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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF:)
)
JAMES T.M. VERBIC) DOCKET NO.:
(CRD #2125770)) S-03435A-01-0000
7880 N. 71st Street)
Paradise Valley, AZ 85253)
)
Respondent.)
_____)

At: Phoenix, Arizona

Date: March 19, 2003

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, in Hearing Room 1
4 of said Commission, 1200 West Washington Street,
5 Phoenix, Arizona, commencing at 9:19 a.m. on the 19th
6 day of March, 2003.

7

8

BEFORE: PHILIP J. DION, III, Administrative Law Judge

9

APPEARANCES:

10

11 For the Arizona Corporation Commission:

12

Ms. Amy J. Leeson
Securites Division
13 1300 West Washington Street
14 Phoenix, Arizona 85007

14

15 For the Respondent:

16

SICHENZIA, ROSS, FRIEDMAN & FERENGE, L.L.P.
By Mr. Michael H. Ference
17 1065 Avenue of Americas, 21st Floor
18 New York, New York 10018
(Appearing telephonically)

19

SALESE & McCARTHY, P.C.
By Mr. Armand Salese
20 The Steinfield Mansion
21 300 North Main, Suite 203
Tucson, Arizona 85701
(Appearing telephonically)

22

23

COLETTE E. ROSS
24 Certified Court Reporter
Certificate No. 50658

24

25

1 ALJ DION: This is the matter of J.T. Verbic.
2 First of all, I would like to say good morning to
3 everybody, welcome to the Arizona Corporation
4 Commission.

5 Again, this is the Verbic matter. Docket No.
6 is S-03435A-01-0000. My name is Phil Dion. And I
7 will be presiding over this hearing.

8 Let's first start by taking appearances. And
9 I will start with the Securities Division.

10 MS. LEESON: Amy Leeson, L-E-E-S-O-N, senior
11 counsel representing the Securities Division. And
12 with me is Lisa Busse who is a special investigator
13 for the Securities Division.

14 ALJ DION: Good morning.

15 MS. LEESON: Good morning.

16 ALJ DION: I have on the phone for Mr. Verbic
17 Mr. Ference and Mr. Salese. If you gentlemen would
18 just state your name for the record.

19 MR. FERENCE: Michael Ference, F, like Frank,
20 E-R-E-N-C-E.

21 MR. SALESE: Armand Salese, S-A-L-E-S-E.

22 ALJ DION: Good morning, gentlemen.

23 MR. FERENCE: Good morning.

24 ALJ DION: Just for the record, we have had a
25 brief conversation off the record. It was regarding a

1 bit of confusion that occurred.

2 Mr. Ference had filed a motion to continue
3 the hearing that was scheduled for today. He made
4 that filing on, actually it was faxed to me on the
5 17th of March, subsequently to be filed, requesting a
6 continuance in this matter, just really a short
7 continuance but a continuance nonetheless.

8 The Division then filed a response on the
9 18th opposing that. And today I received supplemental
10 information from Mr. Ference via fax, which I
11 understand will be docketed.

12 I had fully intended on hearing the motion to
13 continue yesterday, which would be Tuesday the 18th.
14 I had set up a time in fact for the parties to either
15 telephone or appear and we would -- and the motion
16 would be argued. However, we could not get a court
17 reporter. And I did not find that out until yesterday
18 around mid morning, I believe.

19 At that point I issued a procedural order
20 based upon the fact of some of the things I read in
21 the motion. And since Mr. Ference is in New York, I
22 had changed the hearing to a procedural conference so
23 that we could argue this motion. Because since the
24 hearing was already set and we had a court reporter,
25 it was the first time available that I could hear the

1 motion and also, well, not also, but and establish a
2 record for the motion. I was unwilling to hear the
3 motion outside the presence of a court reporter.

4 That procedural order, which is labeled as
5 the eighth procedural order, was drafted with some
6 haste. And it was in the intent of, it was my intent
7 that the procedural orders would be faxed to
8 Mr. Ference and to Ms. Leeson so that they would get
9 it in due haste. And exactly the opposite happened.
10 Neither the faxes were sent out and received until
11 today. And Ms. Leeson has already brought over a
12 number of documents and things and has already had a
13 witness appear for this particular hearing.

