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AZ CORP COMMISSION  
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By Federal Express

June 28, 2001

Docket Control  
Arizona Corporations Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Re: Tower Equities, Inc.  
Docket Control No. S-03439A-00-0000

Dear Sir or Madam:

Enclosed please find an original and ten copies of a Docket Control Sheet and Post-Hearing Brief in the above-captioned matter. Please file in your office and send a file-stamped copy to me.

If you have any questions, please call me at (312) 346-8890.

BAM:bt  
Enc/

Very truly yours,

  
Barbara A. Mallon

Arizona Corporation Commission  
**DOCKETED**  
JUL 02 2001

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BEFORE THE  
ARIZONA CORPORATIONS COMMISSION

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WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

AZ CORP COMMISSION  
DOCUMENT CONTROL

In the matter of: )

TOWER EQUITIES, INC. )  
8141 N. Main Street )  
Dayton, Ohio 45415-1747 )  
CRD #16195 )

PHILIP A. LEHMAN )  
Tower Equities, Inc. )  
8141 N. Main Street )  
Dayton, Ohio 45415-1747 )  
CRD #1345038, )

Respondents. )

DOCKET NO. S-03439A-00-0000

POST-HEARING BRIEF

**BRIEF IN SUPPORT OF RESPONDENT**  
**TOWER EQUITIES, INC.'S REQUEST NOT TO HAVE ITS**  
**ARIZONA LICENSE REVOKED**

Tower Equities, Inc. ("Tower") by and through its attorneys, Mallon & Johnson.

P.C., in support of its request at hearing not to have its license revoked states as follows:

**BACKGROUND**

On December 27, 2000, the Arizona Corporations Commission instituted its Notice and Opportunity for hearing against Tower and its President Philip A. Lehman (Lehman).

At hearing the counsel for the Division of Securities recommended that the Respondents' licenses be revoked in Arizona. Accordingly, the Respondents are responding with this

brief regarding sanctions and to persuade the hearing officer that the license of Tower should not be revoked.

### **ARGUMENTS**

The entire action of the Arizona Corporations Commission can be traced to the entry of the SEC order. Tower and Lehman do not dispute the existence of the Order. However, there are certain mitigating factors the Hearing Officer should consider when determining the appropriate sanction, if any, in this matter.

#### **1. REVOCATION OF TOWER'S LICENSE, AS A POLICY, WOULD BE UNFAIR.**

A revocation of a broker-dealer's and representative's license is the severest sanction that can be rendered by the Arizona Corporations Commission. As such it should be used for the most severe conduct, for example misappropriation of money, or other criminal conduct. In fact, this sanction has been rendered to Arizona salespersons who have stolen money. As a policy, revocation should not be administered for firms who recognize that something has gone wrong and correct their actions. Tower did just that. Tower and Phil arranged for all investors' monies to be returned. All investors were not only made whole but also paid interest on their investment at a money market rate. (See, Joint Pre-Hearing Statement, Item 24) To revoke Tower's license when no investors lost money and at the same time revoke the license of another firm or representative who has stolen client money, sends a conflicting message to the Arizona securities community concerning honesty and fair play.

#### **2. OTHER REGULATORS DID NOT DEEM REVOCATION APPROPRIATE.**

In October of 2000, the States of Ohio and Indiana brought an action against Lehman but

not Tower. It can extrapolated that those regulators determined that no remedial purpose would be served by naming Tower to an action Moreover, the SEC, after months of deliberations, concluded that a censure and cease and desist against Tower was sufficient in order to serve the remedial purpose of its statutes. The Division did not establish at hearing that a revocation of Tower's license would be necessary for the State of Arizona as opposed to the rest of the 49 states.

**3. ARIZONA HAS VIRTUALLY NO INVOLVEMENT WITH THE UNDERLYING ACTION.**

There are no Arizona investors to protect. First, not a single Arizona investor invested in the Tower programs.(Joint Pre-Hearing Statement Item 23). Moreover, there are currently only nine clients of Tower located in Arizona and no representatives located in Arizona.

**CONCLUSION**

For the reasons stated above, we respectfully request that Tower's license not be revoked in Arizona.

Dated: June 29, 2001

Respectfully Submitted,

Mallon & Johnson, P.C.  
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By: Barbara A. Mallon / ER  
Barbara A. Mallon

## AFFIDAVIT OF SERVICE

I, Erin Rigik do hereby certify that I served a copy of the Post-Hearing Brief by depositing the same in a Federal Express dropbox to Docket Control, Arizona Corporations Commission, 1200 W. Washington St., Phoenix, AZ 85007 and by U.S. mail to the following:

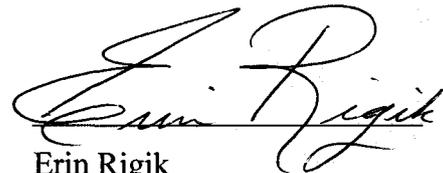
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Counsel for Respondent

Dated: June 29, 2001

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