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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

OCT 17 2000

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CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF:

JOSEPH MICHAEL GUESS, SR.
2911 E. Calavar Road
Phoenix, Arizona 85032

PROGRESSIVE FINANCIAL MANAGEMENT
2911 E. Calavar Road
Phoenix, Arizona 85032

JAMES DOUGLAS SHERRIFFS
5544 East Helena Drive
Scottsdale, Arizona 85254

RICHARD GORDON DAVIS
4330 North 30th Street
Phoenix, Arizona 85016

RGD
4330 North 30th Street
Phoenix, Arizona 85016

RGD ENTERPRISES, INC.
4330 North 30th Street
Phoenix, Arizona 85016

IRA JOE PATTERSON
4330 North 30th Street
Phoenix, Arizona 85016

RANDALL WAYNE SMITH, JR.
1905 Springlake Court
Birmingham, Alabama 35215

BALLY OVERSEAS TRADING INC.
1905 Springlake Court
Birmingham, Alabama 35215,

Respondents.

DOCKET NO. S-03280A-00-0000

SEVENTH
PROCEDURAL ORDER

BY THE COMMISSION:

On April 6, 2000, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order

1 for Relief ("Notice") against Joseph Michael Guess, Sr., Progressive Financial Management, James
2 Douglas Sherriffs, Richard Gordon Davis, RGD, RGD Enterprises, Inc., Ira Joe Patterson, Randall
3 Wayne Smith, Jr., and Bally Overseas Trading, Inc., ("Bally") (collectively the "Respondents") in
4 which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection
5 with the offer and sale of securities in the form of investment contracts.

6 All Respondents were duly served with copies of the Notice.

7 On April 17, 2000, counsel for Respondent Richard G. Davis filed a request for hearing.

8 On April 21, 2000, Respondents, Joseph Michael Guess, Sr. and Ira J. Patterson, filed requests
9 for hearing.

10 On April 24, 2000, Respondent, James D. Sherriffs, filed a request for hearing.

11 On May 11, 2000, a pre-hearing conference was held. Respondent Davis and the Division
12 were present with counsel. Respondents Guess, Patterson and Sheriffs were not present, Respondents
13 Guess and Patterson had also requested continuances. After a discussion of certain procedural
14 matters, it was agreed that an additional pre-hearing conference would be scheduled.

15 On May 25, 2000, the Commission scheduled a pre-hearing conference on June 7, 2000.

16 On June 7, 2000, a pre-hearing conference was held with the Division, and Respondents
17 Guess and Patterson in attendance. A discussion was conducted on scheduling the hearing when
18 witnesses and parties could be available.

19 On July 25, 2000, the hearing commenced with evidence presented by the Division and again
20 on July 26 and July 27. The hearing was recessed at that point and was to be rescheduled at a later
21 date.

22 On August 10, 2000, counsel for the Division and Mr. Davis contacted the presiding
23 Administrative Law Judge stipulating that the proceeding should resume on August 31, 2000 at 9:00
24 a.m. , at the Commission's offices. It was agreed that if any party to the proceeding did not attend the
25 hearing on August 31, that they could participate telephonically, provided that they provided their
26 names and telephone numbers with area codes to the Commission's Hearing Division by August 28,
27 2000, so they could be telephonically connected to the August 31, 2000 hearing.

28 On August 31, 2000, the hearing concluded with closing briefs to be filed in 30 days.

1 On September 14, 2000, the Division filed a request to admit three post-hearing Exhibits,
2 S138a, S138b, and S138c, which are related to Respondents Smith and Bally, Exhibit R1, and other
3 uncontested evidence. The Division has obtained certified copies from the Clerk of the U.S. District
4 Court for the Northern District of Alabama of the following three case documents in United States of
5 America v. Randall Wayne Smith, Docket CR-00-S-0296-S: the court "Criminal Docket" in this case
6 as of September 7, 2000 (Exhibit S138a); the "Plea Agreement and Conditions" executed and filed
7 with the court on August 10, 2000 (Exhibit S138b); and the "Information" filed with the court by the
8 United States Attorney on August 10, 2000 (Exhibit S138c).