14 So with that, I apologize to the parties and
15 especially the witness.

16 So there was some discussion about that, as I
17 stated, off the record. And that is really all we
18 covered off the record as I recall.

19 Is that your recollection, Ms. Leeson?

20 MS. LEESON: Yes, I believe so.

21 ALJ DION: Anything to add?

22 MS. LEESON: No. I think that's an accurate
23 summary.

24 ALJ DION: Okay. Mr. Ference?

25 MR. FERENCE: I agree.

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1 ALJ DION: Okay. In any event, so at this
2 point I would like to just kind of hear,
3 Mr. Ference -- well, first of all, as I understand it,
4 Mr. Ference, there was the talk of a consent order, is
5 that correct?

6 MR. FERENCE: There was a consent order that
7 was drafted. The language was agreed upon. You can
8 rely upon my paper to the extent you want to reference
9 an agreement reached to the terms and with respect to
10 sanctions, et cetera.

11 And then on Monday, two days ago, in my
12 afternoon, I don't know if it was early afternoon or
13 late afternoon, we received that the ACC was pulling
14 the consent to it. And obviously it would be
15 impossible for us to be there today so we are not.

16 The bottom line is we will be there next
17 Thursday if you want. We will show up. We are more
18 than happy. We have gone along in good faith. We
19 have flown across the country already. We have had
20 the clients work on it. We have been very
21 cooperative, we have been completely cooperative
22 throughout the whole thing.

23 We have every intention, as Your Honor knows,
24 defending in this matter, participate in a settlement
25 conference, Your Honor, in good faith with an attempt

1 to get this resolved.

2 And frankly, you know, we have no intention
3 to delay this matter unnecessarily. But the fact of
4 the matter is the deal gets pulled less than two days
5 from the time of the hearing and it is impossible to
6 be there. So we can be there as early as next
7 Thursday. We are more than happy to show up.

8 If you want further argument, I can go into
9 my rant but frankly I think it is pretty clear.

10 ALJ DION: My understanding, I just want an
11 understanding, Mr. Ference, that a consent order was
12 drafted. Was it signed by your client?

13 MR. FERENCE: It was not signed by my client,
14 no, but it was drafted. The Division drafted -- we
15 went through several iterations of it, going back to,
16 I don't know the exact date of the first version.

17 This time around, this go-round, as you know,
18 in the fall, an earlier attempt at drafting a consent
19 order which we were not able to come to on it, both
20 myself and local counsel, Mr. Salese, participated in
21 the negotiation and revision and discussions with
22 respect to this call -- with respect to this version
23 of the consent order. And the parties, including
24 myself and Mr. Salese, all agreed on the terms. And
25 we were good to go on it, and it was set to go. And

1 in fact my client was in New York on the day that the
2 final version, the version, its final incarnation was
3 drafted. My client was ready, willing and able to
4 sign it. But we were not able to sign it because we
5 needed the -- to get, I guess, an issue with respect
6 to payment terms, a financial affidavit completed.

7 ALJ DION: Okay.

8 MR. FERENCE: Which we got while I was on
9 vacation last week, Thursday and Friday, which the
10 Division knew because she had my cell phone. She had
11 called me there, while I was in Nevada.

12 ALJ DION: Again, all I am trying to do,
13 Mr. Ference, is try to figure out: There was a
14 consent order that was drafted, it went through
15 several iterations, but you received a final iteration
16 from the Securities Division?

17 MR. FERENCE: Yes.

18 ALJ DION: And that was the one -- and you
19 had to go through some restitution and/or payment
20 plans or something like that, and that's what, that
21 was what was being worked out, is that correct?

22 MR. FERENCE: There was, all the components
23 of it were, the terms were finite. There was an issue
24 whether or not the restitution portion could be paid
25 in one lump sum or over time. And to do it over time

1 there is a 30-page financial document which needs to
2 be completed, by the request of the Division, not by
3 us of course.

