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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

**COMMISSIONERS:**

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

2011 JUL 22 1 A 10: 19

AZ CORP COMMISSION  
DOCKET CONTROL

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.

**RESPONDENTS  
MICHAEL J. SARGENT  
AND PEGGY L. SARGENT'S**

**MOTION FOR CONTINUANCE**

Arizona Corporation Commission  
**DOCKETED**

JUL 22 2011

DOCKETED BY

Respondents Michael J. Sargent ("Mr. Sargent") and Peggy L. Sargent (collectively, the "Sargents") respectfully request that the Administrative Law Judge continue the hearing dates currently set in this case pursuant to the Commission's 18<sup>th</sup> and 19<sup>th</sup> Procedural Orders in this docket. A continuance is warranted because: (1) critical new evidence is expected to be available in the near future; and (2) Mrs. Bosworth was only recently notified that she must participate in this case separately from her husband, and she requires adequate time to prepare.

**New Evidence.** A continuance is warranted because important new evidence is expected. The Settlement Agreement regarding the Three Gringos investments (Exhibit S-100b) calls for title to certain condominium units to be transferred to the investors. In the Consent Orders for Mr. Van Campen and Mr. Bornholdt, the Securities Division proposed, and the Commission agreed, that

1 there should be no award of restitution for the Three Gringos investments on the basis of the  
2 Settlement Agreement. Likewise, the Division's memorandum submitting the proposed consent  
3 order with the Bosworths stated that the Three Gringos investors "have been satisfied in full."  
4 Mid-way through the hearing, the Division has now reversed course, and has demanded that the  
5 final Mexican title paperwork be presented before it will give any consideration to the Three  
6 Gringos Settlement. In other words, the lack of this paperwork has apparently caused the Division  
7 to seek over \$1 million in restitution for the Three Gringos investments (See Exhibit S-103b). The  
8 Division's August 23, 2010 motion to set hearing states that it was the absence of this final title  
9 paperwork that caused the Division to not proceed with the proposed consent order for Mr.  
10 Bosworth. This has also been a key issue in the settlement discussions between the Division and  
11 the Sargents.

12 New information indicates that the final Mexican title paperwork will be completed in the  
13 near future, but likely after the hearing. Moreover, the Division has demanded a translation of the  
14 final title documents by a qualified translator, further delaying the process. The paperwork is in  
15 process, and is close to completion, per the attached email from Mr. Robert May, representative of  
16 the Three Gringos Investors. Because the issuance of the final title paperwork appears to be a key  
17 settlement issue for both the Sargents and the Bosworths, it makes little sense to expend the  
18 resources necessary to proceed with the hearing at this time, when the hearing may become  
19 unnecessary if settlements are reached once the final Mexican title paperwork is completed.

20 Further, practicality counsels in favor of a continuance. At this point, the record is jumbled.  
21 Under prior counsel, the Division added, revised, and renumbered various exhibits. Significant  
22 questions exist regarding the foundation and sufficiency of the evidence upon which the Division  
23 bases its restitution amounts. Indeed, according to Division Special Investigator Brokaw, the  
24 complete absence of any forensic accounting evidence was the reason the Attorney General's  
25 Office did not pursue a prosecution. (June 25, 2010 Tr. at 813). Further, the record regarding Mrs.  
26 Bosworth is unclear and contradictory. For example, the 18<sup>th</sup> Procedural Order states that "Mr.  
27 Bosworth appeared on behalf of the Bosworth Respondents" (p. 8), a term that included Mrs.

1 Bosworth (p. 6). Yet the 19<sup>th</sup> Procedural Order states that the Division has established that “a  
2 familial relationship does not allow a husband to represent his wife in a legal proceeding despite  
3 their joint interest in their community property”, and thus rules that Mr. Bosworth may not  
4 represent Mrs. Bosworth. Was Mrs. Bosworth ever notified that she had to appear separately, prior  
5 to the 19<sup>th</sup> Procedural Order? What is the status of previous actions of Mr. Bosworth purporting to  
6 be on behalf of Mr. and Mrs. Bosworth? And there are still open procedural issues concerning the  
7 Division’s unresolved objection to the Bosworths’ List of Witnesses and Exhibits. At this point,  
8 none of the parties know what witnesses and exhibits Mr. Bosworth will be allowed to present, nor  
9 whether Mrs. Bosworth will be bound by those limits, and if not, what witnesses and exhibits she  
10 may present. In light of all of these issues, it is not sensible to proceeding with the hearing now,  
11 when all of these issues may be resolved by settlement once the final Mexican title paperwork is  
12 issued.

