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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

OCT 28 2011

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AZ CORP COMMISSION
DOCKET CONTROL

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, L.L.C.,)
an Arizona limited liability company;)
3 GRINGOS MEXICAN INVESTMENTS,)
L.L.C., an Arizona limited liability company;)
Respondents.)

DOCKET NO. S-20600A-08-0340

**DIVISION RESPONSE IN
OPPOSITION TO THE BOSWORTH
RESPONDENTS'
MOTION TO DISMISS OR IN THE
ALTERNATIVE TO STRIKE
EVIDENCE AND MOTION FOR
SANCTIONS FOR PROSECUTORIAL
MISCONDUCT**

(Assigned to the Honorable Marc E. Stern)

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby responds in opposition to the Bosworth Respondents'¹ Motion to Dismiss or In the Alternative to Strike Evidence and Motion for Sanctions for Prosecutorial Misconduct ("Bosworth Motion"). The Bosworth Motion should be denied because (1) the Bosworth Respondents have failed to provide evidence *how* they have been prejudiced; and (2) the Bosworth Respondents have not been prejudiced because (a) the Division advised Mark Bosworth prior to the commencement of his testimony on June 24, 2010, that paragraph 8 of the proposed

¹ Mark Bosworth and Lisa Bosworth.

1 Consent Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and
2 Consent to Same by the Bosworth Respondents, Mark Bosworth & Associates L.L.C. ("MBA")
3 and 3 Gringos Mexican Investments, L.L.C. ("3GMI") dated June 10, 2010, ("Proposed Consent")
4 would have to be revised before the Division would recommend it for approval by the
5 Commission; and (b) Mark Bosworth, individually and on behalf of Respondents MBA and
6 3GMI,² expressed his willingness to proceed in the ongoing administrative hearing and
7 "vigorously opposed" the Division's and Sargent Respondents' request for a separate hearing in
8 which a different administrative law judge would preside, testimony utilized in the administrative
9 hearing to date ("Sargent Respondents' Proceeding") would not be utilized for any purpose, and all
10 exhibits, even if the same, would be subject to admission in the separate hearing in order to avoid
11 a perceived or actual violation of the due process rights of the Bosworth Respondents ("Separate
12 Hearing").³ See Hearing Transcript Vol. VI at p. 853, line 20 through p. 860, line 10 and Fifteenth
13 Procedural Order at p.6, line 9 through p.7, line 21. This response is supported by the following
14 Memorandum of Points and Authorities.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 The Bosworth Respondents contend that the purpose in bringing the Bosworth Motion at
17 this juncture is to ensure that they have complied with the doctrine of exhaustion of administrative
18 remedies and to allow the Commission to address any irregularities in these proceedings that have
19 deprived the Bosworth Respondents of an opportunity for a fair hearing. See Bosworth Motion at
20 p.6, line 2 through p.10, line 5. The crux of their argument is that the Division's refusal to
21 recommend for approval by the Commission the Proposed Consent after Mr. Bosworth testified in
22 the Sargent Respondents' Proceeding has prejudiced them because they did not participate in a
23

24 ² In any administrative matter before the Commission, a limited liability company may be represented by a
25 member or manager. See 17 A.R.S. Sup.Ct.Rules, Rule 31(d)(13).

26 ³ Lisa Bosworth did not respond to the Division's Motion to Set Hearing filed on August 23, 2010, and did
not appear at the Procedural Conference on August 26, 2010. See Fifteenth Procedural Order at p.6, line 9
though p.7, line 21; Hearing Transcript Vol. VI at p.854, line 59 and p.856, line 24 through p.857, line 2.

1 majority of the Division's case-in-chief. *Id.* The Bosworth Respondents request that the
2 Commission dismiss this matter, a "mistrial be declared" (i.e., grant a rehearing), or "strike and
3 exclude from consideration by the Commission as against the Bosworth Respondents "any of the
4 testimony and evidence offered and admitted up to this point."⁴ See Bosworth Motion at p.19,
5 lines 20-26. The Bosworth Respondents' request for any such relief is meritless.

6 The Bosworth Respondents' protests that they have been deprived of an opportunity for a
7 fair hearing ring hollow. What are included in their arguments are speculative and conclusive
8 statements. See e.g., Bosworth Motion at p.8, lines1-5. What is absent from their arguments is
9 sufficient facts as to exactly *how* the Commission has deprived them of an opportunity for a fair
10 hearing, either through purported violations of their constitutional right to due process or alleged
11 misconduct on the part of the Division. This is because the facts surrounding the Division's
12 settlement negotiations with the Bosworth Respondents, the procedural rulings by the
13 Administrative Law Judge ("ALJ"), and applicable law do not support their arguments that they
14 have been deprived of a fair hearing.

15 **I. The Bosworth Respondents ignore significant facts pertaining to their own conduct during**
16 **settlement negotiations and the basis for the Administrative Law Judge's ruling on the**
17 **Division's request for a separate hearing for the Bosworth Respondents.**

18 The Division began discussing the possibility of settlement with the Bosworth Respondents,
19 MBA, and 3GMI in mid-2009. See Opposition Exhibit 1. As early as June 2, 2009, the Bosworth
20 Respondents inquired what, if any, impact a private party settlement between the 3GMI investors

21 ⁴ The Bosworth Respondents fail to set forth any argument regarding the basis for the exclusion of any
22 evidence in these proceedings other than the testimony of Mark Bosworth and those exhibits for which he
23 provided the evidentiary foundation for admission in evidence, namely Hearing Exhibits S-5, S-7, S-8(b), S-
24 11, S-12(a), S-12(f), S-17, S-20, S-21, S-23(c), S-25(b), S-29(b), S-31(b), S-33(b), S-34(d), S-36(a), S-37,
25 S-38(a), S-38(b), S-39(d), S-42(a), S-42(b), S-49, S-57, S-59(c), S-60(a), S-60(b), S-75(b), S-94(a), S-94(b),
26 S-99(a), S-99(b), S-99(e), S-101(d), S-101(h), R-27, R-28, F-29, R-30, R-31, and R-32. The Division
opposes any request to exclude any adverse testimony, exhibits, or the re-introduction into evidence of any
exhibit, the evidentiary foundation for which another witness can provide the basis for admission in
evidence because (1) the Bosworth Respondents have been provided an opportunity to re-call any witness
who has provided testimony in these proceedings for purposes of cross-examination; (2) the Division has
witnesses that it may re-call in its case-in-chief or upon rebuttal; and (3) Mark Bosworth may testify on his
own behalf in the Bosworth Respondents' case-in-chief, allowing for the introduction of exhibits through
direct examination or the cross-examination by the Sargent Respondents and/or the Division.