4 ALJ DION: Okay.

5 MR. FERENCE: Which we got in my e-mail on
6 Friday of last week. And like I said, I was 30
7 minutes from you when that happened, not 2000 miles.

8 ALJ DION: All right. Ms. Leeson, is that
9 what happened? I mean was there a draft going through
10 that you had negotiated? I am just trying to find out
11 where we are.

12 MS. LEESON: Right.

13 ALJ DION: I really -- honestly, if it gets
14 done this way, fine; if it doesn't, fine. But was
15 there a iteration finally sent to Mr. Ference?
16 Because I do know the restitution, I do know the
17 Division has certain policies about that. But is that
18 where we were?

19 MS. LEESON: No.

20 ALJ DION: Okay. Then give me your series of
21 events kind of keeping it condensed. I am just trying
22 to find out where in the negotiation process we were
23 that things got halted on Monday.

24 MS. LEESON: All right. The initial event
25 was that I called Mr. Ference on February 3rd or 4th

1 because I knew that I had to wait until after
2 January to reraise the topic of settlement for various
3 reasons. So I called him at the beginning of
4 February.

5 It took him approximately three to four weeks
6 to respond. At that time, we had an oral conversation
7 about what the sanctions should be. And I wrote up a
8 draft consent. And I sent it to him with an e-mail,
9 which I have a copy of here, and I have redacted to
10 take out specific terms that we were talking about
11 because that sort of thing I believe is still
12 confidential, Tuesday, February 25th, 2003, with a
13 cover e-mail. I said the attached is not an offer
14 from the Division but merely a discussion draft.
15 There are three people I would have to get to sign off
16 from in order to make it an offer or an agreement.

17 Basically I took my old draft from August
18 20th and then I described how I had changed it: Be
19 advised that X days was as low as the Division
20 management was willing to go last summer as far as a
21 suspension term. That part may not be approvable
22 because I had put in Y days, which is what he asked
23 for. But I believe the language deletions are...

24 That's what I said. It was not an offer from
25 Division. I made it clear he was talking only to me

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1 March 17th. It looks like Mr. Dion did not schedule a
2 room for Friday the 21st. Let me know if you expect
3 to need a third day in the event a consent is not
4 reached and whether you wish to call the judge
5 together. I received no response to that particular
6 message.

7 March 6th at 10:40 a.m. addressed to both
8 Mr. Ference and Mr. Salese, with an attachment:

9 Dear Michael and Armand, here is a new draft.
10 The changes are all in paragraphs, blank. Except I
11 remembered I needed to change a list of commissioners
12 and so on. Again, this is not an offer by the
13 Division until approval from Division management. Let
14 me know this afternoon if this language meets your
15 requirements -- in other words, their requirements for
16 the offer that they wanted to make to the Division.
17 If agreement is reached with Division management, then
18 the consent is to be signed and notarized and
19 sent back to me. The penalty, or a substantial
20 portion of it, if a payment plan is agreed upon, must
21 be delivered in certified funds, bank check or money
22 order, payable to the State of Arizona not later than
23 March 31st. If I don't have the check in hand, I
24 won't be able to put a proposed order on the open
25 meeting agenda for April 17th. The case might then

1 receive a new hearing date. And then there is another
2 paragraph about how we treat the funds and so on.

3 ALJ DION: When was that sent, Ms. Leeson?

4 MS. LEESON: That was sent March the 6th.

5 ALJ DION: Okay.

6 MS. LEESON: They did not provide final
7 signoff to the draft and their agreement that they
8 could live with that draft until the 12th of March.
9 And the 12th of March is also when I then sent out the
10 financial statement form and tried to give the offer
11 that they had made to Division management.

12 On that date, which was Wednesday, March the
13 12th, I then learned that the Division director and
14 the director of registration and compliance, who are
15 two of the three people that I need signoff from, were
16 in New York on other business.