13 Moreover, given the Division’s position on the importance of the Mexican paperwork to the  
14 amount of restitution it seeks, the final paperwork will be key evidence if the hearing does go  
15 forward. But that evidence can only be considered when the final title paperwork is complete.

16 **Due Process.** Mrs. Lisa Bosworth is named in this case as a respondent, so that an order  
17 may be issued against the community property of Mr. and Mrs. Bosworth. The Commission’s 19<sup>th</sup>  
18 Procedural Order (July 15, 2011) dramatically alters Mrs. Bosworth’s situation. The 19<sup>th</sup>  
19 Procedural Order specifically orders that “Respondent Mark Bosworth shall not represent  
20 Respondent Lisa Bosworth in the proceeding.” (19<sup>th</sup> Procedural Order at page 6, lines 3-4). Thus,  
21 if Mrs. Bosworth’s interests are to be represented in this case, she must appear in person, or obtain  
22 counsel. The 14<sup>th</sup> Amendment to the United States Constitution, and Article II, Section 4 of the  
23 Arizona Constitution both grant a right to due process before the state may deprive a person of a  
24 property interest. Due process requires a “[n]otice and an opportunity to be heard [that] must be  
25 provided at a meaningful time and in a meaningful manner... as provided by the regular and  
26 established rules of procedure.” *Morrison v. Shanwick International Corp.*, 167 Ariz. 39, 42, 804  
27 P.2d 768, 771 (1990)(Ct. App. 1990). This right extends to state administrative proceedings.

**ROSHKA DEWULF & PATTEN, PLC**  
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1 *Webb v. State of Arizona by the Arizona Board of Medical Examiners*, 202 Ariz. 555, 558 ¶ 9, 48  
2 P.3d 505, 508 (Ct. App. 2002)(“Procedural due process requires notice and an opportunity to be  
3 heard in a meaningful manner and at a meaningful time.”). Going forward with the hearing at this  
4 time will not afford Mrs. Bosworth with a meaningful time and manner to be heard. This is a very  
5 complex case, with an extensive record. Mrs. Bosworth has only been on notice since July 15 that,  
6 if her rights are to be protected, she (or her attorney) must be present and participate in these  
7 hearings. In other words, Mrs. Bosworth has had a half of a month to prepare for a hearing  
8 involving complex legal issues of securities law, and involving complex facts and numerous  
9 exhibits. She hasn’t heard the testimony. She hasn’t had adequate time to review the record. She  
10 hasn’t had adequate time to prepare to present evidence and cross-examine witnesses. Thus, if the  
11 hearing goes forward as scheduled, she will not have “a meaningful time and in a meaningful  
12 manner...” to be heard under “regular and established rules of procedure.” *Morrison, supra*.  
13 Accordingly, due process requires a continuance.

14 Further, given the extraordinarily convoluted procedural posture of this case, Mrs. Bosworth  
15 may well have viable grounds to seek a mistrial, or to strike the transcripts and evidence  
16 accumulated to this point. She has not participated in the lengthy proceedings to date. First, the  
17 Commission approved consent orders with Mr. Van Campen and Mr. Bornholdt. Then the  
18 Division entered into a deal for a proposed consent order with Mr. and Mrs. Bosworth. The  
19 hearing therefore went forward against the Sargents alone, as the only remaining respondents. But  
20 the Division refused to provide the proposed consent order for weeks after the hearing began.  
21 Finally, the Division filed a copy of the proposed consent order in Docket Control, only three days  
22 before Mr. Bosworth testified. When Mr. Bosworth testified, the proposed consent order still  
23 appeared to be going forward. Mr. Bosworth thus testified as a cooperating witness for the  
24 government. Mrs. Bosworth was also a party to the settlement, and she therefore had no reason to  
25 cross-examine Mr. Bosworth on various points, including community property issues. She likewise  
26 had no reason to cross-examine Mr. Brokaw or any of the investor witnesses.

27

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1 After Mr. Bosworth testified, the Division withdrew the proposed consent order with Mr.  
2 and Mrs. Bosworth. Because the record was based only on issues related to Mr. Sargent, both the  
3 Division and the Sargents argued that a separate hearing should take place against Mr. and Mrs.  
4 Bosworth. The ALJ rejected this idea, and the hearing has moved (slowly) forward with Mr.  
5 Bosworth participating. The 19<sup>th</sup> Procedural Order now compels Mrs. Bosworth to participate in  
6 the hearing, either personally or through counsel, if her interests are to be protected. She certainly  
7 must be given adequate time to prepare. However, even with adequate preparation, at this point,  
8 the record may be fatally flawed because she is now required to participate after much of the record  
9 has been compiled.