1 and 3GMI and/or its principals would have on their liability for the payment of restitution with
2 respect to those investments. *Id.* The Division advised the Bosworth Respondents that any
3 amount paid or the value of the assets distributed to the 3GMI investors could be applied as a credit
4 toward the total amount due for restitution. *Id.*; *see also* A.R.S. § 44-2032 and A.A.C. R14-4-
5 308(C). This issue also arose in context of any payments that may be made to the MBA investors
6 and/or 3GMI investors as part of a final plan of distribution in the Bosworth Respondents
7 bankruptcy proceeding. *See* Opposition Exhibit 1. In fact, the Bosworth Respondents shared
8 numerous drafts of the Proposed Consent with their bankruptcy attorney, who did not officially
9 appear in this administrative enforcement action, from June 2009 through at least August 2010.
10 *See* Opposition Exhibits 1, 2, and 3. As early as June 16, 2009, the Bosworth Respondents were
11 advised that any proposed settlement would need to be approved by the Commission. *Id.*

12 On August 12, 2009, the Division was advised by an investor that a private party settlement
13 between the 3GMI investors and 3GMI had been reached (“3GMI Settlement”). *See* Opposition
14 Exhibit 4; *see also*, Hearing Exhibit S-100(b). Based on the 3GMI Settlement, the Division agreed
15 to include a credit for the repayment of the 3GMI investors in the proposed consents for the Van
16 Campen and Bosworth Respondents, ordering the repayment of restitution as it related solely to the
17 MBA investors. *See* Bosworth Motion Exhibit 2 at p.20, lines 20-25 and p.4, lines 17-25 and
18 Bosworth Motion Exhibit 3 at p.2, lines 20-25 and p.5, lines 5-13. The Van Campen Respondents
19 executed a proposed consent, which was submitted on February 5, 2010, by the Division for
20 consideration by the Commission at the February 18, 2010, Securities Open Meeting. The Van
21 Campen proposed consent was approved by the Commission, and docketed on February 23, 2010,
22 as Decision No. 71496⁵ (“Van Campen Decision”). Four months after the Van Campen Decision
23 was entered, the Bosworth Respondents executed the Proposed Consent
24

25 ⁵ The Van Campen Decision also contains the following provision, “[I]T IS FURTHER ORDERED that no
26 finding of fact or conclusion of law contained in this Order shall be binding against any Respondent under
this Docket Number who has not consented to the entry of this Order.” *See* Bosworth Motion Exhibit 1 at
p.6, lines 1-3.

1
2 During the ongoing Sargent Respondents' Proceeding, testimony by the witnesses revealed
3 that not all of the 3GMI investors participated in the 3GMI Settlement and, more importantly, that
4 the transfer of property to the 3GMI investors contemplated by the 3GMI Settlement had not yet
5 occurred. The Division was not told these facts prior to this time.⁶

6 On June 22, 2010, the Proposed Consent was docketed by the Division. However,
7 immediately prior to his scheduled testimony on June 24, 2010, in the Sargent Respondents'
8 Proceeding, Mark Bosworth was advised by the Division that paragraph 8 of the Proposed Consent
9 would need to be revised before the Division could recommend to the Commission that it be
10 approved because testimony in the ongoing hearing indicated that not all of the 3GMI investors
11 participated in the agreement and, more importantly, that the transfer of property to the 3GMI
12 investors contemplated by the 3GMI Settlement had not yet occurred. *See* Procedural Order
13 Fifteen at p.6, lines 9-15. In addition, there would need to be additional discussion regarding the
14 payment of restitution to the 3GMI investors. *Id.* at p.6, lines 15-18.

15 The Bosworth Motion relates a different version of the same event. However, the Division
16 strongly disagrees with the Bosworth Respondents' repeated representation to this tribunal that
17 Mark Bosworth was either in the middle of or had completed his testimony before he was advised
18

19 ⁶ The Bosworth Respondents argue that it was the sole responsibility of the Division to ascertain these facts
20 prior to the time that the Bosworth, MBA, and 3GMI Respondents executed the Proposed Consent, an
21 argument that the Division believes to be irrelevant. *See* Bosworth Motion at p.12, lines 3-6. The
22 assignment of the entire blame on the Division for the inclusion of an inaccurate fact in the Proposed
23 Consent is nothing more than the Bosworth Respondents' frivolous attempt to divert attention from their
24 own malfeasance or questionable motives. Specifically, Mark Bosworth testified before this tribunal that he
25 has been a member of 3GMI since its inception. *See* Hearing Transcript Vol. V at p.744, lines 7-19. Mr.
26 Bosworth further testified that 3GMI was "controlled by a trustee" in the Bosworth Respondents' personal
bankruptcy, a proceeding which has been pending since 2008. *Id.* at p. 777, line 19 through p. 778, line 4;
Opposition Exhibits 1, 2, and 3. However, the Bosworth Motion fails to provide any reasonable explanation
as to how Mark Bosworth could not have possibly known prior to the time that he executed the Proposed
Consent that (1) not all of 3GMI investors were included in the 3GMI Settlement and (2) the 3GMI
Settlement had not been consummated. *See* Hearing Transcript Vol. V at p.744, lines 7-19. The Bosworth
Respondents also fail to provide a reasonable explanation as to why Mark Bosworth would withhold this
information from the Division.

1 that the Division could not support the Commission's approval of the Proposed Consent as written.
2 *See e.g.*, Bosworth Motion at p.5, lines 22-24 and p.13, lines10-13. The Division maintains that it
3 discussed this matter with Mark Bosworth immediately prior to the time that his testimony
4 commenced in the Sargent Respondents' Proceeding. If Mark Bosworth wished to decline to
5 testify, he could have well done so. He chose not to. There can be no misconduct on the part of
6 the Division where Mark Bosworth was aware of the facts prior to his testimony and still chose to
7 testify, a choice that was his alone.

