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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 OCT 12 A 11:38

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

ADDED TO DOCKET
DOCKET CONTROL

In the matter of:

RADICAL BUNNY, L.L.C., an Arizona limited liability company,

HORIZON PARTNERS, L.L.C., an Arizona limited liability company,

TOM HIRSCH (aka THOMAS N. HIRSCH) and DIANE ROSE HIRSCH, husband and wife,

BERTA FRIEDMAN. WALDER (aka BUNNY WALDER), a married person,

HOWARD EVAN WALDER, a married person,

HARISH PANNALAL SHAH and MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET NO. S-20660A-09-0107

SECURITIES DIVISION'S REPLY TO RESPONSE TO MOTION TO ALLOW TELEPHONIC TESTIMONY

(Assigned to the Hon. Lyn Farmer)

Arizona Corporation Commission
DOCKETED

OCT 12 2010

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission hereby replies to the response filed on behalf of Respondents Horizon Partners, L.L.C., an Arizona limited liability company, Tom Hirsch, Diane Rose Hirsch, Berta Friedman Walder, Howard Evan Walder, Harish Pannalal Shah, and Madhavi H. Shah ("Respondents").

On May 27, 2010, the Division moved for leave to present the telephonic testimony of two prospective Division witnesses during the hearing of the above-referenced matter which was scheduled to begin on June 2, 2010. The hearing was subsequently rescheduled to begin on October 14, 2010. On June 2, 2010, Respondents objected to the Division's motion on the

1 grounds that the reason for the need for telephonic testimony may not still exist and other
2 investor witnesses may be available to testify. The Division disagrees.

3 The Division anticipates calling Roberta Heneisen and Steven Friedberg as central witnesses
4 to this hearing. Ms. Heneisen lives in Georgia and Mr. Friedberg lives in New York. The witnesses
5 can offer probative testimony as to this case. In so doing, they can provide evidence supporting a
6 number of the allegations brought by the Division in this case. As such, the burdensome task of
7 traveling to Phoenix to provide testimony in person is impractical, both financially and logistically,
8 for these witnesses.

9 Ms. Heneisen's only contact with Respondents about her investment was telephonic. While
10 there are numerous investors with Respondents, many of them reside outside Arizona. It is
11 important that out-of-state investors are able to provide details of their interactions with the
12 Respondents which arguably differ from those who may have met the Respondents in person.

13 Mr. Friedberg is the *only* witness who can provide the necessary authentication and
14 foundation for admission into evidence of Division's proposed exhibit S-14. Respondents have not
15 stipulated to the admission of this evidence. The telephonic testimony requested in this case fits
16 squarely within the tenor of the plain language of the applicable administrative statutes, rules and
17 case holdings discussed in the Division's motion. The Division is seeking to introduce the
18 telephonic testimony of witnesses that could otherwise not testify for financial and/or logistical
19 reasons. Permitting Ms. Heneisen and Mr. Friedberg to testify telephonically at the upcoming
20 administrative hearing allows the Division to present relevant witness evidence that is expected to be
21 reliable and probative, is fundamentally fair, and does not compromise Respondents' due process
22 rights. Thus, if the instant Motion is granted, direct, first-person evidence bearing on the outcome of
23 this trial will not be barred, and respondents will still have every opportunity to question the
24 witnesses about their testimony and/or about any exhibits discussed. Therefore, the Division
25 respectfully requests that its motion for leave to present such telephonic testimony be granted.

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1 RESPECTFULLY SUBMITTED this 12th day of October, 2010.

2
3 

4 Julie Coleman
5 Chief Counsel of Enforcement for the Securities
6 Division of the Arizona Corporation Commission

6 ORIGINAL and 9 copies of the foregoing
7 filed this 12th day of October, 2010 with:

8 Docket Control
9 Arizona Corporation Commission
10 1200 W. Washington St.
11 Phoenix, AZ 85007

11 COPY of the foregoing hand-delivered
12 this 12th day of October, 2010, to:

12 Lyn Farmer
13 Administrative Law Judge
14 Arizona Corporation Commission
15 1200 W. Washington St.
16 Phoenix, AZ 85007

16 COPY of the foregoing mailed and electronically mailed
17 this 12th day of October, 2010 to:

17 Michael J. LaVelle
18 Matthew K. LaVelle
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20 2525 E. Camelback Road, Suite 888
21 Phoenix, AZ 85016

21 By: 