



0000117526

REHEARING APR 22 2002

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2002 APR 11 P 3:39

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

DOCKET NO. S-03439A-00-0000

PHILIP A. LEHMAN
Tower Equities, Inc.
8141 N. Main Street
Dayton, OH 45451-1747,

Arizona Corporation Commission
DOCKETED

APR 11 2002

Respondents.

DOCKETED BY [Signature]

APPLICATION OF RESPONDENTS TOWER AND LEHMAN
FOR REHEARING/RECONSIDERATION OF DECISION NO. 64559

Tower Equities, Inc. ("Tower") and Philip A. Lehman ("Lehman") hereby submit its Application for Rehearing/Reconsideration of Decision No. 64559 dated February 22, 2002 in the above-captioned matter. To date, neither counsel for the Respondents, Mallon & Johnson or local counsel, Snell & Wilmer, has been served with a copy of Decision No. 64559 (the "Decision"). Please see Affidavits A-D attached hereto and made a part hereof. The affidavits attest to the following:

- 1) that no one at either firm received notice of the Decision as entered in February 22, 2002; and
- 2) that the United States Post Office confirms that it has no record of receiving or delivering the certified mail copies as set forth in the attachment to Decision.

Snell & Wilmer

L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 Therefore, Respondents are appealing from the ten-day filing period that is fully required under
2 A.A.C. Rule 14-3-112(5) as well as petitioning for rehearing under A.A.C. Rule 14-3-112(5).

3
4 **THE PENALTIES FOR TOWER AND LEHMAN ARE EXCESSIVE**

5 In Paragraph 44 of Decision No. 64559, the commission revokes the license of Tower in
6 Arizona and in paragraph 43 of Decision No. 64559, it revokes the license of Lehman. The
7 Respondents are asking for a rehearing of the Decision under A.A.C. Rule 14-3-112(5) in that the
8 penalties are excessive in light of the conduct of the Respondents. The penalties are excessive for
9 the following reasons:

- 10 1. No other state has brought an action against the company, Tower, including its
11 home state of Ohio;
 - 12 2. No investors at all were harmed in the offering, and in fact, received all of their
13 money back with interest;
 - 14 3. Not a single resident of Arizona invested in any of the offerings referenced in
15 Decision No. 64559; and
 - 16 4. The Decision does not comport with its other decisions in relation to registered
17 securities salesmen and entities.
- 18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONCLUSION

Tower and Lehman respectfully request a rehearing in this matter in order to establish that the sanction rendered by Decision 64559 was excessive in light of the surrounding circumstances.

RESPECTFULLY SUBMITTED this 11th day of April, 2002.

MALLON & JOHNSON, P.C.



Barbara A. Mallon

SNELL & WILMER, L.L.P.

Don Zavala
Local Counsel

Original and ten copies of the foregoing filed this 11st day of April, 2002, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Copy of the foregoing mailed, e-mailed or hand-delivered this 11th day of April, 2002, to:

All parties of record.

AFFIDAVIT OF BARBARA MALLON

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Barbara Mallon, hereby state and affirm the following:

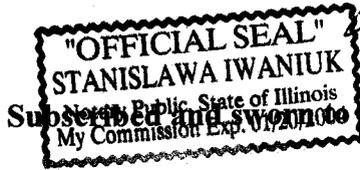
- 1. I am attorney at the law firm of Mallon & Johnson, P.C., 19 S. LaSalle Street, Suite 1202, Chicago, Illinois 60603 and counsel to Tower Equities, Inc. and Philip A. Lehman.**
- 2. I received a copy of the hearing officer's recommendation and proposed Order from the Arizona Corporation Commission ("Commission") in the Commission's Matter of Tower Equities, Inc. and Philip A. Lehman, Docket No. S-03439A-00-0000, by facsimile, on or about February 1, 2002. That proposed order indicated that a hearing would be held to determine if the Commission would adopt the hearing officer's Proposed Order and then issue a Final Order in this matter.**
- 3. Since receiving the Proposed Order, I have received no additional documents by mail, or otherwise, from the Commission, including the Final Order of the Commission in this matter dated February 22, 2002. Although the Final Order says it was sent to me via certified**

mail on or about February 26, 2002, I never received a copy of that
Final Order by certified mail or otherwise.

Dated this 10th day of April, 2002.

Barbara A. Mallon

Barbara A. Mallon



Subscribed and sworn to before me this 10 day of April 2002.

Stanislaw Iwanuk

Notary Public

My Commission Expires:

1-20-2004

AFFIDAVIT OF DONALD C. ZAVALA, JR.

1
2 State of Arizona)
3) ss.
4 County of Maricopa)

5 I, Donald C. Zavala, Jr., being duly sworn hereby depose and say:

6 1. I am an attorney at Snell & Wilmer, L.L.P., in Phoenix, Arizona.