8 On June 24 and 25, 2010, Mark Bosworth voluntarily testified in the Sargent Respondents'
9 Proceeding after being advised by the Division that the Proposed Consent needed to be revised
10 before the Division could recommend its approval by the Commission at an open meeting and
11 despite (1) the absence of a binding cooperation agreement in which he agreed to provide
12 testimony in these proceedings, the Proposed Consent having not yet been approved by the
13 Commission; (2) knowing that if the Commission declined to approve the Proposed Consent, a
14 hearing would be have to be held with respect to the Bosworth, MBA, and 3GMI Respondents; (3)
15 knowing that his testimony could be used against him in any proceeding relating to MBA and
16 3GMI investments, including a criminal proceeding; and (4) the absence of a subpoena compelling
17 him to appear and testify, in which case he could have either testified or invoked his 5th
18 Amendment privilege against self-incrimination. *See* Hearing Transcript Vol. V at p.776, line 3
19 through p.77, line 18.⁷

20 ⁷ The Bosworth Respondents argue that Mark Bosworth was disadvantaged because he did not have the
21 benefit of advice of counsel at this time. *See* Bosworth Motion at p. 5, lines 8-18. However, they do not
22 provide any explanation as to whether Mark Bosworth would have proceeded differently with respect to
23 providing testimony or that the Division prevented him from making the choice not to provide testimony in
24 the Sargent Respondents' Proceeding at that time. It is worth noting that until the Bosworth Respondents
25 retained counsel to represent them in these proceedings, they were subject to the general rule that a
26 laypersons who act as their own attorney must expect to be treated as if they know what they were doing.
See Ackerman v. Southern Arizona Bank & Trust Co., 39 Ariz. 484, 486, 7 P.2d 944, 946 (1932); *see also*
Smith v. Rabb, 95 Ariz. 49, 53, 386 P.2d 649, 653 (1963) (parties who conduct their own litigation "are
entitled to no more consideration than if they had been represented by counsel... Such a rule is indispensable
to the orderly and efficient administration of justice."). The court in *Homecraft Corp. v. Fimbres* observed
that "[e]xperience in trial of cases indicates that all too often litigants who appear in propria persona
deliberately attempt to capitalize upon their own ignorance or appearance of ignorance." 119 Ariz. 299,

1 Throughout July and early August 2010, the Division and Mark Bosworth engaged in
2 further settlement negotiations regarding the Proposed Consent, with the Division repeatedly
3 expressing that it was unwilling to recommend to the Commission that it approve a consent order
4 which contained what the Division had just recently learned to be to be a factual inaccuracy. On
5 August 13, 2010, the Division forwarded to Mark Bosworth a revised proposed consent for
6 consideration by the Bosworth Respondents (“August 2010 proposed consent”). See Opposition
7 Exhibit 5. The August 2010 proposed consent removed the reference to the 3GMI Settlement, but
8 ordered the same principal amount of restitution that was to be paid pursuant to the Proposed
9 Consent. *Id.* at p.1, ¶2 and attached August 2010 proposed consent at p.4, lines 20-24 and p.5,
10 lines 3-11. Mark Bosworth informed the Division, however, that he was unwilling to sign the
11 August 2010 proposed consent. See Opposition Exhibit 3 at p.1, ¶2. In other words, Mark
12 Bosworth was unwilling to correct the factual inaccuracy contained in the Proposed Consent. *Id.*

13 Due to the impasse that had been reached in the settlement negotiations with the Bosworth
14 Respondents, on August 23, 2010, the Division filed a request to schedule a separate hearing for
15 the Bosworth, MBA, and 3GMI Respondents in which a different ALJ would preside.⁸ See
16 Procedural Order Fifteen at p.6, lines 9-19. The Division did not, however, withdraw its settlement
17 offer, as articulated in the August 2010 proposed consent, at that time. See Opposition Exhibit 3 at
18 ¶2.

19 What is most interesting with respect to the allegations contained in the Bosworth Motion,
20

21 301, 580 P.2d 760, 762 (Ct. App. 1978) (citations omitted). The *Fimbres* court also quoted *Viles v. Scofield*,
22 128 Colo. 185, 261 P.2d 148, 149 (1953), stating “[i]f a litigant, for whatever reason, sees fit to rely upon
his own understanding of legal principles and the procedures involved in the courts, he must be prepared to
accept the consequences of his mistakes and errors.” 119 Ariz. at 301, 580 P.2d at 762.

23 ⁸ Without a finding by the Commission that Mark Bosworth violated the Securities Act, an order for the
24 payment of restitution and/or an administrative penalty cannot be entered against the marital community of
25 Mark Bosworth and Lisa Bosworth. Accordingly, neither the Proposed Consent nor the August 2010
26 proposed consent could be presented for approval by the Commission without the inclusion of Mark
Bosworth. See A.R.S. § 44-2031(C); see also A.R.S. §§ 25-211, 25-214(B), and 25-215(D); *Hrudka v.*
Hrudka, 186 Ariz. 84, 91, 919 P. 2d 179, 186 (Ct. App. 1995) (holding that “[a] debt incurred by a spouse
during marriage is presumed to be a community obligation.”).

1 however, is what happened next, as summarized by the ALJ in Procedural Order Fifteen:

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

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

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

25 On September 16, 2010, the Division filed a reply to the response which had
26 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 repeat their vigorous opposition to a separate hearing from the
hearing which is in progress.

Under the circumstances, after weighing the arguments of parties, **since the**
Bosworth Respondents have indicated their willingness to go forward in the
instant proceeding, the best resolution is to go forward and insure that the due
process rights of the parties are preserved.

Procedural Order Fifteen at p.6, line 20 through p. 7, line 21 (emphasis added).

On November 30, 2010, Mark Bosworth was provided with a copy of all of the hearing
transcripts and exhibits which had been admitted in evidence as of that date. *See* Transcript of
Proceedings on November 30, 2010, at p.12, lines 11-21.

1 On December 6, 2010, Mark Bosworth expressed a desire to renew settlement discussions
2 with the Division. *See* Exhibit 6 at p.1. However, he also advised the Division, “I am not
3 interested in the State’s previous offer. I believe that they should have kept it. It was re-offered in
4 full by Ms. Coleman.” *Id.* In response, on December 7, 2010, the Division sent a letter to Mark
5 Bosworth via regular mail and electronic mail as written confirmation that the Division had been
6 advised that all previous settlement proposals, including the Proposed Consent, had been rejected
7 by Mark Bosworth, MBA, and 3GMI. *Id.* at p.2. On December 7, 2010, a copy of this
8 confirmation letter was provided to Lisa Bosworth by the Division via regular mail and by Mark
9 Bosworth via electronic mail.⁹ *Id.*; *see also* Opposition Exhibit 7 at p.1.

10 **II. The Bosworth Respondents ignore well settled law applicable to administrative**
11 **proceedings.**

12 A. The Commission has provided the Bosworth Respondents notice and an opportunity to be
13 heard at a meaningful time and in a meaningful way.

14 The Arizona and federal constitutions prohibit deprivation of property without due process.
15 Ariz. Const. art. 2 § 4; U.S. Const. Amend. XIV. In particular, procedural due process in Arizona
16 requires fundamental fairness. *See State v. Tyszkiewicz*, 209 Ariz. 457, 460, 104 P.3d 188, 191 (Ct.
17 App. 2005). The right to fundamental fairness is violated when citizens are denied procedural due
18 process. *See County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998). Procedural due process
19 ensures that a party receives adequate notice and an opportunity to be heard at a meaningful time
20 and in a meaningful way, *Matthews v. Eldridge*, 424 U.S. 319, 333-34 (1976); *Huck v.*
21 *Haralambie*, 122 Ariz. 63, 65, 593 P.2d 286, 288 (1979), as provided by the regular and
22 established rules of procedure, *Marco v. Superior Court*, 17 Ariz.App. 210, 212, 496 P.2d 636, 638
23 (Ct. App. 1972).

