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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room No. 1 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, commencing at 11:35 a.m., on the 10th day of  
6 April, 2003.

7  
8 BEFORE: MARC E. STERN, Administrative Law Judge

9 APPEARANCES:

10 For the Securities Division:

11 Ms. Amy J. Leeson  
12 Senior Counsel  
13 1300 West Washington  
14 Phoenix, Arizona 85007

15 For the Respondents:

16 Mr. Harry N. Stone  
17 Attorney at Law  
18 3030 North Third Street  
19 Phoenix, Arizona 85012

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CECELIA BROOKMAN, RPR  
Certified Court Reporter  
Certificate No. 50154

1 ALJ STERN: This prehearing is now open in the  
2 matter of Kathleen Whorley Sommer in docket number  
3 S-03489A-03-0000. My name is Marc Stern, I'll preside  
4 over this proceeding today. Here on behalf of the  
5 Division?

6 MS. LEESON: Amy Leeson and Lisa Busse,  
7 investigator.

8 ALJ STERN: And on behalf of the respondent.

9 MR. STONE: Harry Stone.

10 ALJ STERN: We're here a little bit later than  
11 we normally would be. There was a problem apparently with  
12 delivery of the procedural order to Mr. Stone's office,  
13 but that's not a problem as far as holding the prehearing  
14 conference today.

15 I have your motion to dismiss and I have your  
16 answer also, Mr. Stone. Usually in our cases at the  
17 Commission here, and this has been the practice ever since  
18 I've been here, it's been a few years, and the Division  
19 filed a response, I believe, also --

20 MS. LEESON: Yes, we did

21 ALJ STERN: -- to this motion. It will be  
22 dealt with by the Commission if we actually litigate this  
23 matter through a hearing. We won't dismiss it outright.  
24 That's just the procedure we follow, if the Commission so  
25 chooses. They're the only ones with the authority to

1 dismiss. I can't.

2 So in any event, at this point I don't know  
3 whether you've had a chance to talk to the Division about  
4 any discovery or anything, if you want to do some.

5 MR. STONE: We do. We haven't discussed it.

6 ALJ STERN: What I was going to suggest, if  
7 you want a few minutes to talk to them right now, since  
8 maybe you haven't had a chance to talk to them, you can,  
9 or in the alternative we can see if we actually at this  
10 point think we're going to need a hearing, how long it's  
11 going to go, how many witnesses, that type of thing, and  
12 you can do your discussions between the two of you on your  
13 own time and the court reporter can go home. So it's up  
14 to you.

15 MS. LEESON: Do you want to talk discovery or  
16 settlement?

17 ALJ STERN: I assume you wouldn't reach an  
18 agreed settlement instantly today, but you might sort of  
19 get a feel for what they have, what their position is,  
20 they might get a feeling for what your position is,  
21 et cetera, and see where you can go, if you want.  
22 Otherwise, if you want to talk, I'd like X number of days  
23 to do some discovery to see what they have, if you haven't  
24 already seen it. Maybe we can then talk in terms of  
25 possibly another prehearing, if we need to, in a certain

1 amount of time, and then if it isn't going to get  
2 resolved, we can set a hearing.

3 MR. STONE: On the issue of discovery, there  
4 are some documents that I have that may negate the  
5 allegation of fraud against my client. Amy hasn't seen  
6 those yet, and I intend to get that over to her. That may  
7 have some impact on the way we approach a resolution of  
8 this matter.

9 MS. LEESON: We offered our file in a letter  
10 that I wrote to Mr. Stone on March 26th but we haven't  
11 talked about it yet, so I did offer my file and we're glad  
12 to copy that and send it over to him.

13 ALJ STERN: Can I suggest maybe rather than  
14 tie up the court reporter any longer than she's already  
15 been here today that we -- it looks to me like maybe  
16 perhaps you ought to talk a little bit and maybe have a  
17 prehearing in another 30 days and maybe you'll be in a  
18 better position to know what you have, if you were to do  
19 any discovery.

20 MS. LEESON: I do need to speak to that,  
21 actually. I have a physical disability occurring, and  
22 this is kind of my last day before I take a leave for  
23 several weeks, so in another 30 days I won't be here,  
24 probably, in all likelihood.

25 ALJ STERN: You're back?

1 MS. LEESON: I'd rather not discuss that on  
2 the record, if you don't mind.

3 ALJ STERN: Whatever.

4 MS. LEESON: I expect to be back not later  
5 than July the 7th, but it could be earlier.

6 ALJ STERN: But you'll be around for another  
7 couple weeks?

8 MS. LEESON: No, today is my last day.

9 ALJ STERN: Mr. Stone, will you maybe have a  
10 few minutes to discuss anything with her in the interim  
11 today?

12 MR. STONE: I'll be glad sit down and talk,  
13 see where we are. I think a rescheduling of the  
14 prehearing may be advisable, consistent with the schedule.

15 ALJ STERN: Let's go off the record.

16 (An off-the-record discussion ensued.)

17 (A recess ensued.)

18 ALJ STERN: Back on the record. We'll  
19 continue this till July 15th at 9:30 again, and I will put  
20 out a procedural order. But as I say, it may be subject  
21 to change. I may have something where I've got to  
22 schedule something.

23 (An off-the-record discussion ensued.)

24 ALJ STERN: Back on the record again.

25 We have we had a brief off-the-record

1 discussion regarding when this matter can be explored  
2 again and it's been decided that we will continue this  
3 matter until July 15th, 2003 at 9:30 a.m. for an  
4 additional prehearing. And with that, unless someone  
5 raises an objection earlier and wants to reschedule, we  
6 can reschedule it also. It shouldn't be a problem.

7 Okay, with that, we're concluded. Thank you.  
8 Thank you for coming down, Mr. Stone.

9 (The prehearing conference concluded at  
10 11:45 a.m.)

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1 STATE OF ARIZONA )  
 2 COUNTY OF MARICOPA ) ss.  
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7 I, CECELIA BROOKMAN, Certified Court Reporter  
 8 No. 50154 for the State of Arizona, do hereby certify that  
 9 the foregoing printed pages constitute a full, true and  
 10 accurate transcript of the proceedings had in the  
 11 foregoing matter, all done to the best of my skill and  
 12 ability.

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 14 WITNESS my hand this 23rd day  
 15 of April, 2003.  
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19 *Cecelia Brookman*  
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 21 CECELIA BROOKMAN, RPR  
 22 Certified Court Reporter  
 23 Certificate No. 50154  
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