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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

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COMMISSIONERS:

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

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-20600A-08-0340

MARK W. BOSWORTH and LISA A. BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L. SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.

SEVENTEENTH
PROCEDURAL ORDER
(Schedules a Hearing)

BY THE COMMISSION:

On July 3, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Mark W. Bosworth and Lisa A. Bosworth, husband and wife; Stephen G. Van Campen and Diane V. Van Campen, husband and wife; Michael J. Sargent and Peggy L. Sargent, husband and wife; Robert Bornholdt and Jane Doe Bornholdt, husband and wife; Mark Bosworth & Associates, LLC ("MBA"); and 3 Gringos Mexican Investments, LLC ("3GMI") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and investment contracts.

Respondents were duly served with copies of the Notice. Requests for hearing were filed by all Respondents except 3GMI.

1 On August 18, 2009, at a status conference, the Division, the Van Campen Respondents, and
2 the Sargent Respondents were present with counsel. Mr. Bosworth was present on his own behalf
3 and indicated Mrs. Bosworth would be retaining her own attorney. Counsel for the Division
4 indicated that the Bornholdt Respondents' counsel would not be present because they are attempting
5 to resolve the issues that had been raised in the Notice. After a discussion between the parties, it was
6 determined that a hearing should be scheduled in approximately six months.

7 On August 21, 2009, by Procedural Order, a hearing was scheduled to start on March 15,
8 2010.

9 On February 19, 2010, the Sargent Respondents filed a Motion to Set Settlement Conference
10 and for the Appointment of a Settlement Judge.

11 On February 24, 2010, the Division filed a response arguing that it does believe that a
12 settlement conference will facilitate a settlement with respect to the Sargent Respondents.

13 On February 25, 2010, the Sargent Respondents filed a reply to the Division's response citing
14 the use of settlement judges in both the Superior and Federal Courts, and further argued the need to
15 resolve issues efficiently and economically.

16 On March 1, 2010, by Procedural Order, a status conference was scheduled to review this
17 matter on March 4, 2010.

18 On March 4, 2010, at the status conference, the Division and Mr. Sargent appeared with
19 counsel. Mr. Bosworth appeared on his own behalf and on behalf of MBA and 3GMI. The parties
20 indicated that there are ongoing discussions to resolve the issues that had been raised in the Notice,
21 but that certain matters need to be resolved to conclude their possible settlements in this proceeding.
22 It was further indicated that a brief continuance would facilitate the complete resolution of the
23 proceeding by the parties and the submission of proposed Consent Orders for Commission approval.
24 The Sargent Respondents' counsel pointed out that if he and the Division could not resolve their
25 remaining issues for his clients in 30 days, that he might renew his Motion for the Appointment of a
26 Settlement Judge. At the conclusion of the status conference, the parties agreed to the proceeding
27 being continued to the agreed upon dates in June, if the proceeding was not settled.

28 On March 5, 2010, by Procedural Order, the proceeding was continued to June 7, 2010.

1 On April 28, 2010, the Sargent Respondents filed a Motion to Sever the Commission's
2 proceeding against them from the overall proceeding against the Bosworth Respondents, MBA and
3 3GMI because the Sargents argue that a separate proceeding for them would be simpler and less
4 complex. Further, they argue that severance will promote judicial economy, reduce the risk of
5 prejudice and reduce the economic burden on the Sargents.

6 On May 3, 2010, Respondent Mark W. Bosworth filed his Exhibit and Witness Lists.
7 Additionally, he filed copies of subpoenas to the Commission, the Arizona Department of Real Estate
8 and the Arizona Republic/Republic Media. The subpoenas requested voluminous amounts of
9 documentary information from all three entities without stating any reason for this action.

10 On May 10, 2010, the Division filed Objections and a Motion to Quash Respondent
11 Bosworth's subpoenas. In its response, the Division cited numerous legal arguments including that
12 the requested information sought is overbroad, unduly burdensome, untimely and unnecessary.
13 Further, the Division argued that Respondent was attempting to delay the proceeding beyond the
14 pending hearing date.