24 ⁹ It is worth noting here that Lisa Bosworth misstated to the ALJ during the Procedural Conference on
25 August 1, 2011, that she not been advised that the Proposed Consent was not going to be presented for
26 approval by the Commission and that Mark Bosworth could not represent her in these proceedings. Clearly,
Mark Bosworth sent her a copy of the correspondence via electronic mail on the same day in which he
received it, December 7, 2010. *See* Transcript of Procedural Conference on August 1, 2011, at p.8, line 14
through p.12, line 16 and Opposition Exhibit 7, p.1.

1 The amount of process due a party is a matter determined by the facts and circumstances of
2 the case. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985); *Matthews v. Eldridge*,
3 424 U.S. 319, 333-34 (1976); *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, 430, 153 P.3d 1055,
4 1059 (Ct. App. 2007) (noting the flexible nature of due process does not require elaborate
5 administrative hearings as long as there is notice and an opportunity to be heard); *Begay v. Arizona*
6 *Dep't of Econ. Sec.* 128 Ariz. 407, 409-10, 626 P.2d 1137, 139-40 (Ct. App. 1981) (hearsay
7 admissible and may be sole support of administrative decision; the Fifth Amendment privilege
8 against self-incrimination in criminal proceedings is not applicable to civil actions and an
9 administrative agency may draw an adverse inference from an assertion of privilege).

10 "It is hornbook law that an administrative board must follow its own rules and regulations."
11 *Tiffany v. Arizona Interscholastic Ass'n, Inc.*, 151 Ariz. 134, 139, 726 P.2d 231, 236 (Ct. App.
12 1986); *see also Cochise County v. AHCCS*, 170 Ariz. 443, 825 P.2d 968 (Ct. App. 1992).
13 However, "[a] constitutional due process right is not created in favor of a person who suffers harm
14 by reason of an administrative agencies failure to follow its own procedures. The requirement that
15 procedures be followed is founded on principles of administrative law, not on constitutional
16 principles." *Barrow Arizona Bd. of Regents*, 158 Ariz. 71, 79, 761 P.2d 145, 154 (Ct. App. 1988)
17 *citing Tiffany*, 151 Ariz. at 139, 726 P.2d 236 and *Board of Curators v. Horowitz*, 435 U.S. 78, 92
18 (1978).

19 Article 15, Section 6,¹⁰ of the Arizona Constitution authorizes the Commission to adopt
20 rules to govern procedures before the Commission, which the Commission has done and with
21 which the Commission must comply. The Arizona Administrative Code and the Arizona Rules of
22 Practice and Procedure before the Corporation Commission ("Rules of Practice and Procedure")
23 contain explicit provisions addressing procedures in contested adjudicative proceedings before the

24 _____
25 ¹⁰ "The law-making power may enlarge the powers and extend the duties of the Corporation Commission,
26 and may prescribe rules and regulations to govern proceedings instituted by and before it; but, until such
rules and regulations are provided by law, the Commission may make rules and regulations to govern such
proceedings." *Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U.S.*, 101 Ariz. 594, 422 P.2d 710
(1967).

1 Commission. *See* A.R.S. § 44-1601, *et seq.*, A.A.C. R14-3-101, *et seq.*, and A.A.C. R14-4-305 *et seq.*
2 Rule R14-3-101(A) states that the Rules of Practice and Procedure govern in all cases before the
3 Commission, including cases arising out of Securities Act. A.A.C. R-14-3-101(A). In addition to
4 the Rules and Practice and Procedure, the Commission has also adopted rules generally applicable
5 to the administration of the Securities Act. *See* A.A.C. R14-4-101, *et seq.*

6 The Bosworth Respondents do not provide an explanation as to how the Commission has
7 not followed its own rules with respect to these proceedings. They do not contest that they
8 received a copy of the Notice, providing them with a statement of the allegations against them with
9 respect to the conduct constituting violations of the Arizona Securities Act. *See* Twenty-Second
10 Procedural Order at p.1, lines 19-26. The Bosworth Respondents filed a request for hearing. *Id.* at
11 p.1, lines 27-28. As they acknowledge, A.A.C. R14-3-104 states: “[a]t hearing a party shall be
12 entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make
13 arguments, and generally participate in the conduct of the proceeding.” A.A.C. R14-3-104. The
14 Commission has complied with the mandates of this rule; a hearing is being held before the ALJ.
15 *See* A.R.S. § 44-1973; A.A.C. R14-4-109(A). While the Bosworth Respondents are joining this
16 proceeding late, it was their own decision to join in the Sargent Respondents’ Proceeding. The
17 Bosworth Respondents agreed to forego a Separate Hearing, ignoring the concerns about the
18 preservation of their due process expressed by the Division, the Sargent Respondents, and the ALJ.
19 It was the Bosworth Respondents who voluntarily declined to begin afresh with a Separate
20 Hearing, despite the fact that the order of the receipt of evidence has been modified to
21 accommodate the consolidation of the Bosworth Respondents hearing in the midst of the Sargent
22 Respondents’ Proceeding. *See* A.A.C. R14-3-109(G) (providing that “[e]vidence will ordinary be
23 received” in a specified order “unless otherwise directed by the presiding officer and “[o]nce a
24 party has rested his case he shall not be entitled allowed to introduce further evidence without
25 consent of the presiding officer.”).

1 B. Immediate judicial intervention in these proceedings is unsupported by the facts and applicable
2 law.

3 Under the Arizona Administrative Review Act (“APA”), administrative decisions are not
4 judicially reviewable until the agency has issued a final decision “that affects the legal rights,
5 duties or privileges of persons and that terminates the proceedings before the administrative
6 agency.” A.R.S. §§ 12-901(2) and 12-902(B). Decisions of the Commission issued under the
7 Arizona Securities Act are subject to review under the APA. *See* A.R.S. § 44-1981. The basic
8 purpose of the doctrine of exhaustion of administrative remedies is to allow an administrative
9 agency to perform functions within its special competence to make a factual record, to apply its
10 expertise and to correct its own errors so as to moot judicial controversies. *Parisi v. Davidson*, 405
11 U.S. 34, 37 (1972). Although exhaustion of administrative remedies is typically required as a
12 condition for judicial review, the requirement is not absolute. The Division agrees that where
13 pursuit of administrative remedies does not serve the purposes behind the exhaustion doctrine, the
14 courts have allowed a number of exceptions. *See McKart v. United States*, 395 U.S. 185 (1969).
15 However, none of the exceptions exist in this case. For example, exhaustion is not required when
16 there is no adequate administrative remedy. *See Greene v. United States*, 376 U.S. 149 (1964);
17 *McNeese v. Board of Educ. for Cmty. Unit Sch. Dist. 187, Cahokia, IL*, 373 U.S. 668 (1963). In
18 this case, the Division requested the ALJ to grant a Separate Hearing for the Bosworth
19 Respondents in August 2010, a request that they “vigorously opposed.”

