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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS Arizona Corporation Commission

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

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AZ CORP COMMISSION  
DOCKET CONTROL

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IN THE MATTER OF:

DOCKET NO. S-20660A-09-0107

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

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

TOM HIRSCH (aka TOMAS 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.

PROCEDURAL ORDER

BY THE COMMISSION:

On March 12, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing against Radical Bunny, L.L.C.; Horizon Partners, L.L.C.; Tom Hirsch (aka Tomas N. Hirsch); Berta Friedman Walder (aka Bunny Walder); Howard Evan Walder; Harish Pannalal Shah; and Madhavi H. Shah, in which the Division alleged multiple violations of the Arizona Securities Act in connection with the offer and sale of securities in the form of notes and investment contracts.

On March 26, 2009, a request for hearing was filed on behalf of Horizon Partners, L.L.C.; Tom Hirsch; Diane Rose Hirsch; Berta Friedman Walder; Howard Evan Walder; Harish Pannalal Shah; and Madhavi H. Shah ("Respondents").

On April 28, 2010, the Commission issued Decision No. 71682, a Consent Order against Respondent Radical Bunny, L.L.C., an Arizona limited liability company.

1 On October 14, 2010, the hearing concerning the remaining Respondents commenced as  
 2 scheduled and was concluded on November 17, 2010. Briefs were filed by the parties on February  
 3 18, 2011; April 4, 2011; and April 25, 2011.

4 On April 13, 2011, the Division filed a Post-Hearing Motion to Supplement the Evidentiary  
 5 Record (“Motion”). In its Motion, the Division asked to supplement the administrative hearing  
 6 evidentiary record with a copy of the order filed on April 12, 2011, as document no. 99, in the official  
 7 court docket for *Securities and Exchange Commission v. Radical Bunny, LLC, Tom Hirsch, Berta*  
 8 *Walder, Howard Walder, and Harish P. Shah*, case no. CV-09-1560-PHX-SRB in the United States  
 9 District Court for the District of Arizona (“Order”). The Division argued that the “introduction of the  
 10 Order into evidence will aid this tribunal in ascertaining the relevant facts in these proceedings” and  
 11 that the standard for taking judicial notice of the Order had been met.

12 On April 29, 2011, the Respondents filed their Response and Objection to Post Hearing  
 13 Motion to Supplement the Evidentiary Record. The Respondents objected to the admission of the  
 14 Order because:

- 15 1. It is not a final, unappealed judgment.
- 16 2. It is not based on the record made in this matter; but on a record made in  
 17 Federal Court which cannot be presumed to be the same as the one before  
 18 this body.
- 19 3. Any judgment entered based on this order will be appealed so that it is not  
 20 entitled to a res judicata or collateral estoppel effect.
- 21 4. It is thus irrelevant to these proceedings.<sup>1</sup>

22 On May 3, 2011, the Division filed its Reply to Respondents’ Response and Objection to  
 23 Motion to Supplement the Evidentiary Record. The Division argued that the Motion should be  
 24 granted because the Order is a final order<sup>2</sup> and because the “uncontested factual findings in the Order  
 25 are relevant to these proceedings.”

25 <sup>1</sup> Response and Objection to Post Hearing Motion to Supplement the Evidentiary Record, p. 2.

26 <sup>2</sup> The Division attached a copy of the Respondents’ Objection to Lodged: [Proposed] Final Judgment of Permanent  
 27 Injunction and Monetary Relief Against Defendants Tom Hirsch, Berta Walder, Howard Walder, and Harish P. Shah,  
 28 filed April 21, 2011, as document no. 101, in case no. CV-09-1560-PHX-SRB (“document no. 101”), where Respondents  
 argued that the following language should be included in the Court’s order: “This judgment resolves, except for any  
 enforcement issues that may arise, all remaining claims against all remaining parties and its immediate entry as a final  
 judgment by the Clerk is hereby directed.” The Division also attached a copy of document no. 104, the April 28, 2011,  
 Final Judgment of Permanent Injunction and Monetary Relief Against Defendants Tom Hirsch, Berta Walder, Howard  
 Walder, and Harish P. Shah, in case no. CV-09-1560-PHX-SRB (“document no. 104”).

1 Pursuant to A.A.C. R14-3-109(T), the presiding officer may take official notice of “[s]uch  
2 other matters as may be judicially noticed by the Courts of the state of Arizona.” Accordingly, the  
3 Motion to Supplement the Record should be granted, and official notice should be taken of the Order,  
4 as well as document no. 101 and document no. 104. Appropriate weight will be given to these  
5 documents.

6 IT IS THEREFORE ORDERED that the Motion to Supplement the Record is granted, and  
7 official notice is hereby taken of the April 12, 2011, Order entered as document no. 99; as well the  
8 April 21, 2011, Objection to Lodged: [Proposed] Final Judgment of Permanent Injunction and  
9 Monetary Relief Against Defendants Tom Hirsch, Berta Walder, Howard Walder, and Harish P.  
10 Shah, entered as document no. 101; and the April 28, 2011, Final Judgment of Permanent Injunction  
11 and Monetary Relief Against Defendants Tom Hirsch, Berta Walder, Howard Walder, and Harish P.  
12 Shah, entered as document no. 104, all in the official court docket for *Securities and Exchange*  
13 *Commission v. Radical Bunny, LLC, Tom Hirsch, Berta Walder, Howard Walder, and Harish P.*  
14 *Shah*, case no. CV-09-1560-PHX-SRB in the United States District Court for the District of Arizona.

15 IT IS FURTHER ORDERED that appropriate weight will be given to these documents.

16 DATED this 15<sup>th</sup> day of July, 2011

17  
18  
19   
20 LYN FARMER  
CHIEF ADMINISTRATIVE LAW JUDGE

21  
22 Copies of the foregoing mailed/delivered  
this 15<sup>th</sup> day of July, 2011.

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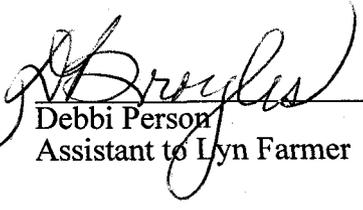
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