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AZ CORP COMMISSION
DOCUMENT CONTROL

March 18, 2003

VIA FEDERAL EXPRESS

Docket Control
Arizona Corporation Commission
Securities Division
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

MAR 19 2003

DOCKETED BY	CAR
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Re: In the Matter of James Verbic (CRD# 2125770)

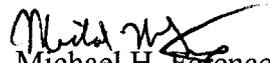
Dear Sir:

As you know, this firm represents Mr. James Verbic ("Verbic") in connection with the above-referenced matter. Enclosed for filing please find an original and ten (13) copies of Mr. Verbic's Motion to Adjourn.

By copy of this letter, Mr. Verbic is contemporaneously transmitting a copy of this Motion to Adjourn to Administrative Law Judge Philip J. Dion III and Special Assistant Attorney General, Amy Leeson, Esq.

Thank you for your attention in this regard.

Very truly yours,


Michael H. Ference

Encl.

cc: Administrative Law Judge, Philip J. Dion III
Amy J. Leeson, Esq., Special Assistant Attorney General
Mr. James T. Verbic

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

-----X
WILLIAM A. MUNDELL :
Chairman
JIM IRVIN :
Commissioner
MARC SPITZER
Commissioner

No. S-03435A-01-0000

Arizona Corporation Commission
DOCKETED

In the matter of:

MAR 19 2003

JAMES T. M. VERBIC
(CRD #2125770)
7880 N. 71ST Street
Paradise Valley, Arizona 85253

DOCKETED BY : *CM*

Respondent. :
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RESPONDENT JAMES T. M. VERBIC'S RENEWED MOTION TO ADJOURN

Respondent James T. M. Verbic ("Verbic"), by and through his counsel, Sichenzia Ross Friedman Ference LLP, submits this Renewed Motion to Adjourn the Hearing currently scheduled to begin on Wednesday, March 19, 2003. As will be demonstrated below, the bad faith tactics on the part of the Division, coupled with the absolute trampling of Respondent's Due Process rights necessitates that the Hearing in this matter be adjourned.

As a preliminary matter, please be advised that this document is being offered in connection with oral argument the undersigned counsel intends to present prior to the commencement of the proceedings tomorrow morning at 9:00 a.m.

Please be advised that the adjournment sought by Respondent is merely for a period of one week so that Respondent can make arrangements for himself, his attorney and his witnesses to attend the hearing, which hearing the Respondent reasonably relied upon to his detriment was no longer necessary given the representations given by the Division's Senior Counsel. Please be

further advised that as an act of good faith, Respondent is willing to pay a reasonable administrative fee in connection with the granting of this motion so that the taxpayers of the State of Arizona are not unduly burdened as a result of the Division's bad faith tactics.

Put simply, the parties reached an agreement to resolve the matter a week and one-half prior to the first scheduled hearing date. Specifically, the parties agreed upon the language of a Consent Order that Respondent would enter into thereby alleviating the necessity for a hearing. At that point, given the parties had agreed on a resolution of all of the issues, preparations for the hearing were rendered moot and there was no need for Respondent to make arrangements for himself, his counsel and his witnesses to be available in person in Phoenix on March 19, 2003.

Late Monday afternoon, March 17, 2003, a week and one-half after the parties had reached an agreement, and less than 48 hours prior to the first scheduled hearing session, the Division's Senior Counsel contacted Respondent's counsel on his cellular phone while he was at an unrelated adversarial proceeding, and advised him that the Division was backing out of the settlement. It is important to note that counsel for the Division and for Respondent spoke several times between the date that the agreement was reached and the now infamous call late Monday afternoon, March 17, 2003, and not once did the Division's counsel even intimate that there was a problem with the settlement reached by the parties. But for the Division's backtracking on a settlement that was previously reached, Respondent would have had no difficulty making the necessary arrangements to attend the hearing in person with his counsel and witnesses and would in fact have done so.