20 Exhaustion is also not required when there is a clear showing that irreparable injury will
21 result unless immediate judicial review is permitted.¹¹ *See Renegotiation Bd. v. Bannerkraft*

22 ¹¹ The Bosworth Respondents misstate the court’s holding in *Pavlik v. Chinle Unified Sch. Dist.*, 195 Ariz.
23 148, 985 P.2d 633 (Ct. App. 1999). The *Pavlik* court held that the “presence of procedural irregularities
24 does not require setting aside the finding of an administrative board unless a party was prejudiced by the
25 irregularities.” 195 Ariz. at 157, 985 P.2d at 642 *citing DeFries v. School Dist. No. 13 of Cochise Co.*, 116
26 Ariz. 83, 86, 567 P.2d 1212, 1215 (Ct. App. 1977) and *Barrow v. Arizona Bd. of Regents*, 158 Ariz. 71, 79,
761 P.2d 145, 153 (Ct. App. 1988). More relevant to these proceedings is that the *Pavlik* court also held that
“as long as Pavlik was afforded due process, defects in proceedings that did not prejudice his rights do not
require upsetting the administrative decision.” 195 Ariz. at 157, 985 P.2d at 642 *citing Cooner v. Board of*
Educ., 136 Ariz. 11, 17-18, 663 P.2d 1002, 1008-09 (Ct. App. 1982).

1 *Clothing Co., Inc.*, 415 U.S. 1 (1974); *Rhodes v. United States*, 574 F.2d 1179, 1181 (5th Cir.
2 1978). In this case, the Bosworth Respondents do not offer any evidence that they will suffer
3 irreparable harm absent immediate judicial intervention.

4 Finally, exhaustion is not required when such effort would be futile. *See Moulton v.*
5 *Napolitano*, 205 Ariz. 506, 511-13, 73 P.3d 637, 642-44 (Ct. App. 2003). However,
6 “administrative action cannot be deemed futile if the agency has the power to provide some relief.”
7 *Save Our Valley Ass’n v. Arizona Corp. Comm’n*, 216 Ariz. 216, 224, 165 P.3d 1194, 202 (Ct.
8 App. 2007) *citing Moulton*, 205 Ariz. at 514, 73 P.3d at 645. The Commission is required to
9 provide an aggrieved party with the right to make an application for a rehearing after it renders a
10 final decision. *See* A.R.S. §§ 44-1974 and 41-1062(B); A.A.C. R14-3-112. “The purpose of the
11 rehearing requirement is to give the Commission the opportunity to correct its own errors before a
12 party seeks judicial relief.” *State ex rel. Church v. Arizona Corp. Comm’n*, 94 Ariz. 107, 110, 382
13 P.2d 222, 224 (1963) (stating it “is an expression of the doctrine of the exhaustion of administrative
14 remedies”).

15 In this case, the Commission has the power to provide relief to the Bosworth Respondents
16 upon the filing of an appropriate application for rehearing, pursuant to A.A.C. R14-3-112(C). *See*
17 A.A.C. R14-3-112(C); A.R.S. § 41-1062(B). After the administrative hearing is concluded, the
18 ALJ will submit a recommended opinion and order (“ROO”) to the Commission for consideration.
19 The Bosworth Respondents, the Sargent Respondents, and the Division will have the opportunity
20 to file objections to the ROO in the form of “exceptions.” The Commission will consider the
21 ROO and any filed exceptions and will make the final determination at an open meeting. A final
22 opinion and order is then entered into the record (“Decision”). *See* A.A.C. R14-3-110; A.R.S. §§
23 41-1061(G) and 41-1063. Following the entry of the Decision, the Bosworth Respondents may
24 make an application to the Commission for a rehearing. *See* A.A.C. R14-3-112; A.R.S. §§ 44-1974
25 and 44-1062(B). Grounds for a rehearing include that either of the following causes materially
26 affected the moving party’s rights: (1) “irregularity in the proceeding before the Commission or

1 any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;" or (2)
2 "misconduct of the commission, its staff or its hearing officer or the prevailing party." A.A.C.
3 R14-3-112(C). Even if the Division were to agree that either of these conditions existed so as to
4 have materially affected the due process rights of the Bosworth Respondents, the procedural result
5 would be that the Commission could grant a rehearing. In other words, the Bosworth Respondents
6 would get a Separate Hearing, the same administrative remedy that the Division requested the ALJ
7 to grant to the Bosworth Respondents in August 2010, a remedy they "vigorously opposed."

8 If the Commission declined to grant a rehearing upon the entry of a Decision adverse to the
9 Bosworth Respondents, they could then appeal, pursuant to A.R.S. § 44-1981. *See* A.R.S. § 44-
10 1981. Again, the procedural result of a successful appeal upon a finding by the court that the
11 Bosworth Respondents were denied a fair hearing is that the matter would be remanded to the
12 Commission for further proceedings. *See City of Tucson v. Mills*, 114 Ariz. 107, 110, 559 P.2d
13 663, 666 (Ct. App. 1977) ("The general rule seems to be that where an administrative agency has
14 been found to act arbitrarily, the administrative agency is entitled to have the proceedings returned
15 to it."). A remand for further proceedings means that "the case is returned to the administrative
16 agency so that it may take further action in accordance with applicable law." *Id.* "Where an
17 administrative body has made invalid or inadequate findings or not afforded a fair hearing, the
18 court granting judicial review can and should remand the case to the administrative body for
19 further proceedings to the end that valid and essential findings may be made." *Id.* Accordingly,
20 the Commission would most likely be given a rehearing (i.e., separate hearing) upon remand,
21 exactly the same administrative remedy that the Division requested the ALJ to grant to the
22 Bosworth Respondents in August 2010, a remedy which they "vigorously opposed."

23 C. The Proposed Consent could be withdrawn by the Division at any time because it had not been
24 approved by the Commission.