15 On May 12, 2010, the Division filed its Response to the Sargent Respondents' Motion to
16 Sever arguing that if it is approved, the matter would be duplicative, wasteful, and that similar
17 evidence would have to be presented if the proceedings were severed.

18 On May 13, 2010, the Sargent Respondents filed a Reply in Support of their Motion to Sever
19 essentially restating their arguments made earlier.

20 On May 18, 2010, the Division filed its Objections and Motion to Quash the Sargent
21 Respondents' First Request for Admissions and Non-Uniform Interrogatories ("First Request") which
22 had been hand-delivered to the Division on May 3, 2010. Therein, the Division argues that the First
23 Request is not supported by fact or law. The Division further argues that the Sargent Respondents
24 "attempt to invoke far-reaching civil discovery rules in this administrative forum is misplaced and
25 must be denied."

26 On May 21, 2010, the Division filed its Objections to Respondent Bosworth's List of
27 Witnesses and Exhibits together with a Motion to Compel Production of Information Regarding
28 Witnesses and Copies of Exhibits or, If Production Is Not Made, To Preclude Admission Into

1 Evidence. The Division, in its filing, argues that it requires the information to prepare for the hearing
2 or the admission of Respondent Bosworth's witness' testimony and related exhibits should be
3 precluded from the proceeding.

4 On May 24, 2010, the Sargent Respondents filed a Response to the Division's May 18, 2010,
5 Motion to Quash citing a number of Commission actions which have found in favor of broad requests
6 for discovery and not for the denial of discovery in administrative proceedings. Additionally, the
7 Sargent Respondents cited the Division's own May 21, 2010, filing seeking discovery with respect to
8 Respondent Bosworth's List of Witnesses and Exhibits.

9 Additionally, on May 24, 2010, the Sargent Respondents filed a Motion for Expedited
10 Procedural Conference and Conditional Motion for Continuance in the event that their Motion to
11 Sever is denied.

12 On May 25, 2010, the Division filed a Motion to Allow Telephonic Testimony. The Division
13 requested approval to allow a former Respondent in this proceeding, Robert Bornholdt, to testify
14 telephonically since he will be out of town at the time the hearing is presently scheduled.

15 On May 26, 2010, the Sargent Respondents filed their Response to the Division's May 25,
16 2010, Motion arguing that the Division's Motion to Allow Telephonic Testimony should be denied
17 because he is a "central witness" whose demeanor, facial expressions and body language should be
18 observed when he testifies.

19 On May 27, 2010, the Division filed a Reply in Support of its Motion to Allow Telephonic
20 Testimony arguing further that Mr. Bornholdt's testimony will be probative and relevant and the
21 Sargent Respondents' due process rights will not be compromised.

22 On May 28, 2010, by Procedural Order, the following Orders were made: the Sargent
23 Respondents' Motion to Sever was denied; the Division's Motion to Quash the Bosworth subpoenas
24 was granted; the Sargent Respondents' First Request was quashed; the Division's Objections to
25 Respondent Bosworth's List of Witnesses and Exhibits together with a Motion to Compel Production
26 of Information was taken under advisement; the Sargent Respondents' Motion for Expedited
27 Procedural Conference and Conditional Motion for Continuance was denied; and the Division's
28 Motion to Allow Telephonic Testimony was granted.

1 On June 16, 2010, the Sargent Respondents filed a Motion to Quash an Administrative
2 Subpoena issued to Respondent, Michael J. Sargent. Respondents cited three reasons in their Motion
3 to Quash the subpoena. Respondent Sargent argues that the subpoena should be quashed because the
4 subpoena is “unreasonable or oppressive” because it was issued extremely late, after the hearing was
5 scheduled to start, and after the close of discovery; the Division failed to provide the required witness
6 fee; and the required subpoena application is insufficient and not even in the record.