9 On September 18, 2000, Respondents Smith and Bally requested hearings in response to the
10 Notice.

11 On September 19, 2000, pursuant to A.A.C. R14-3-109(Q), Exhibits S138a, S138b, and
12 S139c were admitted into evidence by Procedural Order.

13 On September 22, 2000, the Division filed a response in opposition to the request of
14 Respondents Smith's and Bally's requests for hearing. The Division also requested a stay of the
15 deadline for the filing of post-hearing memoranda due to the resulting delays brought about by the
16 preparation of its response to Mr. Smith's and Bally's untimely requests for hearing.

17 On September 25, 2000, the Division filed a Motion to Admit into Evidence Two Post-
18 Hearing Exhibits ("Motion to Admit"), S139a and S139b, which relate to verification of service made
19 upon Respondents Smith and Bally. An Affidavit of Service was executed by a Commission
20 employee and filed on June 5, 2000 (Exhibit S139a) and an Affidavit of Service was executed by a
21 Special Agent of the Alabama Securities Division and filed on September 21, 2000 (Exhibit S139b).

22 On September 26, 2000, by Procedural Order, the requests for hearing filed by Mr. Randall
23 Wayne Smith and Bally were found not timely filed and the requests denied. Further, because of the
24 problems brought about by Mr. Smith's and Bally's requests, the parties were granted an additional
25 two weeks in which to file their closing memoranda, until October 16, 2000.

26 On October 11, 2000, Respondent Davis also filed a Motion to Admit Exhibits, R2 and R3,
27 which relate to two Bank One wire transfer(s) referenced during the hearing by Mr. Davis totaling
28 \$30,000. The first wire transfer in the amount of \$20,000 was originated by Mr. Davis on February

1 27, 1997 (Exhibit R2) and the second wire transfer in the amount of \$10,000 was originated by Mr.
2 Davis on March 10, 1997 (Exhibit R3).

3 On October 12, 2000, the Division filed a Motion for an Extension of Time to file its Post-
4 Hearing Memorandum from October 16, 2000 until November 6, 2000 due to extensive time
5 demands which have been imposed on the Division's counsel in this proceeding that have arisen due
6 to unforeseen out-of-state travel in order to appear as a witness in an unrelated federal criminal
7 proceeding.

8 There are no apparent objections to the Motions to Admit and Motion for an Extension of
9 Time.

10 Accordingly, the Motion to Admit filed by the Division with respect to Exhibits S139a and
11 S139b and the Motion to Admit filed by Respondent Davis with respect to Exhibits R2 and R3
12 should be granted. Additionally, all parties should be granted an extension, if desired, to file their
13 Post-Hearing Memoranda until November 6, 2000.

14 IT IS THEREFORE ORDERED that Exhibits S139a, S139b, R2 and R3 be, and are hereby,
15 admitted into evidence..

16 IT IS FURTHER ORDERED that all parties shall have until November 6, 2000 in which to
17 file their Post-Hearing Memoranda.

18 DATED this 17th day of October, 2000.

19
20
21
22 
23 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

24
25 Copies of the foregoing mailed/delivered
this 17th day of October, 2000 to:

26
27 Dale L. States
6724 North 43rd Avenue
Glendale, Arizona 85301
28 Attorney for Richard G. Davis

Ira J. Patterson
4330 North 30th Street
Phoenix, Arizona 85016

1 Joseph Michael Guess, Sr.
2 2911 E. Calavar Road
3 Phoenix, Arizona 85032

4 James D. Sheriffs
5 5544 E. Helena Drive
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7 Progressive Financial Management
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9 Phoenix, Arizona 85032

10 RGD
11 4330 North 30th Street
12 Phoenix, Arizona 85016

13 RGD Enterprises, Inc.
14 4330 North 30th Street
15 Phoenix, Arizona 85016

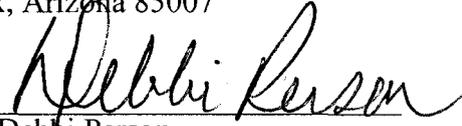
16 Randall Wayne Smith, Jr.
17 1905 Springlake Court
18 Birmingham, Alabama 35215

19 Bally Overseas Trading Inc.
20 1905 Springlake Court
21 Birmingham, Alabama 35215

22 Christopher P. Parkerson
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29 By: 
30 Debbi Person
31 Secretary to Marc E. Stern