25 The Proposed Consent is not a contract because it was not approved by the Commission.
26 *See* A.R.S. §§ 41-1063 and 44-1981. The enforcement proceedings commenced by the Division

1 had not yet been terminated by the Commission. *See* A.R.S. § 12-901(2) (a decision or order
2 sought to be reviewed under the APA must be final – one “that terminates the proceeding before
3 the administrative agency”). The Division can provide no assurance that a proposed consent will
4 be accepted by the Commission. The evidence supports that the Division did not, in fact, provide
5 such an assurance. *See* Opposition Exhibits 1, 3, and 5. Mark Bosworth understood that if the
6 Proposed Consent was not approved by the Commission, then a hearing would be held by the ALJ
7 regarding the allegations contained in the Notice against the Bosworth, MBA, and 3GMI
8 Respondents. *See* Hearing Transcript Vol. V at p.776, lines 7-9. Therefore, the settlement offer
9 articulated in the Proposed Consent was subject to withdrawal by the Division, if appropriate
10 under the circumstances. The Division believes that such circumstances existed.

11 Without any authority, the Bosworth Respondents claim that the Proposed Consent is
12 similar to a plea agreement in a criminal proceeding. Even if that were true, while not relevant to
13 these administrative proceedings, the Bosworth Respondents neglect to note that (1) a criminal
14 plea agreement may be revoked by any party prior to its acceptance by the court and (2) the court
15 has wide discretion to accept or reject a criminal plea agreement.¹² *See* 17 A.R.S. Rules Crim.
16 Pro., Rules 17.4(b) and 17.4(d); *State v. De Nistor*, 143 Ariz. 407, 411, 694 P.2d 237, 241 (1985).

17 D. Administrative Proceedings before the Commission are not a “prosecution.”

18 With respect to their request for dismissal, rather than for rehearing (i.e., “mistrial”), the
19 Bosworth Respondents argue that the “Arizona courts have extended double jeopardy protection
20 based on prosecutorial misconduct to cases in which the defendant moves for a mistrial on those
21 grounds.” *See* Bosworth Motion at p. 17, line 3 through p.19, line17. The Bosworth Respondents
22

23 ¹² The Bosworth Respondents misstate the court’s holding in *Coy v. Fields*, 200 Ariz.442, 27 P.3d 799 (Ct.
24 App. 2001) (holding that defendant did not breach a plea agreement in a **criminal proceeding** by objecting
25 to an illegal probationary term imposed pursuant to that agreement because, inter alia, the state bears the risk
26 that a provision in a plea agreement is illegal and unenforceable). In *Coy*, the court held that “[p]lea
agreements are contractual in nature and subject to contract interpretation. (citations omitted) **But we are
not always obligated to apply a contract analysis to plea agreements because contract law may not
provide sufficient analogy.**” 200 Ariz. at 445, 27 P.3d at 802 (emphasis added).

1 misstate the law because they again rely on case law applicable solely to criminal proceedings.¹³
2 This administrative proceeding before the Commission is not a criminal prosecution. *See Mullet v.*
3 *Miller*, 168 Ariz. 594, 596-97, 816 P.2d 251, 253-54 (Ct. App. 1991). “[A] prosecution for double
4 jeopardy purposes is a judicial proceeding initiated on behalf of the state by officers charged with
5 the enforcement of the state’s penal laws, seeking the conviction and punishment of persons
6 alleged to have committed offense.” *State v. Nichols*, 169 Ariz. 409, 411, 819 P.2d 995, 997 (Ct.
7 App. 1991). As court stated in *Hernandez v. Superior Court*, “[t]he [Arizona Corporation]
8 Commission’s proceeding was an administrative action brought by officers who are responsible for
9 the civil enforcement of the state’s securities laws; the Attorney General, not the Securities
10 Division of the [Arizona] Corporation Commission, is charged with enforcing Arizona’s criminal
11 laws relating to securities violations. *See* A.R.S. § 44-2032(5) (authorizing [Arizona Corporation]
12 Commission to transmit information about securities violations to Attorney General for criminal
13 prosecution).” 179 Ariz. 515, 522-23, 880 P.2d 735, 742-43 (Ct. App. 1994). Accordingly,
14 dismissal of these proceedings against the Bosworth Respondents cannot be based on principles of
15 double jeopardy.

16 Even if the Bosworth Respondents were to argue that a mistrial would be appropriate in
17 this administrative matter, there is no evidence that a mistrial would provide any advantage to the
18 Division; to the contrary, a mistrial would be expected to benefit the Bosworth Respondents,
19 permitting them to better prepare in advance of hearing for all of the evidence that would be
20 presented by the Division. The Division, however, would not have the same advantage of
21 knowing what evidence the Bosworth Respondents would present in their defense.

22
23 ¹³ *See Pool v. Superior Court*, 139 Ariz. 98, 108-09, 677 P.2d 261, 271-72 (1984) (holding that double
24 jeopardy attached and retrial is barred if the prosecutor in a **criminal proceeding** knowingly engages in
25 intentional, egregious, and improper conduct indifferent to the fact that such conduct will likely result in a
26 mistrial or dismissal, and further holding that conduct due to legal error, negligence, or mistake does **not**
meet this condition); *State v. Jorgenson*, 198 Ariz. 390, 392, 10 P.3d 1177, 1179 (2000) (extending *Pool* to
cases in which a meritorious motion for mistrial was denied and should have been granted). In each of those
cases, the courts formulated a rule that encompasses either (1) prosecutorial misconduct that was especially
indifferent toward risk of mistrial or (2) evidence that a mistrial served some interest of the prosecution.

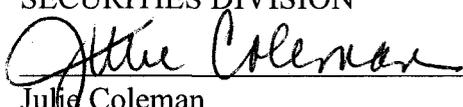
1 E. The requests for continues in these proceedings have been in response to filings by the
2 Bosworth Respondents or the Sargent Respondents, or have resulted from the stipulation of a
3 continuance by the parties.

4 Although the Bosworth Respondents complaint about delays in these proceedings, it is
5 worth noting that all requests for continuances have been filed by the respondents, primarily the
6 Bosworth Respondents. See Bosworth Motion at p.15, lines 1-10; Twenty-Second Procedural
7 Order. Several of these requests by the Bosworth Respondents were ostensibly to engage counsel,
8 a course that did not occur until this year when Mr. Adams was engaged to represent them in these
9 proceedings.¹⁴ The Bosworth Respondents cannot avail themselves of a continuance that they
10 requested or to which they stipulated, then complaint about the resulting delay in the continuation
11 in the administrative hearing in these proceedings.

12 F. Conclusion.

13 The Bosworth Motion should be denied because the Bosworth Respondents (1) have failed
14 to provide evidence *how* they have been prejudiced; and (2) have not been prejudiced because (a)
15 the Division advised Mark Bosworth prior to the commencement of his testimony on June 24,
16 2010, that paragraph 8 of the Proposed Consent would have to be revised before the Division
17 would recommend it for approval by the Commission; and (b) Mark Bosworth, individually and on
18 behalf of Respondents MBA and 3GMI, expressed his willingness to proceed in the ongoing
19 administrative hearing and “vigorously opposed” the Division’s and Sargent Respondents’ request
20 for a Separate Hearing.

