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BEFORE THE ARIZONA CORPORATION COMMISSION

2001 NOV -1 P 1:32

AZ CORP COMMISSION  
DOCUMENT CONTROL

1 WILLIAM A. MUNDELL  
2 Chairman  
3 JIM IRVIN  
4 Commissioner  
5 MARC SPITZER  
6 Commissioner

6 In the matter of: )

7 EASY MONEY AUTO LEASING, INC. )  
8 10243 N. Scottsdale Rd., Suite 5 )  
9 Scottsdale, Arizona 85253 )

9 SUPERIOR FINANCIAL SERVICES, INC. )  
10 2102 E. Sharon Dr. )  
11 Phoenix, Arizona 85022 )

11 JAMES ANTHONY CICERELLI )  
12 13027 N. Surrey Circle )  
13 Phoenix, Arizona 85029 )

13 DAVID PAUL FRENCH )  
14 2102 E. Sharon Dr. )  
15 Phoenix, Arizona 85022 )

16 Respondents.

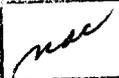
DOCKET NO. S-03415A-01-0000

**MOTION TO ALLOW  
TELEPHONIC TESTIMONY OF  
LYNN ANDREWS**

Arizona Corporation Commission

**DOCKETED**

NOV 01 2001

DOCKETED BY 

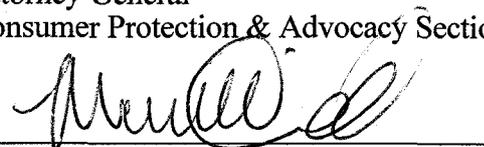
17  
18 The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for  
19 leave to present the telephonic testimony of prospective Division witness Lynn Andrews during the  
20 hearing of the above-referenced matter, scheduled to begin on November 13, 2001. This Motion is  
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supported the attached Memorandum of Points and Authorities.

RESPECTFULLY submitted this 1st day of November, 2001.

JANET NAPOLITANO  
Attorney General  
Consumer Protection & Advocacy Section

BY: 

MARK DINELL  
Special Assistant Attorney General  
MOIRA A. MCCARTHY  
Assistant Attorney General  
Attorneys for the Securities Division of  
The Arizona Corporation Commission

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## MEMORANDUM OF POINTS AND AUTHORITIES

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### I.

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#### FACTS

5 The Division anticipates calling Lynn Andrews as a witness in this hearing. Ms. Andrews, an  
6 investor with Easy Money, can provide probative testimony as to several of the Division's allegations  
7 in this case. Specifically, Ms. Andrews may testify as to the circumstances surrounding Respondents'  
8 offer and sale of various notes as well as her subsequent experiences with these investments.  
9 Although Ms. Andrews lives in Fountain Hills, Arizona, she will be traveling out-of-state from  
10 November 5-15, 2001. Ms. Andrews was available to testify in person during the previously  
11 scheduled hearing on this matter, but that date was continued until November 13 at the request of  
12 Respondents.<sup>1</sup>

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### II.

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#### ARGUMENT

16 The purpose of administrative proceedings is to provide for the fair, speedy and cost effective  
17 resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided  
18 for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically,  
19 A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested administrative cases.  
20 The evidence submitted in an administrative hearing need not rise to the level of formality required in  
21 a judicial proceeding, as long as it is "substantial, reliable and probative." In addition, the  
22 Commission promulgated rules of practice and procedure to ensure just and speedy determination of  
23 all matters presented to it for consideration. *See, e.g.*, A.A.C. R14-3-101(B); R14-3-109(K).  
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<sup>1</sup> This Motion is in addition to a previously filed motion with respect to allowing telephonic testimony from Margaret Pierson, a resident of Maryland.

1 Allowing Ms. Andrews to testify by telephone retains all indicia of reliability and preserves  
2 Respondents' right to cross-examination.

3 Courts in other states have acknowledged that telephonic testimony in administrative and civil  
4 proceedings is permissible and consistent with the requirements of procedural due process. *See*  
5 *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved Oregon  
6 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*  
7 *Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert testimony in  
8 commitment hearing). Both of these courts concluded that fundamental fairness weighed in favor of  
9 permitting telephonic testimony.

10 Public policy considerations also militate towards allowing Ms. Andrews to testify  
11 telephonically. Through this form of testimony, the Division can better allocate its limited resources  
12 to better serve and protect the Arizona investing public.

13  
14 **III.**

15 **CONCLUSION**

16 Permitting Ms. Andrews to testify telephonically at the hearing allows the Division to present  
17 relevant witness evidence that is expected to be reliable and probative, is fundamentally fair, and does  
18 not compromise Respondents' due process rights. Considering that the conflict with her schedule  
19 was caused by the Respondents' request to continue the previously scheduled hearing, it seems only  
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equitable to allow her telephonic testimony. Therefore, the Division respectfully requests that its motion for leave to present the telephonic testimony of Ms. Andrews be granted.

JANET NAPOLITANO  
Attorney General  
Consumer Protection & Advocacy Section

BY: 

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The Arizona Corporation Commission

1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 1st day of November, 2001, with:

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