



0000117533

045

ORIGINAL

RECEIVED

AFFIDAVIT OF SERVICE

2002 MAY 31 P 2: 14

AZ CORP COMMISSION DOCUMENT CONTROL

1 STATE OF ARIZONA )  
2 County of Maricopa )

3  
4 I, Lisa Busse, for the Securities Division of the Arizona Corporation Commission, hereby certify  
5 that on the 31st day of May, 2002 at 11:00 AM, I served a copy of the Order denying the  
6 Application for Rehearing, Docket No. S-03439A-00-0000, upon Snell and Wilmer, Attorney's at  
7 Law at One Arizona Center, Phoenix, AZ 85044, by hand delivery. The Opinion and Order was  
8 given to Julie Cederberg (phon.), an employee working in the reception area of Snell and Wilmer.  
9 Cederberg is a female over the age of 16 years. She accepted the Order and made note that it was  
10 being delivered to Tom Mumaw from the Arizona Corporation Commission, Securities Division.

11  
12  
13 Lisa Busse \_\_\_\_\_ 5/31/02  
14 AFFIANT DATE

15  
16 SUBSCRIBED AND SWORN TO BEFORE me this 31st day of May, 2002.

17  
18 [Signature]  
19 NOTARY PUBLIC

20 My Commission Expires:  
21  Notary Public State of Arizona  
22 Maricopa County  
23 Alan C Walker  
Expires September 10, 2004

24 Attachment: Order, Docket # S-03439A-00-0000

25  
26  
Arizona Corporation Commission  
DOCKETED  
MAY 31 2002  
DOCKETED BY [Signature]

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

2 WILLIAM A. MUNDELL  
CHAIRMAN

**DOCKETED**

3 JIM IRVIN  
COMMISSIONER

MAY 30 2002

4 MARC SPITZER  
COMMISSIONER

DOCKETED BY



5  
6 IN THE MATTER OF:

DOCKET NO. S-03439A-00-0000

7 TOWER EQUITIES, INC.  
8141 N. Main Street  
8 Dayton, OH 45415-1747

DECISION NO. 64851

9 PHILIP A. LEHMAN  
Tower Equities, Inc.  
8141 N. Main Street  
10 Dayton, OH 45415-1747,

11 Respondents.

**ORDER**

12 Open Meeting  
13 May 23, 2002  
Phoenix, Arizona

14 **BY THE COMMISSION:**

15 **FINDINGS OF FACT**

16 1. On February 22, 2002, the Arizona Corporation Commission ("Commission") issued  
17 Decision No. 64559 ("Decision") in the above-captioned matter.

18 2. On April 11, 2002, pursuant to A.A.C. R14-3-112, Tower Equities, Inc. ("Tower") and  
19 Mr. Philip A. Lehman (collectively "the Respondents") filed with the Commission an Application for  
20 Rehearing and Review ("Application") of the Decision on the grounds that the Decision is not  
21 justified by the evidence and is contrary to law.

22 3. Although it appeared that Tower's and Mr. Lehman's Application was not timely filed,  
23 Respondents stated that their attorneys had not been served with a copy of Decision No. 64559 and  
24 attached affidavits which attested to the non-delivery of the Decision at their offices.

25 4. On April 19, 2002, the Commission's Securities Division ("Division") filed its  
26 Response to the Respondent's Application and requested that the Application be denied on the basis  
27 that the Decision is based on the evidence and is not contrary to law. The Division pointed out that  
28 A.R.S. § 12-901 renders moot the question of the exact date of service if the Commission treats the

1 Application as timely filed. The Division also filed an affidavit of service that indicated that personal  
2 service of Decision No. 64559 had been made upon local counsel on April 17, 2002.

3 5. For purposes of this proceeding, Respondents' Application should be treated as timely  
4 filed.

5 6. Upon review of the Decision, the Division's Response to the Application is well made  
6 and should be adopted.

7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
9 Arizona Constitution, A.R.S. §§ 44-1901 et seq. and A.A.C. R14-3-112.

10 2. The Respondents have not demonstrated adequate grounds to justify further review of  
11 the Decision pursuant to A.A.C. R14-3-112.

12 3. The Application of Tower and Mr. Lehman should be denied.

13 ORDER

14 IT IS THEREFORE ORDERED that the Application for Rehearing and Review of Tower  
15 Equities, Inc. and Mr. Philip Lehman is hereby denied.

16 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

17 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

18 

19 CHAIRMAN

20 

COMMISSIONER

COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
22 Secretary of the Arizona Corporation Commission, have  
23 hereunto set my hand and caused the official seal of the  
24 Commission to be affixed at the Capitol, in the City of Phoenix,  
25 this 30<sup>th</sup> day of MAY, 2002.

26 

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

27 DISSENT \_\_\_\_\_

28 MES:mlj

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  
27  
28

SERVICE LIST FOR: TOWER EQUITIES, INC.

DOCKET NO. S-03439A-00-0000

Barbara A. Mallon  
MALLON & JOHNSON, P.C.  
19 S. LaSalle Street, Suite 1202  
Chicago, Illinois 60603  
Attorney for Respondents  
Via Facsimile to: 312-346-8896  
Via Certified Mail, Receipt Number 70993400001824900163

Donald C. Zavala  
SNELL & WILMER  
One Arizona Center  
Phoenix, AZ 85004  
Via Facsimile to: 602-382-6070  
Via Certified Mail, Receipt Number 70993400001834900156

Robert A. Zumoff  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 West Washington Street  
Phoenix, Arizona 85007

W. Mark Sendrow, Director  
Securities Division  
ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
Phoenix, Arizona 85007