17 I gave, in any event, the offer of the
18 respondent to the assistant director of the Division
19 who was present in the office. But I received no
20 response to that. So I believe, you know --

21 Uh-oh, they are gone.

22 ALJ DION: I wonder how long they have been
23 gone.

24 MS. LEESON: Anyway, there was no signoff
25 before the 12th which was one week before.

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1 ALJ DION: All right. Let's hold on until we
2 find out when we lost Mr. Ference.

3 (A recess ensued.)

4 ALJ DION: She said that her supervisor was
5 in New York and I believe that --

6 MS. LEESON: Which was Wednesday the 12th.

7 ALJ DION: Right. And you gave it to your
8 assistant supervisor.

9 MS. LEESON: I gave it to the assistant
10 director, but evidently he wasn't, you know -- nothing
11 happened. But I told Michael Ference that same day,
12 Wednesday the 12th, that we were not going to know
13 until Monday because the people were gone who needed
14 to --

15 ALJ DION: Right.

16 MS. LEESON: And unless something unusual
17 happened and they were able to talk about it over the
18 telephone. But they did not do that.

19 They came back on Monday. That's when we
20 found out. So I let them know immediately when we
21 found out that the offer that respondent had made was
22 not acceptable to the Division.

23 ALJ DION: That's consistent, Mr. Ference --
24 just so you know, I sent an e-mail to Ms. Leeson
25 saying what is the status of the case. And I received

1 a reply I won't know until Monday, which would have
2 been the 17th.

3 MR. FERENC: I am not going to have comment
4 about that portion of it. But I disagree with some of
5 the chronology that she has discussed. And if you
6 would like, I would be happy to respond.

7 ALJ DION: I think I have got it. But in any
8 event, I just want to let you know I sent her just an
9 e-mail, and I did not copy you. I should have done
10 that, but I didn't. But, again, I was just trying to
11 find out for a scheduling perspective for us, because
12 we have other hearings, you know, was this going to
13 happen or not. And I hadn't heard anything from
14 anybody in awhile on this case. So I just want to let
15 you know that did happen.

16 But the only thing I did ask was is this case
17 going to settle. And Ms. Leeson did say she wouldn't
18 know until Monday.

19 So in any event, whether or not, whether or
20 not all those things were told to you, the fact that a
21 decision wasn't made until Monday is your
22 understanding, Ms. Leeson's understanding and, from
23 the information I was given, my understanding. So it
24 is consistent in that regard.

25 Do you understand what I am saying?

1 MR. FERENCE: I understand what you are
2 saying.

3 ALJ DION: Okay. Well, Ms. Leeson, is the
4 holdup in the language, I don't want to get too far
5 into settlement discussions, but is the holdup factual
6 disputes or is it a conclusion of law or a remedy
7 dispute? I mean --

8 MS. LEESON: There is a remedy dispute. And
9 there is also the findings, there are some findings
10 that the respondent wanted that I said I have never
11 seen any evidence for those, and they need to give me
12 affidavits at least to support that language.

13 So we had written this draft, you know. The
14 ultimate draft of last week incorporates certain
15 findings they had asked for. But I have not seen the
16 affidavit that supports those. So there are some
17 things in the findings.

18 ALJ DION: Well, I guess my question was: Is
19 the objection from the director level on a findings
20 level, a finding of fact level, or is it on the remedy
21 level?

22 MS. LEESON: Some of both.

23 ALJ DION: Okay. Well, if those affidavits
24 were obtained, would there still be that objection, I
25 guess is my question.

1 MS. LEESON: Yes, there are other findings
2 that the Division director would not want to see in an
3 order that we would propose.

4 MR. FERENC: Judge, if I could interject one
5 second. I think this is a conversation that maybe
6 counsel and you should have off the record since it is
7 a settlement and you are making a record right now. I
8 think maybe we can have a frank, more, you know,
9 direct conversation about it as opposed to dancing
10 around on the record without -- you know what I am
11 saying?