21 RESPECTFULLY SUBMITTED this 28th day of October, 2011.

22 ARIZONA CORPORATION COMMISSION
23 SECURITIES DIVISION
24 
25 Julie Coleman
Chief Counsel of Enforcement for the Division

26 ¹⁴ Mr. Adams filed his appearance on behalf of the Bosworth Respondents on September 2, 2011.

1
2 **ORIGINAL and 13 COPIES** of the foregoing filed
this 28th day of October, 2011 with:

3 Docket Control
4 Arizona Corporation Commission
1200 W. Washington St.
5 Phoenix, AZ 85007

6 **COPY** of the foregoing hand delivered
this 28th day of October, 2011 to:

7 The Honorable Marc E. Stern
8 Hearing Division
Arizona Corporation Commission
1200 W. Washington St.
9 Phoenix, AZ 85007

10 **COPY** of the foregoing mailed
this 28th day of October, 2011 to:

11 Timothy J. Sabo, Esq.
12 Paul J. Roshka, Jr., Esq.
13 ROSHKA DeWULF & PATTEN, PLC
One Arizona Center
400 E. Van Buren St., Ste. 800
14 Phoenix, AZ 85004
Attorneys for Michael J. Sargent and
15 *Peggy L. Sargent*

16 Jeffrey R. Adams
17 The Adams Law Firm, PLLC
125 Grove Ave
Post Office Box 2522
18 Prescott, AZ 86302
Attorneys for Respondents Bosworth

19 Mark Bosworth & Associates, LLC
20 3 Gringos Mexican Investments, LLC
c/o Mark Bosworth
21 10115 E. Bell Road, #249
Scottsdale, AZ 85260
22 *Respondents*

23 By: Karen Houde
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OPPOSITION EXHIBIT 1

Julie Coleman

From: Mark Bosworth [theboz@cox.net]
Sent: Wednesday, June 17, 2009 8:26 AM
To: Aaron Ludwig
Subject: RE: In the Matter of Bosworth, et al. (Docket No. S-20600A-08-0340); settlement

Aaron:

Thank you for your email – Unfortunately I am unable to commit to this agreement at this time as my bankruptcy attorney, Allan NewDelman is out of town until June 29, 2009. His office advised me that he would need to review any agreement that is being considered to make sure it is in accordance with bankruptcy rules and regulations regarding what we are able to commit to or not. Within 10 days of his return I will be able to let you know if we are able to commit to this agreement.

Sincerely,

Mark

From: Aaron Ludwig [mailto:ALudwig@azcc.gov]
Sent: June 16, 2009 4:43 PM
To: Mark Bosworth
Subject: In the Matter of Bosworth, et al. (Docket No. S-20600A-08-0340); settlement

Mark:

I'm following up on our meeting on June 2 regarding settlement of the above-referenced matter. Please allow me to recap the issues that, according to my notes, we discussed and fully addressed/resolved.

In response to your inquiry about "who is claiming what" and what documentary evidence exists, I repeatedly referred to the allegations in the Notice, the investors in the commercial buildings and Mexico condos, and the investment agreements that were given to the investors and that were (for the most part) filed as attachments to proofs of claim in your bankruptcy. Also, I confirmed that the restitution sought by this action does not include the promised return on the investments and, when you brought up Broyles, Davis, and Fleming, I said that, when warranted, the Division often pursues securities salesmen after the securities dealers/issuers and principals.

Since our meeting, I've investigated the Mexico settlement and worked on verbiage (that has not yet been approved) regarding a reduction of the restitution amount by the value of the condos in Mexico that the investors are supposed to get. However, recall my mentioning that, even without specific verbiage, respondents always get credit for payments they make toward restitution and I don't see why the Attorney General (who handles the collection of Corporation Commission judgments and keeps track of the balance due) wouldn't reduce the restitution obligation by an amount equal to the value of any assets distributed to the investors. Also, I'm sure that I mentioned that any verbiage in the consent would be somewhat vague. Here is a working draft..."The Commission, in its sole discretion, may reduce the restitution obligations ordered herein by an amount equal to the value of any assets distributed to the investors so long as the Commission is provided with proof, the sufficiency of which shall be determined solely by the Commission, of the value of the assets and that the distribution to the investors has in fact occurred."

Finally, after balancing the aggravating and mitigating factors of the case and taking into account the hundreds of thousands of dollars paid to you and the million-plus dollars transferred from the investor accounts to your other bank accounts, the Director has determined a \$250,000 administrative penalty in this case. Just as I stated in a previous email, this is substantially less than the amount that would be ordered after a trial, which amount could be about \$1 million if it was based only on the violations in the Notice (and there are almost always more proven at trial). A revised consent (with the penalty included) is attached hereto.

10/14/2011

I look forward to your response and please keep in mind that the consent will need to be approved by the Commission during an Open Meeting, the next of which is July 9th. To get on the agenda of that meeting, I would need the executed consent in my hand by June 19th. Also, I need to receive before that date the Statement of Personal Financial Condition that I previously sent you and that I've attached again for your convenience. Thank you.

AARON S. LUDWIG

Enforcement Attorney

SECURITIES DIVISION

ARIZONA CORPORATION COMMISSION

1300 W. Washington St., 3rd Fl.

Phoenix, AZ 85007

(602) 542-3229 phone

(602) 594-7406 fax

aludwig@azcc.gov

<<Bosworth Consent Order.pdf>> <<Statement of Personal Financial Condition.pdf>>

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OPPOSITION EXHIBIT 2

Julie Coleman

From: theboz@cox.net
Sent: Thursday, June 03, 2010 3:33 PM
To: Aaron Ludwig
Subject: Re: AZ Corp Comm-final settlement draft

We may be fine I will review tonight and lisa can stop in the morning on her way to work don't worry to much

Sent via BlackBerry from T-Mobile

From: Aaron Ludwig <ALudwig@azcc.gov>
Date: Thu, 3 Jun 2010 15:15:48 -0700
To: <theboz@cox.net>
Subject: RE: AZ Corp Comm-final settlement draft

The joint and several liability verbiage is not contradictory and/or ambiguous. It says/means that the marital community (made up of Mark and Lisa) is jointly and severally liable with Mark as an individual. Also, Allan's notes and recollection are correct about no "double dipping."