10 While these issues obviously impact Mrs. Bosworth the most, the Sargents are also  
11 impacted. If the hearing goes forward now, Mrs. Bosworth will have strong due process arguments  
12 that she can later present to the Commission, or to an appellate court. If either the Commission or  
13 the courts rule in her favor, the case would likely be remanded to for further hearings. The  
14 Sargents would face another round of ruinously expensive hearings. Moreover, if Mr. Bosworth,  
15 Mrs. Bosworth or both succeed on appeal, the Sargents could be left "holding the bag" with  
16 substantial restitution obligations, while the Bosworths pay nothing.

17 In summary, the hearing should be continued to allow adequate time for the final Mexican  
18 title paperwork to be issued, and to allow Mrs. Bosworth an adequate opportunity to prepare.

19 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of July, 2011.

20 ROSHKA DeWULF & PATTEN, PLC

21  
22 By   
23 Paul J. Roshka, Jr.  
24 Timothy J. Sabo  
25 One Arizona Center  
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27 Phoenix, Arizona 85004  
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Attorneys for Respondents  
Michael J. Sargent and Peggy L. Sargent

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1 ORIGINAL and thirteen copies of the foregoing  
2 filed this 22<sup>nd</sup> day of July, 2011 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered  
8 this 22<sup>nd</sup> day of July, 2011 to:

9 Marc E. Stern, Administrative Law Judge  
10 Hearing Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Wendy Coy, Esq.  
15 Securities Division  
16 Arizona Corporation Commission  
17 1300 West Washington Street, 3rd Floor  
18 Phoenix, Arizona 85007

19 Copy of the foregoing mailed  
20 this 22<sup>nd</sup> day of July, 2011 to:

21 Robert D. Mitchell, Esq.  
22 Joshua R. Forest, Esq.  
23 Julie M. Beauregard, Esq.  
24 Mitchell & Forest, P.C.  
25 1850 North Central Avenue, Suite 1715  
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Mark Bosworth  
MARK BOSWORTH & ASSOCIATES  
3 GRINGOS MEXICAN INVESTMENTS, LLC  
18094 N. 100th Street  
Scottsdale, AZ 85255

Mark Bosworth  
10115 E. Bell Road #249  
Scottsdale, AZ 85260  
Pro Per

*Debbie Amaral*

# Attachment

"1"

## Tim Sabo

---

**From:** mike@mikesargent.com  
**Sent:** Friday, July 22, 2011 9:05 AM  
**To:** Tim Sabo  
**Subject:** [FWD: Bob May - Status of Laguna Shores Condo Titles]

----- Original Message -----

**Subject:** Bob May - Status of Laguna Shores Condo Titles  
**From:** "lilbm1" <lilbm1@cox.net>  
**Date:** Thu, July 21, 2011 8:43 pm  
**To:** "Sargent, Mike" <msargent@mjsone.com>

Hi Mike,

Please see the email below written on 7/18/11 from Carolina Pacheco regarding the title transfer status of our (3) Laguna Shores Condos. As you well know, this has been a long process waiting on the various Mexican legal channels and bancomer to slowly complete their requirements. It appears that we are very close to finally getting this completed and I am very confident that the Laguna Shorebirds Mexican corporation that is owned by the Three Gringos Investors will finally get legal title to the condos. Laguna Shorebirds, LLC has had physical possession of and has been using the (3) condos since November 2009 and we have no reason to believe that there will be any further block to taking final ownership very soon. Mike, you have been very helpful to us from the very beginning of the Bosworth fall and we investors are all well aware that had it not been for you stepping up to the plate (when neither of the other two Gringos would), that the Three Gringos Investors would have nothing but a shallow hope for a few pennies on the dollar. This has been a long process but it will all be worth the wait. We know that when the Bosworth fall happened you were under some pretty heavy pressure by your constituents to keep us in the dark. You could have easily taken the low road but you didn't. We are so very thankful for your consideration, your honesty and your professionalism.

Blessings,

Bob May, Spokesperson  
Laguna Shorebirds Board of Directors  
16768 W. McKinley St.  
Goodyear, AZ 85338

"IN GOD WE TRUST"  
Cell: (623) 203-8636

"IN GOD WE TRUST"

Hi bob, yes the notario requested a city value certification and I just got it and will send it to Hermosillo this afternoon

El lunes 18 de julio de 2011, lilbm1 <lilbm1@cox.net> escribió:

> Hi Carolina,

>

> Hope all is going well for you. Just touching base with you again to find out if you have received any response from the Notario at all?

>

> Blessings,

>

> Bob May, Administrator

> Laguna Shorebirds, S.A. DE. C.V.

> 16768 W. McKinley St.

> Goodyear, AZ 85338

>

> 'IN GOD WE TRUST"  
> Cell: (623) 203-8636