12 ALJ DION: I do, Michael. But where I was
13 going, I want to get your guys' opinion if this was
14 something that needed to go to hearing or if it was a
15 situation where you had agreed on the facts, the facts
16 could then be submitted to me, and then I could make a
17 ruling on the conclusions of law and a remedy, or if
18 it is something truly that requires a hearing and we
19 need to proceed that way, that's all.

20 MR. FERENC: All the attorneys, myself,
21 Mr. Salese, Lisa, agreed on the language. And so it
22 came back that apparently Ms. Leeson's supervisors,
23 they didn't like the language. But all the
24 representatives on the matter were comfortable with
25 it. So you had an issue where the remedies as

1 determined by the parties were acceptable.

2 MS. LEESON: I was comfortable with it in the
3 sense that I was comfortable that I had your best
4 offer in my hand, and I was willing to send it up the
5 chain. It is not accurate to say I was comfortable if
6 the implication is that I went beyond my authority and
7 made a deal on behalf of the Division to accept that
8 draft. I did not do that.

9 MR. FERENC: I don't want to play semantics.
10 I will just take the position that Mr. Salese and I
11 are very comfortable. The reason he is on the phone
12 obviously -- I don't believe, Judge, you dealt with
13 him on this matter, but he has been integral on this
14 negotiation process. And we will both confirm that.
15 There was no ambiguity in our minds that the
16 representatives had a meeting of the minds on this
17 matter.

18 MS. LEESON: The bottom line is --

19 MR. FERENC: I don't want to bicker about
20 it. That's why I was telling Ms. Leeson on the phone
21 today that's why we are here in New York and not in
22 Phoenix.

23 MS. LEESON: The bottom line, from our
24 perspective, it is not going to settle.

25 ALJ DION: Hold on, Ms. Leeson. That's fine.

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1 The case is not going to settle, that's fine.

2 MS. LEESON: No.

3 ALJ DION: If it is a situation -- I am just
4 trying to, I am just trying to determine what is best
5 procedurally in this case. And if it is a situation
6 where there are facts that are legitimately disputed,
7 then we have a hearing. We do that all the time.

8 If it is a situation where it is not, and it
9 is a situation where the remedies are being disputed,
10 then if that is the case, and the attorneys get
11 together and submit stipulated facts, then I can
12 determine from those series of facts, I can make the
13 conclusions of law and the remedy. I am just trying
14 to find out.

15 There is a settlement that was -- we were
16 close to settlement. I understand Ms. Leeson had to
17 pitch that up the pipeline so to speak. And it came
18 back that the language or something in the consent
19 order was unacceptable to them. That's fine.

20 The question in my mind is do we need to have
21 a, do we need to have a three-day hearing if all the
22 facts are stipulated to. If not, we will have a
23 three-day hearing. That is my question to the
24 attorneys that I want you to think about.

25 As to the motion, you know, obviously

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1 ALJ DION: Okay.

2 MS. LEESON: -- of next week.

3 ALJ DION: Yes. And like I said, I am going
4 to try and figure out the time frame for doing this.
5 But if there is not a factual dispute that is
6 acceptable to both the Division and the respondent,
7 then I don't know why we are going to go through a
8 hearing for three days to talk about that stuff if it
9 is just simply a remedy problem. If it is not a
10 remedy problem, if it is also specific findings of
11 fact that are in dispute, then we need to have a
12 hearing about those. And that's fine.

13 Looking at the Commission's schedule, though,
14 to be quite frank, there is a special open meeting set
15 for Thursday that is rather significant. So I am --

16 MS. LEESON: Would you have to attend?

17 ALJ DION: No. But what I mean by that is we
18 can't split the main hearing room. It is an APS
19 financing. So it is going to involve everything and
20 everybody to some extent.

21 MS. LEESON: Well, here is our Division
22 conference room availability if you would be willing
23 to come across the street. We have quite a bit of
24 room in our conference room right now.

25 ALJ DION: You have got everything except for

1 I think we can tell you sort of the two sides where we
2 are coming from. It is really just a remedy issue.
3 And I think you can provide some guidance. Because it
4 seems to me, if there is a bridge -- a gap to be
5 bridged, it seems we can make use of today's time
6 since we are here anyway.

