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Arizona Corporation Commission  
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MAR 25 2003

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1 Harry N. Stone (# 5281)  
2 3030 N. 3<sup>rd</sup> Street  
3 Phoenix, AZ 85012  
4 (602) 241-8575

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5 Attorney For Respondent Kathleen Whorley Sommer

AZ CORP COMMISSION  
DOCUMENT CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION**

6 \_\_\_\_\_ )  
7 In the matter of: )  
8 KATHLEEN WHORLEY SOMMER )  
9 [CRD No. 2750036], )  
10 d/b/a Sommer & Associates )  
11 249 W. Waltann Lane )  
12 Phoenix, AZ 85023 )  
13 Respondent. )

DOCKET NO: S-03489A-03-0000

**APPLICATION TO DISMISS  
ALLEGATIONS RE: RESPONDENT'S  
VIOLATIONS OF A.R.S. §44-1841 AND  
§44-1991**

(Oral Argument Requested)

14 Pursuant to A.A.C. R14-3-101(A) and Rule 12(b)(6) of the Arizona Rules of Civil  
15 Procedure, KATHLEEN WHORLEY SOMMER, by and through her undersigned  
16 attorney hereby respectfully applies to the Commission for an Order dismissing all  
17 allegations in the NOTICE OF OPPORTUNITY for HEARING dealing with Respondent's  
18 alleged violations of A.R.S. §44-1841 ("Offer or Sales Unregistered Securities") and  
19 A.R.S. 44-1991 ("Fraud in Connection with the Offer or Sale of Securities").  
20

21 This motion is brought on the grounds that these allegations are barred by the  
22 applicable statute of limitations and therefore fail to state a valid claim upon which relief  
23 can be granted.

24 This motion is supported by the following Memorandum of Points and Authorities.  
25

19D

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Commission's Notice of Opportunity for Hearing, filed on February 25, 2003,  
3 alleges that during the period of August 1999 to August 2001, Respondent "sold  
4 unregistered, investment contract securities, in the form of pay telephones and related  
5 service contracts". (See §9, § 24 and §31).

6 The Commission alleges, in part, that such sales constituted the unlawful sale of  
7 unregistered securities in violation of A.R.S. § 44-1841 (See Article IV) and further  
8 constituted a fraud in connection with the sale of such securities in violation of A.R.S. §  
9 44-1991 (See Article V).

10 Although Respondent denies such allegations, Respondent should not be  
11 required to defend such allegations because they are barred by the applicable statute  
12 of limitations.  
13

14 A.R.S. § 44-2004 provides in pertinent part as follows:

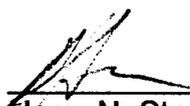
15 "A. No civil action shall be maintained under this article to enforce any  
16 liability based on a violation of §44-1841 or §44-1842 unless brought  
within one year after the violation occurs.

17 B. Except as provided in Subsection C of this section, no civil action  
18 shall be brought under this article to enforce any liability based on violation  
19 of article 13 of this chapter unless brought within two years after discovery  
20 of the fraudulent practice on which the liability is based or after the  
discovery should have been made by the exercise of reasonable  
diligence." (emphasis added).

21 According to the Notice of Opportunity for Hearing the alleged acts in violation of  
22 A.R.S. §44-1841 were committed between August 1999 and August of 2001. The  
23 applicable period of alleged violations falls totally outside the one-year statute of  
24 limitations and is therefore barred.  
25

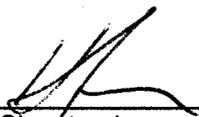
1 With respect to the alleged violations of A.R.S. §44-1991, the applicable statute  
2 of limitations is two years. The allegation fails to specify a time period during which  
3 these allegations occurred. If it is between August 1999 and August 2001, then any  
4 alleged claim of fraud with respect to transactions falling outside the two-year statute of  
5 limitations are to be barred. Aaron v. Fromkin, 196 Ariz. 224 (App. 2000).

6  
7 DATED: March 24, 2003

8  
9   
10 Harry N. Stone (# 5281)  
11 3030 N. 3<sup>rd</sup> Street  
12 Phoenix, AZ 85012  
13 (602) 241-8575  
14 Attorney For Respondent  
15 Kathleen Whorley Sommer

16 I hereby certify that I have this day served the foregoing documents on all parties of record in this  
17 proceeding by delivering an original plus 13 copies thereof to Docket Control at the Arizona Corporation  
18 Commission and by delivery of a copy to Amy Leeson, Esq., Arizona Corporation Commission, 1300  
19 West Washington, 3<sup>rd</sup> Floor, Phoenix, AZ 85007.

20 Dated: March 23, 2003.

21  
22   
23 (Signature)  
24  
25