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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

JUN 21 2002

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF:

DOCKET NO. S-03413A-01-0000

CLAY EUGENE LAMBERT
3711 East Minton Place
Mesa, Arizona 85215
CRD No. 1959853

Respondent.

SIXTH
PROCEDURAL ORDER

BY THE COMMISSION:

On September 26, 2001, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding the Temporary Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice") against Clay Eugene Lambert ("Respondent") in which the Division alleged that Respondent has engaged in acts, practices, and transactions that constitute violations of the Arizona Securities Act ("Act").

On May 16, 2002, the Commission issued a Procedural Order that continued the hearing in this matter from April 10, 2002 until June 3, 2002. In the Procedural Order, Mr. Salcido's Motion to Withdraw was denied; however, the Administrative Law Judge ruled that Mr. Moon and Mr. Salcido could represent Mr. Lambert as co-counsel, with Mr. Moon as lead counsel. In addition, the Procedural Order again directed the Respondent to obtain an Affidavit or other Minute Entry from the Bankruptcy Court regarding the Court's opinion about the Commission's ability to proceed in this case, order restitution, order a fine and/or suspend or terminate Mr. Lambert's securities license by June 3, 2002.

On May 24, 2002, the Respondent filed a Motion to Stay the Administrative Proceeding and

1 requested an expedited oral argument. The Motion stated that Mr. Lambert had just learned he was
2 under criminal investigation by the Arizona Department of Insurance and the Arizona Attorney
3 General, and requested that this matter be stayed until those offices make a decision on whether or
4 not to prosecute Mr. Lambert.

5 On May 29, 2002, the Division filed a response to Respondent's Motion. The Division stated
6 that the Motion should be denied since the Respondent had not shown sufficient factors and
7 circumstances to warrant a stay.

8 On May 29, 2002, Respondent and the Division contacted the Hearing Division and agreed
9 that an oral argument regarding the Motion would occur on May 30, 2002.

10 On May 30, 2002, the hearing on the Motion was held. Both parties appeared with counsel.
11 The Respondent argued that a stay should be granted in this case based on a number of factors,
12 including: (1) there is a possibility that the Division might exploit civil discovery for the
13 advancement of a criminal case; (2) it is appropriate to defer this case pending the resolution of the
14 criminal investigation because they arise out of the same matters; (3) the resolution of a criminal case
15 would make the administrative proceeding moot; (4) testifying in an administrative proceeding while
16 under criminal investigation would undermine Mr. Lambert's Fifth Amendment privilege; and (5) Mr.
17 Lambert was willing to sign a Temporary Cease and Desist Order, and therefore the delay would not
18 seriously injure the public interest.

19 The Division responded by citing to case precedent for denying a motion to stay civil
20 proceedings in pre-indictment proceedings such as this one.¹ The Division further argued that it was
21 not using these proceedings to exploit discovery for the advancement of the criminal case as the
22 Division was not aware of any criminal investigation of Mr. Lambert until late March, 2002 and had
23 filed this case well in advance of that, in September, 2001. The Division argued that the Respondent
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28 ¹ See, U.S. v. Kordel 397 U.S. 1, 90 S.Ct. 763, 25 L.Ed.2d 1 (1969)

1 did not show any malicious prosecution, bad faith, or malicious governmental tactics by the
2 Securities Division or the Attorney General's office. Further, the Division stated the Respondent had
3 not shown any special circumstances that would warrant a stay.

4 Although there is a possibility that a party might exploit civil discovery for the advancement
5 of a criminal case, that concern does not exist in this case. This case was filed back in September,
6 2001, and all discovery occurred prior to the Division's knowledge about a criminal investigation.
7 Mr. Lambert is not under indictment, but it is alleged that he is under criminal investigation. The
8 possibility of criminal prosecution in this case is legitimate, as an investigator from a governmental
9 agency contacted Mr. Lambert's attorney regarding a criminal investigation.
10

11 If delay of a non-criminal proceeding would not seriously injure the public interest, a court
12 may be justified in deferring it.² Mr. Lambert offered to sign a Temporary Cease and Desist Order,
13 and his attorney argued that Mr. Lambert had already settled a civil court case, arising out of the
14 same set of circumstances, with the alleged victims in this case for an amount greater than the
15 Division is currently seeking in the form of restitution. The Division did not show substantial
16 prejudice or serious injury to the public if the case were delayed. The Motion to Stay is denied,
17 however, a short continuance will allow the Respondent the necessary time to contact the appropriate
18 governmental agencies and perhaps allow for the resolution of this administrative proceeding with the
19 criminal investigation. Accordingly, the hearing should be continued.
20

21 At the May 30, 2002 Procedural Conference, the Respondent and counsel were reminded that
22 the filing from Bankruptcy Court was still due on June 3, 2002. Further, Respondent was informed
23 that if he intended to retain a criminal attorney, he should retain the attorney and have him appointed
24 by the Bankruptcy Court.
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26 On June 3, 2002, Respondent filed a Notice of Filing Petition to Enforce Automatic Stay or
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² S.E.C. v. Dresser Industries, Inc. 628 F.2d 1368, 1376 (D.C. Cir.), *cert denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289

1 Alternatively, Application for an Expedited Order to Show Cause in the Bankruptcy Court
2 ("Notice"). Although the filing does not comply with the earlier request for an Affidavit or Minute
3 Entry from the Bankruptcy Court, the Bankruptcy Court has set a hearing for June 19, 2002 to
4 address the identified issues raised.

5 Accordingly, the hearing in this matter should be rescheduled.

6 IT IS THEREFORE ORDERED that the Respondent's Motion to Stay Administrative
7 Proceeding is denied.
8

9 IT IS FURTHER ORDERED that the hearing set for June 3, 2002 shall be vacated and reset
10 for **September 23, 2002 at 10:00 a.m.**

11 IT IS FURTHER ORDERED that the parties shall exchange witness lists and exhibits no later
12 than September 2, 2002 and provide a copy of same to the presiding Administrative Law Judge.

13 IT IS FURTHER ORDERED that this continuance is conditioned upon Mr. Lambert
14 immediately entering into a signed Temporary Cease and Desist Order with the Division. The signed
15 Temporary Cease and Desist Order shall be filed with the Commission no later than July 1, 2002.
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17 IT IS FURTHER ORDERED that Mr. Lambert shall file or cause counsel to file a copy of the
18 Bankruptcy Court's Minute Entry regarding the June 19, 2002 hearing by July 15, 2002.
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22 DATED this 21 day of June, 2002.
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25 
26 PHILIP J. DION III
27 ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
this 21 day of June, 2002.

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By: 
Molly Johnson
Secretary to Philip J. Dion III