7 On June 21, 2010, the Division filed its Response to the Sargent Respondents’ Motion to
8 Quash an Administrative Subpoena. The Division argues that Respondent has been on notice since
9 as early as November 2009 that his appearance would be required at the hearing in this proceeding,
10 was personally served on February 23, 2010, and his attorney served on June 9, 2010, and as a result
11 the subpoena is not “unreasonable or oppressive.” The Division cites Rule 45(b)(2) of the Arizona
12 Rules of Civil Procedure, which are applicable in court proceedings, stating that witness fees and
13 mileage allowance are not required to be paid when the subpoena orders the appearance of a party at
14 a hearing and when it is issued on behalf of a state agency as is the case here. In conclusion, the
15 Division argues that the request for the issuance of a subpoena is not an application as such and is not
16 a “Formal Document” which is required to be filed with the Commission.

17 On June 22, 2010, the Sargent Respondents filed their Reply to the Division’s Response to the
18 Sargents’ Motion to Quash the Administrative Subpoena Issued to Michael J. Sargent. The crux of
19 the Sargents’ Reply was that Respondent Sargent would not be prepared to testify upon such short
20 notice as was provided by the subpoena served on June 9, 2010, upon Respondent Michael Sargent’s
21 counsel. Respondents compared the late service of the Division’s subpoena upon Mr. Sargent with
22 other subpoenas which were quashed for being untimely in this proceeding. The Respondents further
23 argued that the Division’s argument that it was not required to pay witness fees pursuant to Rule
24 45(b)(2) of the Arizona Rules of Civil Procedure “is surprising, given that it has vociferously argued
25 that the Arizona Rules of Civil Procedure don’t apply in Commission proceedings” and was
26 obviously disingenuous and should not be allowed. Lastly, the Sargent Respondents renewed their
27 argument that the Division’s application for the subpoena for Mr. Sargent was insufficient and this
28 constituted an additional reason to quash the subpoena.

1 On June 24, 2010, by Procedural Order, the Respondents' Motion to Quash Administrative
2 Subpoena was denied, and the Division should was ordered to comply with A.A.C. R14-3-109(O)
3 with respect to the applicable fees for witnesses if Mr. Sargent appeared subject to the subpoena.
4 Additionally, Mr. Sargent was to be allowed a reasonable period of time to prepare to testify.

5 At the conclusion of the proceeding on June 25, 2010, the parties stipulated that the
6 proceeding be continued to August 26, and 27, 2010.

7 On July 8, 2010, by Procedural Order, the proceeding was continued to August 26, 2010,
8 pursuant to the parties' stipulated agreement.

9 On August 23, 2010, the Division filed a Motion to Set Hearing with respect to Respondents
10 Mark and Lisa Bosworth, MBA and 3GMI ("Bosworth Respondents") because a proposed Consent
11 Order which was to have been considered for approval by the Commission at its July 8, 2010, Open
12 Meeting with respect to the aforementioned Respondents was pulled from the Commission's Open
13 Meeting agenda. The Consent Order with respect to the Bosworth Respondents was pulled because
14 testimony in the ongoing hearing involving the Sargent Respondents "indicated that the transfer of
15 property contemplated by the 3GMI private party settlement had not yet occurred." As a result, the
16 amount of restitution which had been agreed upon in the Consent Order of the Bosworth Respondents
17 was in need of revision, but the Division and the Bosworth Respondents were unable to reach an
18 agreement for the revision of the proposed Consent Order. The Division further requested a different
19 Administrative Law Judge hear the proceeding involving the Bosworth Respondents.

20 On August 26, 2010, at the hearing, Mr. Bosworth was present on his own behalf. The
21 Division and the Sargent Respondents appeared with counsel. With respect to the Division's Motion
22 to Set Hearing, counsel for the Division argued for a separate proceeding and indicated that testimony
23 utilized in the Sargent portion of the proceeding would not be utilized for any purpose and exhibits,
24 even if the same, would be subject to admission in the separate proceeding to avoid any violation of
25 the due process rights of the Bosworth Respondents. Although Mr. Bosworth indicated that he
26 intended to speak with an attorney, he expressed his willingness to proceed in the instant proceeding.

27 On September 8, 2010, the Sargent Respondents filed their response to the Division's Motion
28 to Set Hearing with respect to the Bosworth Respondents. The Sargent Respondents argued in

1 support of the Division's Motion to Set Hearing for a separate proceeding which involves the
2 Bosworth Respondents pointing out that the Bosworth Respondents were not present for the majority
3 of the hearing as it related to the Sargents, were not familiar with the record and that numerous
4 complications would arise with respect to prior witnesses who had testified previously along with the
5 possibility of the Bosworth Respondents calling numerous witnesses to rebut the allegations which
6 related to them alone.

