

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS:

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

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AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF:

DOCKET NO. S-20600A-08-0340

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, LLC, an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.

Arizona Corporation Commission

DOCKETED

JUL - 8 2010

DOCKETED BY	
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**FOURTEENTH**  
**PROCEDURAL ORDER**

BY THE COMMISSION:

On July 3, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against 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, LLC ("MBA"); and 3 Gringos Mexican Investments, LLC ("3GMI") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and investment contracts.

Respondents were duly served with copies of the Notice. Requests for hearing were filed by all Respondents except 3GMI.

1 On August 18, 2009, at a status conference, the Division, the Van Campen Respondents, and  
2 the Sargent Respondents were present with counsel. Mr. Bosworth was present on his own behalf  
3 and indicated Mrs. Bosworth would be retaining her own attorney. Counsel for the Division  
4 indicated that the Bornholdt Respondents' counsel would not be present because they are attempting  
5 to resolve the issues that had been raised in the Notice. After a discussion between the parties, it was  
6 determined that a hearing should be scheduled in approximately six months.

7 On August 21, 2009, by Procedural Order, a hearing was scheduled to start on March 15,  
8 2010.

9 On February 19, 2010, the Sargent Respondents filed a Motion to Set Settlement Conference  
10 and for the Appointment of a Settlement Judge.

11 On February 24, 2010, the Division filed a response arguing that it does believe that a  
12 settlement conference will facilitate a settlement with respect to the Sargent Respondents.

13 On February 25, 2010, the Sargent Respondents filed a reply to the Division's response citing  
14 the use of settlement judges in both the Superior and Federal Courts, and further argued the need to  
15 resolve issues efficiently and economically.

16 On March 1, 2010, by Procedural Order, a status conference was scheduled to review this  
17 matter on March 4, 2010.

18 On March 4, 2010, at the status conference, the Division and Mr. Sargent appeared with  
19 counsel. Mr. Bosworth appeared on his own behalf and on behalf of MBA and 3GMI. The parties  
20 indicated that there are ongoing discussions to resolve the issues that had been raised in the Notice,  
21 but that certain matters need to be resolved to conclude their possible settlements in this proceeding.  
22 It was further indicated that a brief continuance would facilitate the complete resolution of the  
23 proceeding by the parties and the submission of proposed Consent Orders for Commission approval.  
24 The Sargent Respondents' counsel pointed out that if he and the Division could not resolve their  
25 remaining issues for his clients in 30 days, that he might renew his Motion for the Appointment of a  
26 Settlement Judge. At the conclusion of the status conference, the parties agreed to the proceeding  
27 being continued to the agreed upon dates in June, if the proceeding was not settled.

28 On March 5, 2010, by Procedural Order, the proceeding was continued to June 7, 2010.

1 On April 28, 2010, the Sargent Respondents filed a Motion to Sever the Commission's  
2 proceeding against them from the overall proceeding against the Bosworth Respondents, MBA and  
3 3GMI because the Sargents argue that a separate proceeding for them would be simpler and less  
4 complex. Further, they argue that severance will promote judicial economy, reduce the risk of  
5 prejudice and reduce the economic burden on the Sargents.

6 On May 3, 2010, Respondent Mark W. Bosworth filed his Exhibit and Witness Lists.  
7 Additionally, he filed copies of subpoenas to the Commission, the Arizona Department of Real Estate  
8 and the Arizona Republic/Republic Media. The subpoenas requested voluminous amounts of  
9 documentary information from all three entities without stating any reason for this action.

10 On May 10, 2010, the Division filed Objections and a Motion to Quash Respondent  
11 Bosworth's subpoenas. In its response, the Division cited numerous legal arguments including that  
12 the requested information sought is overbroad, unduly burdensome, untimely and unnecessary.  
13 Further, the Division argued that Respondent was attempting to delay the proceeding beyond the  
14 pending hearing date.

15 On May 12, 2010, the Division filed its Response to the Sargent Respondents' Motion to  
16 Sever arguing that if it is approved, the matter would be duplicative, wasteful, and that similar  
17 evidence would have to be presented if the proceedings were severed.

18 On May 13, 2010, the Sargent Respondents filed a Reply in Support of their Motion to Sever  
19 essentially restating their arguments made earlier.

20 On May 18, 2010, the Division filed its Objections and Motion to Quash the Sargent  
21 Respondents' First Request for Admissions and Non-Uniform Interrogatories ("First Request") which  
22 had been hand-delivered to the Division on May 3, 2010. Therein, the Division argues that the First  
23 Request is not supported by fact or law. The Division further argues that the Sargent Respondents  
24 "attempt to invoke far-reaching civil discovery rules in this administrative forum is misplaced and  
25 must be denied."

26 On May 21, 2010, the Division filed its Objections to Respondent Bosworth's List of  
27 Witnesses and Exhibits together with a Motion to Compel Production of Information Regarding  
28 Witnesses and Copies of Exhibits or, If Production Is Not Made, To Preclude Admission Into

1 Evidence. The Division, in its filing, argues that it requires the information to prepare for the hearing  
2 or the admission of Respondent Bosworth's witness' testimony and related exhibits should be  
3 precluded from the proceeding.

4 On May 24, 2010, the Sargent Respondents filed a Response to the Division's May 18, 2010,  
5 Motion to Quash citing a number of Commission actions which have found in favor of broad requests  
6 for discovery and not for the denial of discovery in administrative proceedings. Additionally, the  
7 Sargent Respondents cited the Division's own May 21, 2010, filing seeking discovery with respect to  
8 Respondent Bosworth's List of Witnesses and Exhibits.

9 Additionally, on May 24, 2010, the Sargent Respondents filed a Motion for Expedited  
10 Procedural Conference and Conditional Motion for Continuance in the event that their Motion to  
11 Sever is denied.

