



0000128911

BEFORE THE ARIZONA CORPORATION COMMISSION  
AZ CORP COM COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

JIM IRVIN  
Commissioner-Chairman  
RENZ D. JENNINGS  
Commissioner  
CARL J. KUNASEK  
Commissioner

DEC 8 2 47 PM '97

In the matter of )  
RONALD H. WEINER dba RON WEINER )  
ASSOCIATES )  
11198 North 129th Way )  
Scottsdale, AZ 85259 )  
CRD #2039529 )  
DOUGLAS DEAN SACKETT )  
104Ow. Oregon Ave. )  
Klamath Falls, OR 97601 )  
CRD #1006917 )

DOCKET NO. S-3047-I

MOTION TO ALLOW TELEPHONIC  
TESTIMONY

Arizona Corporation Commission

DOCKETED

DEC 08 1997

Respondents.

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby moves for leave to allow telephonic testimony during the scheduled hearing in this matter, as supported by the following Memorandum of Points and Authorities.

RESPECTFULLY submitted this 8th day of December, 1997.

GRANT WOODS  
Attorney General  
Consumer Protection & Antitrust Section

By:   
PAMELA JOHNSON  
Special Assistant Attorney General  
NORMA B. MARTENS  
Assistant Attorney General  
Attorneys for the Securities Division of the  
Arizona Corporation Commission

**MEMORANDUM OF POINTS AND AUTHORITIES****I. FACTS.**

The hearing in this matter is currently set to commence on December 18, 1997.

The Division anticipates calling Thomas G. Zielinski as a witness. Mr. Zielinski is the Vice President, Compliance Officer for Securities America, Inc. and can provide testimony probative of certain of the Division's allegations in this matter of a factual nature, for which there appears to be no dispute and for which the credibility of the witness is not an issue. Specifically, Mr. Zielinski will testify that there is no record that Respondent Weiner requested permission of his employer to conduct any private securities transactions during the relevant time period, while he was a registered securities salesman with Securities America, Inc., and that Securities America, Inc. did not approve any transactions or outside business activity related to the Big Horn Oil Company. Mr. Zielinski lives in Omaha, Nebraska. Travel to Arizona to attend the hearing as a witness would be unduly burdensome, costly and impractical in view of the scope of the testimony anticipated from Mr. Zielinski.

**II. ARGUMENT.**

The purpose of administrative proceedings is to provide for the fair, speedy and cost effective resolution of administratively justiciable matters. To effectuate that purpose, the legislature provided for streamlined proceedings and relaxed application of the formal rules of evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested cases. The evidence submitted in an administrative hearing need not rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable and probative." The Commission's rules of practice and procedure ensure just and speedy determination of all matters presented to it for consideration. See, e.g., A.A.C. R-14-3-101(B); R14-3-109(K). Allowing Mr. Zielinski to testify by telephone retains all indicia of reliability and preserves respondents' right to cross-examination.

Courts in other states have acknowledged that telephonic testimony in administrative and

1 civil proceedings is permissible and consistent with the requirements of procedural due process.  
2 See *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved  
3 Oregon Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v.*  
4 *County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted expert testimony in  
5 commitment hearing). Both of these courts concluded that fundamental fairness weighed in  
6 favor of permitting telephonic testimony.

7 Public policy also favors allowing Mr. Zielinski to testify telephonically. The Division is  
8 able to judiciously allocate its limited resources to best serve and protect the Arizona investing  
9 public. The Division will save the costs of air travel, lodging, meals and incidentals.

10 **IV. CONCLUSION.**

11 Permitting Mr. Zielinski to testify telephonically at the hearing does not compromise  
12 Respondent Weiner's due process rights. Therefore, the Division respectfully requests that its  
13 motion for leave to present the telephonic testimony of Mr. Zielinski be granted.

14  
15 DATED this 8th day of December, 1997.

16 GRANT WOODS  
17 Attorney General  
18 Consumer Protection & Antitrust Section

19 By: *Pamela Johnson*  
20 PAMELA JOHNSON  
21 Special Assistant Attorney General  
22 NORMA B. MARTENS  
23 Assistant Attorney General  
24 Attorneys for the Securities Division of the  
25 Arizona Corporation Commission  
26

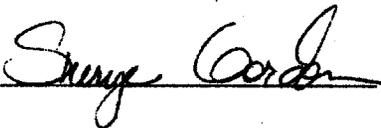
1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 8th day of December, 1997, with:

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

7 Copy of the foregoing  
8 mailed this 9th day of December, 1997  
9 to:

10 RONALD H. WEINER dba RON WEINER ASSOCIATES  
11 11198 North 129th Way  
12 Scottsdale, AZ 85259,

13 DOUGLAS DEAN SACKETT  
14 2555 NW Highland Unit J  
15 Grants Pass, OR 97256

16   
17  
18  
19  
20  
21  
22  
23  
24  
25  
26