7 On September 13, 2010, the Bosworth Respondents filed their response to the Division's
8 Motion to Set Hearing arguing that a separate hearing should not be held concerning the allegations
9 which were raised against them in the Notice. The Bosworth Respondents further indicated their
10 willingness to proceed in the instant hearing.

11 On September 16, 2010, the Division filed a reply to the response which had been filed by the
12 Bosworth Respondents and reiterated that its arguments were expressed on the record during the
13 hearing on August 26, 2010.

14 On September 27, 2010, the Bosworth Respondents filed a reply to the response of the
15 Sargent Respondents to the Division's Motion to Set Hearing and further responded to the Division's
16 reply to the Bosworth Respondents' response filed on September 13, 2010. In both of their
17 pleadings, the Bosworth Respondents repeated their vigorous opposition to a separate hearing from
18 the hearing which is in progress.

19 On November 9, 2010, by Procedural Order, it was determined that the instant proceeding go
20 forward and a procedural conference scheduled on November 30, 2010, to review the present status
21 of the proceeding and the manner in which to go forward.

22 On November 30, 2010, at the procedural conference, the Division and the Sargent
23 Respondents were represented by counsel. Mr. Bosworth appeared on behalf of the Bosworth
24 Respondents. The parties discussed the proceeding going forward with active participation by the
25 Bosworth Respondents and the amount of time needed for Mr. Bosworth to review the record in order
26 to resume the hearing. The parties subsequently agreed that they would exchange copies of any
27 further Exhibits and Witness Lists by January 31, 2011, and that an additional procedural conference
28 be scheduled on February 9, 2011.

1 On December 15, 2010, by Procedural Order, a procedural conference was scheduled as
2 agreed on February 9, 2011, and documents ordered exchanged by January 31, 2011.

3 On February 9, 2011, the Division and the Sargent Respondents appeared through counsel.
4 Mr. Bosworth appeared on behalf of the Bosworth Respondents. The parties discussed the re-
5 opening of the evidentiary proceeding and agreed that the hearing resume on June 1, 2011 and that
6 additional days of hearing take place on June 2, 3, 6, 7, 8, 9 and 10, 2011.

7 Subsequently, after the procedural conference, a scheduling conflict arose and the week of
8 June 6, 2011, is no longer available. As a result, the week of June 13, 2011, will be substituted in its
9 place.

10 Accordingly, the resumption of the hearing should be ordered.

11 IT IS THEREFORE ORDERED that a **hearing** shall be held on **June 1, 2011, at 10:00 a.m.**,
12 at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona.

13 IT IS FURTHER ORDERED that the **Division and Respondents shall set aside June 2, 3,**
14 **13, 14, 15, 16 and 17, 2011**, for additional days of hearing, if necessary.

15 IT IS FURTHER ORDERED that if any party to the proceeding has conflicts with the altered
16 dates for the additional days of hearing, **that party is to file their objections by March 15, 2011.**

17 IT IS FURTHER ORDERED that the Division's Objections to Respondent Bosworth's List
18 of Witnesses and Exhibits together with a Motion to Compel Production of Information shall remain
19 under advisement.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
21 Communications) is in effect and shall remain in effect until the Commission's Decision in this
22 matter is final and non-appealable.

23 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
24 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
25 *hac vice*.

26 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
28 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation

1 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
2 matter is scheduled for discussion, unless counsel has previously been granted permission to
3 withdraw by the Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

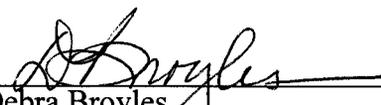
6 Dated this 22nd day of February, 2011.

7
8
9 
10 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing were mailed/delivered
12 this 22nd day of February, 2011 to:

13 Mark W. Bosworth
14 Lisa A. Bosworth
15 MARK BOSWORTH & ASSOCIATES, LLC,
16 3 GRINGOS MEXICAN INVESTMENTS, LLC
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