7 That would be my suggestion. Let's pick some
8 dates. By all means I can come in Wednesday and be
9 ready to go first thing Thursday. I have New York
10 Supreme on Monday and Tuesday so I can't do that. So
11 other than that, I am good Thursday, Friday next week,
12 the entire week after, the entire week after. As the
13 dates keep getting closer to hearing, a lot of cases
14 settle. So my calendar is clearer in the short term
15 than the long term.

16 ALJ DION: Amy, is there any way we can check
17 over -- it is really just this Thursday that I am --

18 MS. LEESON: Thursday, the 27th of March?

19 ALJ DION: I am not confident that I could
20 get a room for that day.

21 MS. LEESON: Can you call somebody over there
22 and find out?

23 We are going to find out.

24 ALJ DION: All right. I appreciate that.

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

1 ALJ DION: You said Monday and Tuesday were
2 bad for you?

3 MR. FERENCE: The problem for me is Tuesday
4 night. I have New York Supreme for trial Monday
5 morning. So I am not confident I can get out of there
6 in time to get on a plane to get there for Wednesday.
7 I am sure I can take the first flight out in the
8 morning, which I don't know if that will allow me to
9 get there. Maybe we can start at noon or something.

10 ALJ DION: Or Thursday, Friday and Monday.

11 MS. LEESON: Yes, take those two days at
12 least. I wouldn't expect actually to need the third
13 day.

14 ALJ DION: Or Thursday, Friday, Monday.

15 MR. FERENCE: I can certainly do Thursday
16 Friday. Whoever wants to put me up at their house is
17 more than welcome.

18 ALJ DION: I think I have a cut rate, \$200 or
19 \$300.

20 MS. LEESON: Plus child care.

21 ALJ DION: Sure, fresh squeezed orange juice.

22 MR. FERENCE: Well, it is warm there.

23 MS. LEESON: I didn't bring a calendar either
24 so -- because I thought we were doing the hearing this
25 morning -- so I wasn't prepared to look at days. I

1 believe I am free. I know I have EUOs early next
2 week.

3 ALJ DION: I am going to wait for a call from
4 the Division. Why don't we take a brief recess and go
5 off the record for a moment here.

6 (A recess ensued.)

7 ALJ DION: Let's go back on the record.

8 We are back on the record. We have had some
9 discussions about setting this for hearing and where
10 to set this for hearing and when to set this for a
11 hearing. We have also had some discussions about the
12 possibility that the parties would submit a series of
13 stipulated facts and perhaps conclusions of law to me
14 at which point I would determine either the
15 conclusions of law, if they have not been stipulated
16 to, and the remedy. I would not do so until I had
17 heard argument from each side, however. And that is
18 the idea that is being tossed about this morning.

19 However, in an effort not to fall into a
20 situation like we found ourselves this morning, I am
21 setting a hearing for 7:00 Monday, April 7th -- not at
22 7:00 but at 10:30. That will begin the hearing.

23 However, if the parties want to get together
24 and work out a series of stipulated facts, I would
25 expect that by April 2nd, which is Wednesday, by 5:00

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1 p.m. If I don't receive something like that or a
2 notice from either Division or Mr. Ference that that
3 agreement has been reached, then I won't assume the
4 hearing will take place on Monday the 7th. So I think
5 the April 2nd, which is Wednesday, which is a good
6 couple weeks, gives each side the ability to deal with
7 their current calendar, such as EUOs and cases that
8 Mr. Ference have in New York, but enough time to
9 review that.

10 If there is a situation where there is a
11 series of stipulated facts that can be agreed to and
12 submitted to by Wednesday, then at that point I will
13 issue a procedural order as to when briefs would be
14 due and when we can have some closing arguments.
15 Otherwise, if that agreement is not met by Wednesday,
16 April 2nd, the hearing will take place on Monday the
17 7th at 10:30. If you guys come up with something at
18 the witching hour on Friday, I of course will listen
19 to you. But I will not consider a motion to continue
20 from either side based upon the fact that we were
21 close or we thought we had something. Either you have
22 something on Wednesday or you don't. And if you
23 don't, you better be prepared on Monday even if you
24 are still negotiating through the weekend.