12 On May 25, 2010, the Division filed a Motion to Allow Telephonic Testimony. The Division  
13 requested approval to allow a former Respondent in this proceeding, Robert Bornholdt, to testify  
14 telephonically since he will be out of town at the time the hearing is presently scheduled.

15 On May 26, 2010, the Sargent Respondents filed their Response to the Division's May 25,  
16 2010, Motion arguing that the Division's Motion to Allow Telephonic Testimony should be denied  
17 because he is a "central witness" whose demeanor, facial expressions and body language should be  
18 observed when he testifies.

19 On May 27, 2010, the Division filed a Reply in Support of its Motion to Allow Telephonic  
20 Testimony arguing further that Mr. Bornholdt's testimony will be probative and relevant and the  
21 Sargent Respondents' due process rights will not be compromised.

22 On May 28, 2010, by Procedural Order, the following Orders were made: the Sargent  
23 Respondents' Motion to Sever was denied; the Division's Motion to Quash the Bosworth subpoenas  
24 was granted; the Sargent Respondents' First Request was quashed; the Division's Objections to  
25 Respondent Bosworth's List of Witnesses and Exhibits together with a Motion to Compel Production  
26 of Information was taken under advisement; the Sargent Respondents' Motion for Expedited  
27 Procedural Conference and Conditional Motion for Continuance was denied; and the Division's  
28 Motion to Allow Telephonic Testimony was granted.

1 On June 16, 2010, the Sargent Respondents filed a Motion to Quash an Administrative  
2 Subpoena issued to Respondent, Michael J. Sargent. Respondents cited three reasons in their Motion  
3 to Quash the subpoena. Respondent Sargent argues that the subpoena should be quashed because the  
4 subpoena is “unreasonable or oppressive” because it was issued extremely late, after the hearing was  
5 scheduled to start, and after the close of discovery; the Division failed to provide the required witness  
6 fee; and the required subpoena application is insufficient and not even in the record.

7 On June 21, 2010, the Division filed its Response to the Sargent Respondents’ Motion to  
8 Quash an Administrative Subpoena. The Division argues that Respondent has been on notice since  
9 as early as November 2009 that his appearance would be required at the hearing in this proceeding,  
10 was personally served on February 23, 2010, and his attorney served on June 9, 2010, and as a result  
11 the subpoena is not “unreasonable or oppressive.” The Division cites Rule 45(b)(2) of the Arizona  
12 Rules of Civil Procedure, which are applicable in court proceedings, stating that witness fees and  
13 mileage allowance are not required to be paid when the subpoena orders the appearance of a party at  
14 a hearing and when it is issued on behalf of a state agency as is the case here. In conclusion, the  
15 Division argues that the request for the issuance of a subpoena is not an application as such and is not  
16 a “Formal Document” which is required to be filed with the Commission.

17 On June 22, 2010, the Sargent Respondents filed their Reply to the Division’s Response to the  
18 Sargents’ Motion to Quash the Administrative Subpoena Issued to Michael J. Sargent. The crux of  
19 the Sargents’ Reply was that Respondent Sargent would not be prepared to testify upon such short  
20 notice as was provided by the subpoena served on June 9, 2010, upon Respondent Michael Sargent’s  
21 counsel. Respondents compared the late service of the Division’s subpoena upon Mr. Sargent with  
22 other subpoenas which were quashed for being untimely in this proceeding. The Respondents further  
23 argued that the Division’s argument that it was not required to pay witness fees pursuant to Rule  
24 45(b)(2) of the Arizona Rules of Civil Procedure “is surprising, given that it has vociferously argued  
25 that the Arizona Rules of Civil Procedure don’t apply in Commission proceedings” and was  
26 obviously disingenuous and should not be allowed. Lastly, the Sargent Respondents renewed their  
27 argument that the Division’s application for the subpoena for Mr. Sargent was insufficient and this  
28 constituted an additional reason to quash the subpoena.

1 On June 24, 2010, by Procedural Order, the Respondents' Motion to Quash Administrative  
2 Subpoena was denied, and the Division should was ordered to comply with A.A.C. R14-3-109(O)  
3 with respect to the applicable fees for witnesses if Mr. Sargent appeared subject to the subpoena.  
4 Additionally, Mr. Sargent was to be allowed a reasonable period of time to prepare to testify.

5 At the conclusion of the proceeding on June 25, 2010, the parties stipulated that the  
6 proceeding be continued to August 26, and 27, 2010.

7 **IT IS THEREFORE ORDERED that the proceeding shall reconvene on August 26 and 27,**  
8 **2010, at 9:30 a.m., at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix,**  
9 **Arizona.**

10 IT IS FURTHER ORDERED that the Division's Objections to Respondent Bosworth's List  
11 of Witnesses and Exhibits together with a Motion to Compel Production of Information shall remain  
12 under advisement.

13 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized  
14 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
15 matter is final and non-appealable.

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

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

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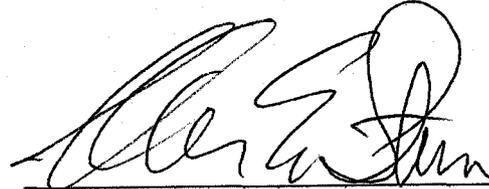
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IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

Dated this 8<sup>th</sup> day of July, 2010.

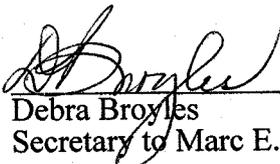
  
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MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing were mailed/delivered this 8<sup>th</sup> day of July, 2010 to:

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By:   
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Debra Broyles  
Secretary to Marc E. Stern