7 2. I received a Proposed Order from the Arizona Corporation Commission in the case
8 styled In the Matter of Tower Equities, Inc. and Philip A. Lehman, Docket No. S-03439A-00-
9 0000 on or about February 11, 2002. That Proposed Order indicated that a hearing would be held
10 and the a Final Order issued in the future.

11 3. Since receiving the Proposed Order, I received no additional documents in the mail
12 from the Arizona Corporation Commission. In particular, I have been shown the Final Order
13 from the Arizona Corporation Commission in the Tower Equities, Inc. and Lehman matter dated
14 February 22, 2002. Although that Final Order says it was sent to me via Certified Mail on or
15 about February 25, 2002, I never received a copy of that Final Order in the mail.

16 Dated this 10th day of April, 2002.

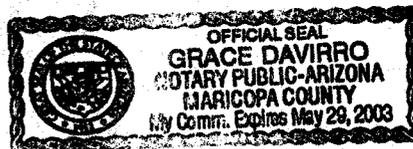
17
18 Donald C. Zavala, Jr.
19 Donald C. Zavala, Jr.

20 SUBSCRIBED and sworn to before me this 10th day of April, 2002, Donald C. Zavala, Jr.

21
22 Grace Davirro
23 Notary Public

24 My Commission Expires:

25 5/29/03
26



AFFIDAVIT OF KIMBELRY K. ERICKSON

1
2 State of Arizona)
3) ss.
4 County of Maricopa)

5 I, Kimberly K. Erickson, being duly sworn hereby depose and say:

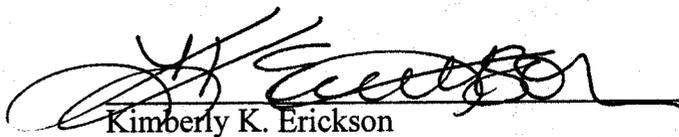
6 1. I am a the legal secretary for Donald C. Zavala, Jr. at the law firm of Snell &
7 Wilmer, L.L.P., in Phoenix, Arizona.

8 2. In my capacity as legal secretary, I am responsible for handling all of the mail for
9 Donald C. Zavala, Jr., which comes through me before it is delivered to him.

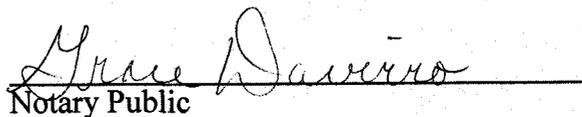
10 3. I received a Proposed Order from the Arizona Corporation Commission in the
11 matter styled In the Matter of Tower Equities, Inc. and Philip A. Lehman, Docket No. S-03439A-
12 00-0000 on or about February 11, 2002. That Proposed Order indicated that a hearing would be
13 held before a Final Order was issued.

14 4. Since receiving the Proposed Order, we received no additional documents in the
15 mail from the Arizona Corporation Commission. In particular, I have been shown the Final Order
16 from the Arizona Corporation Commission in the Tower Equities, Inc. and Lehman matter dated
17 February 22, 2002. Although that Final Order says it was sent via Certified Mail to Donald C.
18 Zavala, Jr. on or about February 25, 2002. I never received a copy of that Final Order in the mail.

19 Dated this 9th day of April, 2002.

20
21 
Kimberly K. Erickson

22 SUBSCRIBED and sworn to before me this 9th day of April, 2002, Kimberly K. Erickson

23
24 
Notary Public

25 My Commission Expires:

26 5/29/03



AFFIDAVIT OF SHARON LEADER

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss:

I, Sharon Leader, hereby state and affirm the following:

1. I am the legal secretary for Joel Hoxie, Esq. at the law offices of Snell & Wilmer, located at One Arizona Center, 400 East Van Buren, Phoenix, AZ 85004-2202.

2. At the request of Mr. Hoxie, I spoke with a representative of the United States Postal Service ("USPS") Claims office for certified mail, the phone number for which is (602) 223-3209. According to the USPS, there is no record of mailing or delivery for the certified mail (Receipt # 7180 5335 1300 0000 2086) addressed to Don Zavala at Snell & Wilmer. I was further informed that if any attempts for delivery had been made, there would be a record in the USPS' system. There is no entry of any kind for this receipt number.

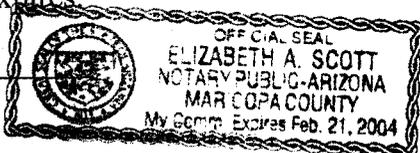
3. Also at the request of Mr. Hoxie, I asked about the receipt addressed to Mallon and Johnson in Chicago (Receipt # 7180 5335 1300 0000 2079). The USPS has no entry of any kind under that receipt number.

By: Sharon Leader
Sharon Leader

I certify and attest that Sharon Leader appeared before me this 9th day of April, 2002, and executed the foregoing Affidavit.

Elizabeth A. Scott
Notary Public, State of Arizona

My Commission Expires:



Snell & Wilmer
L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26