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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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AZ CORP. COMMISSION
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MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY *pd*

In the matter of:)
)
WESLEY KARBAN WYATT, et ux., et al.)
c/o Harry N. Stone, Esq.)
3030 North Third Street)
Phoenix, Arizona 85012,)
)
Respondents.)

DOCKET NO. S-03529A-03-0000
**SECURITIES DIVISION'S MOTION
FOR POST-HEARING ADVERSE
INFERENCE BASED ON
RESPONDENT'S INVOCATION OF
PRIVILEGE AGAINST SELF-
INCRIMINATION**

The Securities Division ("Division") of the Arizona Corporation Commission (the "Commission") requests that the Hearing Officer make a finding that an adverse inference is appropriate against Respondent Wesley Karban Wyatt ("Wyatt"), based on Wyatt's invocation of his Fifth Amendment right against self-incrimination in connection with the Division's inquiry into Wyatt's activities involving the sale of investment contracts in this case. This motion is supported by the record in this matter, by the hearing exhibits referred to herein, and by the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 15th day of January, 2004.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

Kathleen Coughenour DeLaRosa

By Kathleen Coughenour DeLaRosa
Kathleen Coughenour DeLaRosa (#012670)
1300 West Washington, Third Floor
Phoenix, Arizona 85007
Attorneys for Arizona Corporation Commission

1 it request any inference from his assertion of his constitutional right. *See id.* In an administrative
2 proceeding, however, “the Fifth Amendment does not forbid adverse inferences against parties to
3 civil actions when they refuse to testify in response to probative evidence offered against them”
4 *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 1557 (1975); *see also Phelps Dodge v.*
5 *Superior Ct., Cty. of Cochise*, 7 Ariz. App. 277, 286, 438 P.2d 424, 433 (1968), *abrogation on other*
6 *grounds recognized by State v. Ott*, 167 Ariz. 420, 808 P.2d 305 (App. 1990) (“Allowance of an
7 adverse inference in a civil action from the invocation of this privilege is sound in theory, and has
8 been approved in this state . . .”).

9 In this case, the Division will offer evidence that Wyatt violated Arizona law in at least
10 three respects: The Division will present evidence that Wyatt committed violations of the
11 registration provisions of the Securities Act by selling securities when he was not registered as a
12 dealer or salesman, and that he sold securities that were not registered for sale in Arizona. *See*
13 A.R.S. §§ 44-1841, 44-1842. The Division also will present evidence that Wyatt violated the anti-
14 fraud provisions of the Securities Act by making material misrepresentations or omissions in the
15 course of his sales of securities. *See* A.R.S. § 44-1991. The Division will present substantial
16 evidence at the hearing establishing violations of A.R.S. §§ 44-1842, 44-1842, and 44-1991.

17 Following the hearing, it will be proper for this tribunal to make a negative inference based
18 on Wyatt’s failure to testify in response to the Division’s evidence. *See Baxter*, 425 U.S. at 318.
19 The Division therefore requests that the Hearing Officer include in his proposed Order a Finding
20 of Fact that, in response to the Division inquiries and subpoena, Wyatt invoked his privilege
21 against self-incrimination. The Division further requests that the Hearing Officer include in his
22 proposed Order a Conclusions of Law that, as a result, the Commission should infer that Wyatt
23 violated the Securities Act.

24 ...

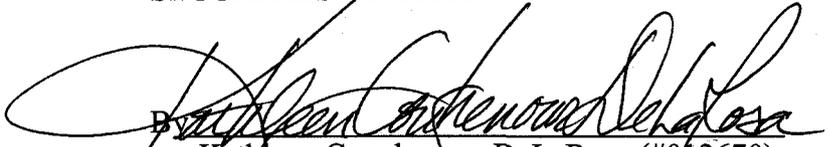
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RESPECTFULLY SUBMITTED this 15th day of January, 2004.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION



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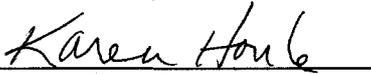
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foregoing filed this 15th day
of January, 2004, with:

Docket Control
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1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing
mailed/delivered this 15th
day of January, 2004, to:

Hon. Philip Dion III
Hearing Division
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