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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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AUG 3 2011
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COMMISSIONERS

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

IN THE MATTER OF:

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.

DOCKET NO. S-20600A-08-0340

TWENTY-FIRST PROCEDURAL ORDER (Continues 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. Subsequent to the filing of these requests for hearing, a number of

pre-hearing and status conferences were held.

On August 18, 2009, at a status conference, the Division, the Van Campen Respondents, and the Sargent Respondents were present with counsel. Mr. Bosworth was present on his own behalf and indicated Mrs. Bosworth would be retaining her own attorney.[1] After a discussion between the parties, it was determined that an evidentiary hearing would be held after further procedural matters were concluded.

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

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

On March 4, 2010, at the status conference, the Division and Mr. Sargent appeared with counsel. Mr. Bosworth appeared on his own behalf and on behalf of MBA and 3GMI. The parties indicated that there were ongoing discussions to resolve the issues that had been raised in the Notice, but that certain matters needed to be resolved to conclude their possible settlements in this proceeding. It was further indicated that a brief continuance would facilitate the complete resolution of the proceeding by the parties and the submission of proposed Consent Orders for Commission approval. At the conclusion of the status conference, the parties agreed to the proceeding being continued to the agreed upon dates in June, if the proceeding was not settled.

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

On June 7, 2010, the hearing was convened primarily involving the Sargent Respondents, but the taking of evidence did not begin until June 10, 2010, followed by additional days of hearing.

At the conclusion of the hearing on June 25, 2010, the Division and the Sargent Respondents stipulated that the proceeding be continued to August 26, and 27, 2010.

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

On August 23, 2010, the Division filed a Motion to Set Hearing with respect to Respondents Mark and Lisa Bosworth, MBA and 3GMI ("Bosworth Respondents") because a proposed Consent

[1] Consent Orders were issued with respect to Respondent, Robert Bornholdt, a single man, in Decision No. 71428 (December 8, 2009) and the Van Campen Respondents in Decision No. 71496 (February 23, 2010).

Order which was to have been considered for approval by the Commission at its July 8, 2010, Open Meeting with respect to the aforementioned Respondents was pulled from the Commission's Open Meeting agenda. The Consent Order with respect to the Bosworth Respondents was pulled because testimony in the ongoing hearing involving the Sargent Respondents "indicated that the transfer of property contemplated by the 3GMI private party settlement had not yet occurred." As a result, the amount of restitution which had been agreed upon in the Consent Order of the Bosworth Respondents was in need of revision, but the Division and the Bosworth Respondents were unable to reach an agreement for the revision of the proposed Consent Order. The Division further requested a different Administrative Law Judge hear the proceeding involving the Bosworth Respondents.

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

On September 8, 2010, the Sargent Respondents filed their response to the Division's Motion to Set Hearing with respect to the Bosworth Respondents. The Sargent Respondents argued in support of the Division's Motion to Set Hearing for a separate proceeding which involves the Bosworth Respondents pointing out that the Bosworth Respondents were not present for the majority of the hearing as it related to the Sargents, were not familiar with the record and that numerous complications would arise with respect to prior witnesses who had testified previously along with the possibility of the Bosworth Respondents calling numerous witnesses to rebut the allegations which related to them alone.

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

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

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

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

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

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

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

Subsequently, after the procedural conference, a scheduling conflict arose and the week of June 6, 2011, was no longer available. As a result, the week of June 13, 2011, was substituted in its place.

On May 27, 2011, the Division filed a Motion to Quash a subpoena of its special investigator, Michael Brokaw, who is testifying in the proceeding.

On June 1, 2011, the Division and the Sargent Respondents were represented by counsel. Mr. Bosworth appeared on behalf of the Bosworth Respondents. At the onset of the proceeding counsel for the Sargent Respondents disclosed that Mr. Sargent had suffered a heart attack several days earlier and had subsequently undergone an angioplasty procedure. As a result, the Sargent Respondents requested a continuance of the proceeding. After discussion of possible hearing dates and to avoid scheduling conflicts, the parties agreed that the proceeding should be continued until August. The Division's Motion to Quash was granted at the hearing.

On June 3, 2011, by Procedural Order, the hearing was continued to August 1, 2011.