25 Is that fairly clear?

1 MS. LEESON: Let me ask one thing. Aren't we
2 going to have a hearing on April 7th, 10:30, in any
3 event at least to do an argument, closing argument?

4 ALJ DION: I would certainly consider that if
5 the sides were ready. I mean if it takes you that
6 long to get all the facts together and somebody just
7 needs a little more time to make a closing argument,
8 you know, that is an hour telephone call and I can
9 schedule that at any point. But that certainly would
10 be a better route, because I would have a court
11 reporter scheduled and we would be able to handle it
12 at that point.

13 I forgot --

14 MR. FERENC: We can do the closing arguments
15 telephonically then?

16 ALJ DION: I don't have a problem with it.

17 MR. FERENC: Then the date doesn't matter,
18 that's fine. How many days are we scheduled? 7th,
19 8th?

20 ALJ DION: 7th, 8th and 9.

21 MR. FERENC: 7th, 8th and 9th, okay.

22 ALJ DION: I forgot to ask the sides. My
23 summary which I gave before I started talking about
24 other things, is that basically what we talked about,
25 Ms. Leeson, the scheduling of the hearing and the

1 proposal of perhaps a series of stipulated facts?

2 MS. LEESON: Those are the subjects we talked
3 about.

4 ALJ DION: Okay. Do you have anything to add
5 to the summary that I made?

6 MS. LEESON: No, I don't.

7 ALJ DION: Okay. Mr. Ference?

8 MR. FERENCE: That is accurate.

9 ALJ DION: Okay. Nothing to add?

10 MR. FERENCE: Nothing to add.

11 ALJ DION: Okay. So I am clear, that there
12 will be a hearing on the 7th at 10:30 if there is not
13 a -- if the facts are not stipulated to and perhaps
14 conclusions of law, but at least the facts, by the 2nd
15 of April? Everybody, that's clear? Mr. Ference?
16 Mr. Ference, is that clear?

17 MR. FERENCE: That's perfectly clear.

18 ALJ DION: Ms. Leeson?

19 MS. LEESON: Yes.

20 ALJ DION: If the series of facts are
21 stipulated to on the 2nd or before and the parties are
22 able and willing to make their closing arguments on
23 the case on the 7th, then we will go ahead and proceed
24 with the hearing on that date because we will already
25 have a room scheduled and a court reporter. Is that

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1 also clear?

2 MS. LEESON: Yes.

3 ALJ DION: Okay. Mr. Ference?

4 MR. FERENCE: That's also clear.

5 ALJ DION: Okay. All right. Then that will
6 conclude the hearing.

7 Anything to add, Ms. Leeson?

8 MS. LEESON: May I just say one thing while
9 still on the record? Because I would like to let the
10 respondent know.

11 I now have the original promissory note from
12 January '99, which I received this morning from
13 Mr. Paster. And I was unaware until yesterday that it
14 was still in existence. But he found it in his safe
15 deposit box when he went there recently, which he does
16 very infrequently. But I want to let you know I have
17 it. Obviously I was going to have you inspect it
18 today. And we can talk later about what to do but I
19 just wanted to make sure --

20 MR. SALESE: Can you fax us a copy of it?

21 MS. LEESON: Yes. I will be glad to do that.

22 ALJ DION: Okay. Is that it, Ms. Leeson?

23 MS. LEESON: Yes.

24 ALJ DION: Okay. Mr. Ference?

25 MR. FERENCE: I have nothing further to add.

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, COLETTE E. ROSS, Certified Court Reporter
 No. 50658 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full,
 true and accurate transcript of the proceedings had in
 the foregoing matter, all done to the best of my skill
 and ability.

WITNESS my hand this 31st day
 of March, 2003.

Colette Ross
 COLETTE E. ROSS
 Certified Court Reporter
 Certificate No. 50658