

ORIGINAL



0000115459

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2010 AUG -4 P 2:51
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

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

RICHARD MCCULLUM, JR., a married man,
LEAH ATWOOD, a married woman,

Respondents.

DOCKET NO. S-20715A-09-0564

Arizona Corporation Commission

DOCKETED

AUG 4 2010

DOCKETED BY

FOURTH
PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and Notice of Opportunity for Hearing ("Notice") against Five Star Tree Service and Landscapes, LLC ("FSTL"), Richard McCullum, Jr. and Leah Atwood, husband and wife (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 investment contracts.

The Respondents were duly served with a copy of the Notice.

On February 16, 2010, a request for hearing was filed by Respondents Leah Atwood and FSTL. Respondents also requested that an attorney be appointed to represent them.

On February 17, 2010, by Procedural Order, a pre-hearing conference was scheduled on March 30, 2010, and Respondents advised that since this is an administrative proceeding and not a criminal proceeding, Respondents did not have a right to the appointment of counsel pursuant to the Arizona Rules of Criminal Procedure. Respondents were further advised that they could either retain counsel or they could represent themselves pursuant to the Commission's Rules of Practice and

1 Procedure A.A.C. R14-3-101 *et seq.* and the Rules of the Arizona Supreme Court.

2 On March 30, 2010, at the pre-hearing conference, the Division appeared with counsel and
3 Respondent, Leah Atwood, appeared on her own behalf. The Division presented a request from
4 hearing by Respondent McCullum, which the Division indicated would be filed after the initial pre-
5 hearing conference. The Division requested that a hearing also be scheduled.

6 On March 31, 2010, by Procedural Order, a hearing was scheduled on June 29 and 30, 2010.

7 On June 23, 2010, by Procedural Order, due to a conflict with the Commission's Open
8 Meeting scheduled on June 29 and 30, 2010, the hearing was continued to September 28 and 29,
9 2010.

10 On August 3, 2010, the Division filed an Amended T.O. and Notice to make a minor change
11 to the caption in the proceeding and made several minor changes to the pleading.

12 Accordingly, leave should be granted to the Division to file its Amended T.O. and Notice.
13 Due to the minor nature of the Division's amendment, it is not necessary for Respondents to file
14 additional requests for hearing or Answers which have been previously filed. The hearing should be
15 held as previously ordered.

16 IT IS THEREFORE ORDERED that the Securities Division is hereby granted leave to amend
17 the T.O. and Notice herein.

18 IT IS FURTHER ORDERED that the caption to the proceeding shall be amended to the
19 caption of the Amended T.O. and Notice.

20 IT IS FURTHER ORDERED that Respondents are hereby relieved of the requirement to
21 refile their requests for hearing and Answers to the Amended T.O. and Notice.

22 IT IS FURTHER ORDERED that the **hearing** scheduled on **September 28, 2010**, at 9:30
23 a.m., at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona,
24 shall take place as previously ordered.

25 IT IS FURTHER ORDERED that the parties shall also set aside **September 29, 2010**, for an
26 additional day of hearing, if necessary.

27 IT IS FURTHER ORDERED that **if the case is resolved by proposed Consent Orders**
28 **prior to the hearing, the Division shall file a Motion to vacate the proceeding.**

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
2 Communications) applies to this proceeding as the matter is now set for public hearing.

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

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

12 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
13 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
14 ruling at hearing.

15 DATED this 4TH day of August, 2010.

16
17
18 
19 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
21 this 4th day of August, 2010 to:

22 Leah Atwood
23 5746 South Estrella Road, No. 2
Gold Canyon, AZ 85118

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004

24 Richard McCullum, Jr.
25 5703 Laurel Canyon Blvd., #304
Valley Village, CA 91607

26 Matt Neubert, Director
27 Securities Division
ARIZONA CORPORATION COMMISSION
28 1300 West Washington Street
Phoenix, AZ 85007

By: 
Debra Broyles
Secretary to Marc E. Stern