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BEFORE THE ARIZONA CORPORATION COMMISSION

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3 WILLIAM A. MUNDELL
Chairman
4 JIM IRVIN
Commissioner
5 MARC SPITZER
Commissioner
6 JEFF HATCH-MILLER
Commissioner
7 MIKE GLEASON
Commissioner
8

Arizona Corporation Commission

DOCKETED

JAN 07 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

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9 In the matter of:

10 CARL DELANO WOODARD
11 AKA: CARL WOODWARD
3065 West Ironwood Circle
Chandler, Arizona 85226,
12
13

Respondent.

) DOCKET NO. S-03364A-02-0000

) MOTION FOR TELEPHONIC TESTIMONY

14 The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for
15 leave to present the telephonic testimony of prospective Division witnesses Patsy Booker, James Burns,
16 Kenneth Burns, Maxine Evans and Corine Pierce during the hearing of the above-referenced matter,
17 scheduled to begin on January 22, 2003. This Motion is supported by the attached Memorandum of Points
18 and Authorities.
19

20 RESPECTFULLY submitted this 7th day of January, 2003.

21 ARIZONA CORPORATION COMMISSION

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23 By 

24 Mark Dinell

25 Attorney for the Securities Division of the Arizona
26 Corporation Commission

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The Division anticipates calling as witnesses in this case, Patsy Booker, James Burns, Kenneth Burns, Maxine Evans and Corine Pierce.¹ All are investors with Respondent's investment partnerships, Maliko I and Maliko II. They can provide probative testimony as to several of the Division's allegations in this case. Specifically, they may testify as to the circumstances surrounding Respondent's offer and sale of various investments as well as their subsequent experiences with these investments. Because all witnesses live in the Bay Area of Northern California, due to personal scheduling and other time constraints, the Division requests that they be allowed to testify telephonically. Additionally, travel to Arizona to attend the hearing as a witness would be unduly burdensome and costly, especially given the current economic difficulties of the State.

II. ARGUMENT

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The purpose of administrative proceedings is to provide for the fair, speedy and cost effective resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested administrative cases. The evidence submitted in an administrative hearing need not rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable and probative." In addition, the Commission promulgated rules of practice and procedure to ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.,* A.A.C. R14-3-101(B); R14-3-109(K). Allowing the witnesses to testify by telephone retains all indicia of reliability and preserves Respondents' right to cross-examination.

¹ While the Securities Division is listing these investors as witnesses at this time, it is possible that all five will not be needed as witnesses at the hearing and will not be called to testify.

1 Courts in other states have acknowledged that telephonic testimony in administrative and
2 civil proceedings is permissible and consistent with the requirements of procedural due process. *See*
3 *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved Oregon
4 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*
5 *Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert testimony in
6 commitment hearing). Both of these courts concluded that fundamental fairness weighed in favor of
7 permitting telephonic testimony. Additionally, the Commission has previously allowed telephonic
8 testimony in administrative hearings. *See e.g., In re Easy Money Auto Leasing, Inc., et al.*, Docket
9 No. S-03415A-01-0000; *In re The Chamber Group, Inc., et al.*, Docket No. S-03438A-00-0000.

10
11 Public policy considerations also militate towards allowing the investor witnesses to testify
12 telephonically. Through this form of testimony, the Division can better allocate its limited resources
13 to better serve and protect the Arizona investing public.

14 **III. CONCLUSION**

15 Permitting the investor witnesses to testify telephonically at the hearing allows the Division to
16 present relevant witness evidence that is expected to be reliable and probative, is fundamentally fair,
17 and does not compromise Respondents' due process rights. Therefore, the Division respectfully
18 requests that its motion for leave to present the telephonic testimony of Patsy Booker, James Burns,
19 Kenneth Burns, Maxine Evans and Corine Pierce be granted.

20 Dated this 7th day of January, 2003.

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22 ARIZONA CORPORATION COMMISSION

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24 By 
25 Mark Dinell
26 Attorney for the Securities Division of the Arizona
Corporation Commission

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ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
filed this 7th day of January, 2003, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

COPY of the foregoing mailed this
7th day of January, 2003, to:

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Phoenix, Arizona 85004