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ARIZONA CORPORATION COMMISSION RECEIVED

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3 WILLIAM A. MUNDELL  
4 Chairman  
5 JIM IRVIN  
6 Commissioner  
7 MARC SPITZER  
8 Commissioner

2001 MAY 21 A 9:18

AZ CORP COMMISSION  
DOCUMENT CONTROL

6 In the matter of: )  
7 )  
8 TOWER EQUITIES, INC. )  
9 8141 N. Main Street )  
10 Dayton, Ohio 45415-1747 )  
11 CRD #16195 )  
12 )  
13 PHILIP A. LEHMAN )  
14 Tower Equities, Inc. )  
15 8141 N. Main Street )  
16 Dayton, Ohio 45415-1747 )  
17 CRD #1345038, )  
18 Respondents. )

DOCKET NO. S-03439A-00-0000

**DIVISION'S OPPOSITION  
TO RESPONDENTS' MOTION  
TO CONTINUE HEARING**

Arizona Corporation Commission

**DOCKETED**

MAY 21 2001

DOCKETED BY *mac*

13 The Securities Division (the "Division") of the Arizona Corporation Commission (the  
14 "Commission") hereby opposes respondents' motion dated May 16, 2001, to delay the time of the  
15 hearing. The hearing was set for May 30, 2001, at 9:30 a.m., by procedural order dated April 4,  
16 2001.

17 Respondents have made no showing of good cause to delay this matter. They speculate  
18 that witnesses "might" be unavailable on May 30, without naming any person whom they actually  
19 intend to call or describing any efforts they have made to secure their appearance. In fact, the only  
20 likely witnesses in this matter are persons who are under the control of respondents and could be  
21 produced whenever respondents choose to do so.

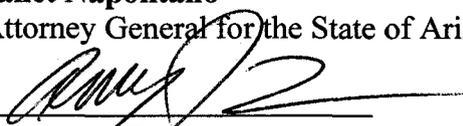
22 In addition, respondents offer the vague assertion that they need additional time to prepare  
23 for the hearing, without specifying what still needs to be done, how long it will take or why they  
24 could not have accomplished it by now. Such vague assertions do not constitute good cause to  
25 issue a new order. Respondents filed an Answer and Request for Hearing in this matter on January  
26 18, 2001, and the pre-hearing conference took place on February 8, 2001. The hearing date was

1 originally set for April 10, which allowed several weeks for settlement discussions and discovery.  
2 Respondents' counsel sent the Division a letter on March 27, 2001, declaring respondents'  
3 intention to transmit a settlement offer by the end of that week (i.e., by March 30), but they did not  
4 do so. On April 3, counsel agreed to request an extension of the original hearing date, which  
5 resulted in the April 4 procedural order setting a new hearing date of May 30, 2001. The Division  
6 heard nothing further from respondents for six weeks, until after Division counsel had sent  
7 respondents a letter on May 11. The settlement offer was not, in fact, sent by respondents until  
8 May 16, 2001. Respondents have had ample time to prepare this case during the months that have  
9 elapsed since the Notice was served in January.

10 Finally, no additional time is needed to negotiate terms of a settlement. Counsel have  
11 conferred and have determined that settlement of this matter is unlikely. Accordingly, the hearing  
12 ought to proceed as soon as possible. At most two additional weeks' preparation time ought to be  
13 allowed, on account of respondents' assertion that they did not receive the procedural order in the  
14 ordinary course.

15 Dated this 21<sup>st</sup> day of May, 2001.

16  
17 **Janet Napolitano**  
Attorney General for the State of Arizona

18   
19 **Moira McCarthy**  
Assistant Attorney General

20 **Amy J. Leeson**  
21 Special Assistant Attorney General  
22 Attorneys for the Securities Division of the  
Arizona Corporation Commission

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24 ...

25 ...

1 Original and Ten Copies  
2 filed with Docket Control  
3 on May 21<sup>st</sup>, 2001.

4 A copy of the foregoing faxed and  
5 mailed on May 21<sup>st</sup>, 2001 to:

6 Barbara A. Mallon  
7 Mallon & Johnson, P.C.  
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11 Chicago, Illinois 60603  
12 Attorney for both Respondents

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