



0000116256

ORIGINAL

195  
#63390

RECEIVED

AUG 28 A 8:42

AZ CORP COMMISSION  
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

OPEN MEETING ITEM

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 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, )

DOCKET NO. S-03280A-00-0000

**MOTION TO STRIKE  
RESPONDENT DAVIS'  
RESPONSE TO THE SECURITIES  
DIVISION EXCEPTIONS**

Arizona Corporation Commission

**DOCKETED**

AUG 28 2001

DOCKETED BY	<i>mac</i>
-------------	------------

**Respondents.**

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





1 affidavit at the feet of the Commissioners just before Open Meeting and demands relief from  
2 restitution. Indeed, his Response is not even dignified by any motion to admit post-hearing exhibits  
3 into evidence.

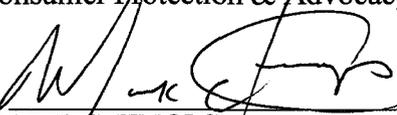
4 Davis' reliance in his Response on unadmitted evidence adversely affects the substantial  
5 interest of the Division in pursuing its claim for restitutionary relief from Davis. The evidence  
6 supporting a Commission decision or order should be substantial, reliable, and probative. A.R.S. §  
7 41-1062 (A)(1). By basing his Response on unadmitted evidence, Davis seeks to deny the Division  
8 the opportunity to test his purported evidence by authentication, foundational *voir dire* and cross-  
9 examination techniques that are long-settled safeguards of evidence reliability. No rule waiver can  
10 be available for the Davis Response under these circumstances. Moreover, any argument founded  
11 on unadmitted evidence is without merit. His Response must be struck from consideration *in toto*.

12 **III.**  
13 **CONCLUSION**

14 For the foregoing reasons, the Division now moves to strike Davis' Response from  
15 consideration in this matter. The Division further requests the Hearing Division to issue a  
16 procedural order that provides a ruling for the record on this motion.

17  
18 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of August, 2001.

19  
20 JANET NAPOLITANO  
21 Attorney General  
22 Consumer Protection & Advocacy Section

23 BY:   
24 MARK C. KNOPS  
25 Special Assistant Attorney General  
26 MOIRA McCARTHY  
Assistant Attorney General  
Attorneys for the Securities Division  
Arizona Corporation Commission

1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 28 day of August, 2001, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

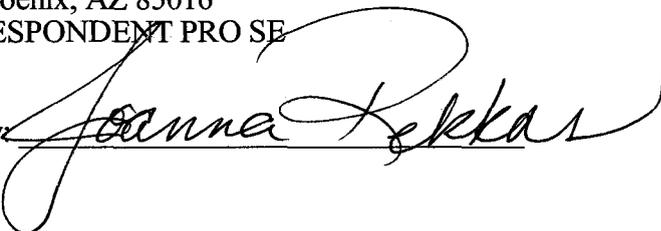
7 COPY of the foregoing mailed this  
8 28 day of August, 2001 to:

9 Joseph Michael Guess, Sr.  
10 2911 E. Calavar Rd.  
11 Phoenix, AZ 85032  
12 RESPONDENT PRO SE

13 Peter Strojnik, Esq.  
14 3030 N. Central Ave., Suite 1401  
15 Phoenix, AZ 85012-2712  
16 ATTORNEY FOR JAMES DOUGLAS SHERRIFFS

17 Dale L. States, Esq.  
18 6724 N. 43<sup>rd</sup> Ave.  
19 Glendale, AZ 85301  
20 ATTORNEY FOR RICHARD G. DAVIS

21 Ira Joe Patterson  
22 4330 No. 30<sup>th</sup> St.  
23 Phoenix, AZ 85016  
24 RESPONDENT PRO SE

25 By:   
26