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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

2001 APR 24 P 2: 34

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF:

Arizona Corporation Commission  
DOCKET NO. ~~DA000000~~  
**DOCKETED**  
3280  
APR 24 2001

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

DOCKETED BY *sd*

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

JAMES DOUGLAS SHERRIFFS  
5544 East Helena Drive  
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RICHARD GORDON DAVIS  
4330 North 30<sup>th</sup> Street  
Phoenix, Arizona 85016

RGD  
4330 North 30<sup>th</sup> Street  
Phoenix, Arizona 85016

RGD ENTERPRISES, INC.  
4330 North 30<sup>th</sup> Street  
Phoenix, Arizona 85016

IRA JOE PATTERSON  
4330 North 30<sup>th</sup> 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.

**EIGHTH**  
**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 On October 17, 2000, by Procedural Order, Exhibits S139a, S1396b, R2 and R3 were  
9 admitted into evidence. The parties also were given until November 6, 2000 in which to file their  
10 Post-Hearing Memoranda.

11 On January 4, 2001 and January 24, 2001, the Division filed two Motion(s) to Admit Exhibits  
12 S140 and S141, respectively, which in the case of Exhibit S140 is a copy of a letter from the United  
13 States Postal Service which confirms delivery of the Notice to Respondent Smith by the postal  
14 service of the British Virgin Islands on or about June 26, 2000. Exhibit S141 is a copy of a Criminal  
15 Judgment against Mr. Smith issued by the United States District Court for the Northern District of  
16 Alabama based on a Plea Agreement by Respondent Smith that he operated a fraudulent Ponzi  
17 scheme involving the investment securities allegedly offered and sold by the Respondents named in  
18 this proceeding.

19 There are no apparent objections to the Motion(s) to Admit Exhibits S140 and S141.

20 Accordingly, the Motion(s) to Admit filed by the Division with respect to Exhibits S140 and  
21 S141 should be granted.

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1 IT IS THEREFORE ORDERED that Exhibits S140 and S141 be, and are hereby, admitted  
2 into evidence..

3 DATED this 24<sup>th</sup> day of April, 2001.

4  
5  
6  
7   
8 MARC E. STERN  
9 ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered  
11 this 24<sup>th</sup> day of April, 2001 to:

12 Dale L. States  
13 6724 North 43<sup>rd</sup> Avenue  
14 Glendale, Arizona 85301  
15 Attorney for Richard G. Davis

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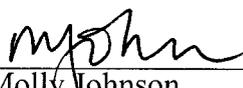
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By:   
Molly Johnson  
Secretary to Marc E. Stern