Respondent's counsel indicated to the Division's Senior Counsel that he would make a motion for a brief adjournment of the hearing so that Respondent would have the ability to make arrangements for himself, his counsel and his witnesses to be present at the hearing. At that

point, the parties attempted to reach the Hearing Officer telephonically, but were unsuccessful. Two hours later, the Hearing Officer and the Division's Senior Counsel attempted to reach Respondent's counsel. Given Respondent's counsel was participating in an unrelated adversarial proceeding in Court in New York, he was unreachable. In Respondent's counsel's absence, the Hearing Officer agreed to hear oral argument on Respondent's motion at 3:30 p.m. e.s.t. Tuesday, March 18, 2003 and further indicated that Respondent memorialize his motion in writing. To that end, Respondent's counsel arranged for the motion to be drafted and transmitted in his absence.

This morning, the undersigned received the Division's opposition to Respondent's motion to adjourn that was filed early Monday evening. Please be advised that having had the opportunity to review the Division's opposition to Respondent's Motion to Adjourn, Respondent affirmatively states that the information and position advanced by the Division inaccurate and does not reflect the events as they transpired. Additionally, this morning, despite being told that Respondent would have an opportunity to be heard, Respondent's counsel received a call from the Hearing Officer's scheduler wherein he was advised that the oral argument was cancelled and that the hearing would go forward on Wednesday, March 19, 2003.

The combination and timing of these facts and events rendered it absolutely impossible for Respondent, his counsel, and his witnesses to attend the hearing scheduled for Wednesday, March 19, 2003.

By way of background, since February 2003, the parties have been engaged in renewed settlement negotiations. To that end, in February 2003, the Division, not Respondent, through its "Senior Counsel", forwarded a proposed written Consent Order for Respondent's consideration. It is indisputable that the Division's Senior Counsel is an agent of the Division

and has both the requisite apparent and actual authority to act on behalf of the Division. To that end, Respondent and his counsel had and have the absolute right to rely upon representations made to them by the Division's representative and agent and more importantly, that despite its protestations to the contrary, the Division is bound by representations of its agent and representative and can not distance themselves from them under the guise of that their self proclaimed internal procedures undermine the law of agency.

Over the course of the past month, the parties through their respective counsel, including Respondent's local counsel, Armand Salese, Esq., negotiated and revised the language of the Consent Order. It is important to note that the Division drafted each and every permutation of the Consent Order. Ultimately, on or about March 6, 2003, thirteen days prior to the first scheduled day of the hearing, the final version of the proposed document was forwarded to Respondent's counsel. The following day, the undersigned made a request orally and via e-mail to the Division's counsel with a final suggestion modification (subsequently, Respondent's counsel has been advised by the Division's counsel that she has been unable to receive e-mail sent from Respondent's counsel for technical reasons unknown to either party). Either that day or the following business day, via telephone, the Division's counsel advised the undersigned that the proposed amendment was unacceptable or that the Division was only agreeable to the Consent Order as drafted. On behalf of the Respondent, the undersigned accepted the Consent Order as drafted by the Division.

At that point, Respondent's ceased preparations for the hearing, and in order to avoid incurring unnecessary expenses, did not make arrangements for Respondent, his counsel and his witnesses to travel to Phoenix for the hearing.

Respondent has acted in complete good faith in this matter and no credible argument can be made that this motion is an attempt by Respondent to unnecessarily delay this matter.

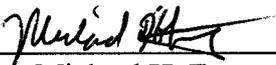
Respondent was ready, willing and able to proceed on Wednesday, March 19, 2003. Had the parties not reached an agreement one and one-half weeks prior to the hearing, there would be no need for this motion.

In light of the foregoing, Mr. Verbic respectfully requests that the Court grant this motion in its entirety.

Dated: New York, New York
March 18, 2003

Yours, etc.,

SICHENZIA ROSS FRIEDMAN FERENCE LLP

By: 
Michael H. Ference, Esq.
1065 Avenue of the Americas, 21st Floor
New York, New York 10018
(212) 930-9700

Attorneys for Respondent James T. M. Verbic

Original and 13 copies have
Been Fedexed to:
Docket Control
Arizona Corporation Commission
Securities Division
1200 West Washington
Phoenix, Arizona 85007

A copy of the foregoing
was mailed and sent by
fax on March 18, 2003 to:

Amy J. Leeson, Esq.
Senior Counsel
Arizona Corporation Commission
(602) 594-7417