On June 23, 2011, the Division filed a Motion for Clarification in this matter with respect to Respondent Mark Bosworth's representations that he is representing himself, his wife, Lisa, MBA and 3GMI in this proceeding. The Division stated that Mr. Bosworth's representation is subject to the limitations imposed by the Arizona Supreme Court Rules, Rule 31, with respect to the unauthorized practice of law. He is only able to represent himself, and under limited circumstances, the business entities. The Division cited specific case law which establishes that a familial relationship does not allow a husband to represent his wife in a legal proceeding despite their joint interests in their community property. No responses were filed to the Division's Motion for Clarification.

Early in this proceeding, on July 28, 2008, Lisa Bosworth filed a request for a hearing, and Mr. Bosworth later indicated that she was consulting with an attorney. However, an attorney did not appear to represent her at any subsequent proceeding, and if she is to be represented, counsel should file a Notice of Appearance or she can appear on her own behalf or not appear, if she so chooses.

On July 15, 2011, by Procedural Order, pursuant to Rule 31, Mark Bosworth was ordered not to represent Lisa Bosworth.

On July 22, 2011, the Sargent Respondents filed a Motion for Continuance arguing that new evidence, which may affect an order for restitution reducing any amount possibly due if Respondents are found in violation of the Act, "is expected to be available in the near future." Additionally, counsel for the Sargent Respondents raised issues involving due process which relate primarily to Mrs. Bosworth in the proceeding.

Only July 26, 2011, the Division filed its Response to the Sargent Respondents' Motion for Continuance. The Division argued that the "new evidence" does not relate to the alleged violations of the Act, but may possibly be utilized as an offset pursuant to A.A.C. R14-4-308, if violations of the Act are found and restitution is ordered. The Division also argued that the due process argument with respect to Mrs. Bosworth raised by the Sargent Respondents is without merit and that counsel for the Sargent Respondents lacks a legal basis to seek a continuance for an individual his firm does not represent. There has been no Response filed by either Mr. or Mrs. Bosworth.

On July 27, 2011, Mrs. Bosworth filed a response and her own Motion for a Continuance of the proceeding. She argued that while she was aware of the ongoing proceedings, she was concerned that newly discovered evidence could affect the outcome of the proceeding. Additionally, Mrs. Bosworth argued that her due process rights have been violated because she has not been present at the hearing nor had time to review the record, and does not know why the previously concluded Consent Order was not submitted for Commission approval. Further, she states that she will attend the hearing, but needs time to prepare her defense and to prepare to cross examine witnesses.

On July 28, 2011, the Sargent Respondents filed Joinder in support of Mrs. Bosworth's Motion for a Continuance.

On July 28, 2011, by Procedural Order, oral arguments were scheduled on August 1, 2011, on the Motions for a Continuance.

On July 29, 2011, Mr. Bosworth filed Joinder in Mrs. Bosworth's and the Sargent's Motion for a Continuance. Subsequently, the Sargent Respondents also filed a Reply in Support of their Joinder in Mrs. Bosworth's Motion for a Continuance.

On August 1, 2011, at the hearing on the oral arguments of the parties, the Division appeared with counsel, the Sargent Respondents appeared through counsel, Mr. Bosworth appeared on behalf of himself and his business entities and Mrs. Bosworth appeared on her own behalf. After the respective arguments were made, it was ruled that the proceeding should be continued for approximately 60 days. The Bosworths were further directed to notify the Commission of any address changes by making a filing with the Commission's Docket Control.

IT IS THEREFORE ORDERED that the **hearing** shall be continued from August 1, 2011,

to **October 17, 2011, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, **2nd Floor Conference Room**, Phoenix, Arizona.

IT IS FURTHER ORDERED that the **Division and Respondents shall set aside October 18, 19, 20, 21, 24, 25, 26 27 and 28, 2011,** for additional days of hearing, if necessary, as previously ordered, pending a ruling on the Motions for a Continuance.

IT IS FURTHER ORDERED that **Mrs. Bosworth shall provide the Division and the Sargent Respondents with a copy of her Witness List and Exhibits by September 21, 2011**, with a courtesy copy to the presiding Administrative Law Judge, if she intends to add any additional witnesses or exhibits not previously filed by Mr. Bosworth.

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

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

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

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation to appear at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

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

Dated this 3rd day of August, 2011.

MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing were mailed/delivered this 3rd day of August, 2011 to:

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