48 (2000).

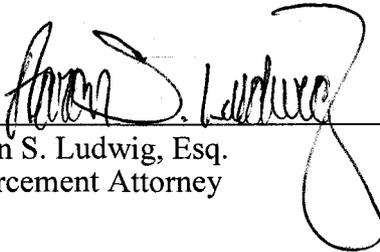
3 Respondent Sargent complains about “the huge number of exhibits in this case” and about the
4 possible confusion involved in providing exhibits to Mr. Bornholdt. The Division contends that Mr.
5 Bornholdt will testify about only a handful of exhibits, if that. Furthermore, any exhibits that Sargent
6 wishes to question Mr. Bornholdt about can easily be provided to him prior to hearing via the
7 mails, email, or by fax. The advent of these forms of transmission make this particular concern
8 unfounded.

9 In his response to the motion, Sargent cites two procedural orders pursuant to which
10 Commission administrative law judges have denied motions for telephonic testimony. However,
11 neither should be considered in this case as precedent holding that telephonic testimony should be
12 disallowed because they involve entirely telephonic hearings. One of the cases involves a single
13 witness hearing and the other involves a request for the entire hearing to be held telephonically. In
14 the present case, the Division is requesting the telephonic testimony of only Mr. Bornholdt. All
15 other witness testimony will be in-person.

16 Permitting Mr. Bornholdt to testify telephonically at the upcoming administrative hearing
17 allows the Division to present relevant witness evidence that is expected to be reliable and
18 probative, is fundamentally fair, and does not compromise Respondents’ due process rights.
19 Therefore, the Division respectfully requests that its motion for leave to present such telephonic
20 testimony be granted.

21 RESPECTFULLY SUBMITTED this 27th day of May 2010.

22
23 **SECURITIES DIVISION of the**
ARIZONA CORPORATION COMMISSION

24
25 
26 _____
Aaron S. Ludwig, Esq.
Enforcement Attorney

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

ORIGINAL and **8 COPIES** of the foregoing filed
this 27th day of May 2010 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing mailed/delivered
this 27th day of May 2010 to:

The Honorable Marc E. Stern
Hearing Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Paul J. Roshka, Jr., Esq.
ROSHKA DeWULF & PATTEN, PLC
One Arizona Center
400 E. Van Buren St., Ste. 800
Phoenix, AZ 85004
Attorneys for Michael J. Sargent and
Peggy L. Sargent

Mark W. Bosworth
Lisa A. Bosworth
18094 N. 100th St.
Scottsdale, AZ 85255

By: Karen Houk