From: theboz@cox.net [mailto:theboz@cox.net]
Sent: Thursday, June 03, 2010 2:37 PM
To: Aaron Ludwig
Subject: Fw: AZ Corp Comm-final settlement draft

Sent via BlackBerry from T-Mobile

From: "Allan NewDelman" <anewdelman@qwestoffice.net>
Date: Thu, 3 Jun 2010 14:35:08 -0700
To: Mark Bosworth<theboz@cox.net>
Cc: carol prieur<cprieur@qwestoffice.net>
Subject: Re: AZ Corp Comm-final settlement draft

Mark:

I reviewed the revised Order with the Corporation Commission and still have basic problems. I am reviewing my notes of February 8, 2010, which is an email directed to your attention. Although there is no reference in the Findings of Fact dealing with your bankruptcy filing they did include the bankruptcy information as a footnote on page 6 of the Order.

I am glad to see that in Paragraph 4 of the Findings of Fact and in Paragraph 9 of the Conclusions of Law there is a reference that Lisa was joined solely for the purpose of determining liability of the marital community. In fact in Paragraph 9 of the Conclusion there is a clear statement that under the restitution and administrative penalties that the debt would be a debt against the community but not the sole and separate obligation of Lisa. However, what I do find very disturbing is the inconsistency where the restitution and administrative claims are set forth.

In the Order, at page 5, it references that the restitution amount "shall be the joint and several liability" which is inconsistent with the concept of no liability against Lisa. Look carefully at both the administrative award and the

10/14/2011

restitution award. In the restitution section it says "that NBA and Bosworth individually" (and Bosworth is meant to mean Mark) are responsible "and the marital community of Bosworth and respondent spouse, jointly and severally." This doesn't make sense. The marital community of Bosworth is responsible but there is no joint and several obligation. The same language is used in the administrative award. I trust this is not what they meant but the language is ambiguous.

There are few other items which they did not include from my earlier memo. One concept was the credit for what the investors will receive under the bankruptcy as a credit against the restitution claim. All I remember is their assurance that there would be no double dipping.

Further, if you recall from my February 10, 2010, email, I wanted a paragraph 6 (see the email) that would deem all claims to be prepetition claims and not subject to the exceptions to discharge under 523(a). Apparently, that provision was not ever accepted by the Commission.

Please make sure that Lisa has no exposure ever as to any sole and separate liability which is inconsistent with the term "jointly and severally."

Sincerely,
Allan

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

From: Mark Bosworth
To: Allan NewDelman
Cc: Lisa bosworth ; carol prieur
Sent: Thursday, June 03, 2010 9:10 AM
Subject: AZ Corp Comm-final settlement draft

Allan, the ACC has made the changes you discussed. Can you review this one more time before we sign later today ? Thanks,!!

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(20100319)

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<http://www.eset.com>

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OPPOSITION EXHIBIT 3

Julie Coleman

From: Julie Coleman
Sent: Monday, August 23, 2010 5:08 PM
To: 'theboz@cox.net'
Subject: RE: S-20600A-08-0340, Mark W. Bosworth et al.

Mark:

I believe that you may have misunderstood the point that I was trying to make with regard to submitting the June 3, 2010 proposed consent to the Commission at an Open Meeting. What I recall that I said was that the Division could submit it, however, the Division would be obligated to point out to the Commission the inaccuracies in the Findings of Fact paragraph 8 in which event it would be likely that the Commission would reject the proposed consent as written. I again advised you that if the Commission rejects the proposed consent, the proceeding against you would then need to be set for hearing. I also indicated that we would recommend that your hearing take place before a different hearing officer.

Even though you indicated in our last telephone conversation that you were unwilling to sign the August 13, 2010 proposed consent, the Division has not yet withdrawn its offer to resolve this matter pursuant to the terms set forth in my August 13, 2010 email and attached proposed consent.

Consistent with our conversation earlier last week in which we discussed your request for additional time to review the proposed change to the Findings of Fact paragraph 8 with your bankruptcy attorney, I filed the motion to set a hearing in your matter today to advise the Hearing Division and the Sargents' attorneys of the status of this matter in advance of the continuation of the Sargents' hearing on Thursday and to keep the proceeding moving toward a conclusion as to all parties.

If you would like to discuss this further, I am available tomorrow all day or Wednesday afternoon to meet with you.

Julie A. Coleman
Chief Counsel of Enforcement
Arizona Corporation Commission, Securities Division 1300 W. Washington St., Third Floor
Phoenix, AZ 85007 Direct Phone: (602) 542-0639
Email: jcoleman@azcc.gov

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

From: Karen Houle
Sent: Monday, August 23, 2010 3:17 PM
To: Julie Coleman
Subject: FW: S-20600A-08-0340, Mark W. Bosworth et al.

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

From: Mark Bosworth [mailto:theboz@cox.net]
Sent: Monday, August 23, 2010 2:45 PM
To: Karen Houle
Subject: Re: S-20600A-08-0340, Mark W. Bosworth et al.

The last thing you told me is you offered to submit the original agreement in its original

form that was signed and executed to go to public hearing before the commissioners. Are you denying you made that offer? Why this now??

On 8/23/10 1:00 PM, "Karen Houle" <KHoule@azcc.gov> wrote:

> FYI, the Division filed the attached motion today.

>
>
>

> -----Original Message-----

> From: Sec Div Scanner East [mailto:scanner@azcc.gov]

> Sent: Monday, August 23, 2010 12:55 PM

> To: Karen Houle

> Subject: Scanned Document

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Recipient

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'theboz@cox.net'

Matt Neubert

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Mark Dinell

Delivered: 8/23/2010 5:08 PM

Aaron Ludwig

Delivered: 8/23/2010 5:08 PM

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OPPOSITION EXHIBIT 4

Michael Brokaw

From: lilbm1 [lilbm1@cox.net]
Sent: Wednesday, August 12, 2009 6:19 PM
To: Aaron Ludwig
Subject: Re: Certification of Release - Three Gringos Mexican Investments, LLC
Attachments: signed Settlement and Release Agreement - 30JUL09.pdf

Mr. Ludwig,

Attached is a copy of the signed agreement/settlement between Three Gringos Mexican Investments, Laguna Shores Golf & Country Club and the Three Gringos Investors. Please let me know if I can assist in any other manner.

Bob May, Spokesperson
Laguna Shorebirds Board of Directors
16768 W. McKinley St.
Goodyear, AZ 85338
Cell: (623) 203-8636

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

From: Aaron Ludwig
To: lilbm1
Sent: Wednesday, August 12, 2009 1:32 PM
Subject: RE: Certification of Release - Three Gringos Mexican Investments, LLC

Mr. May:

Thank you for following up and sending me the email below. Would you please email me a copy of the agreement signed by everyone? Thank you in advance.

AARON S. LUDWIG
Enforcement Attorney
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION
1300 W. Washington St., 3rd Fl.
Phoenix, AZ 85007
(602) 542-3229 phone
(602) 594-7406 fax
aludwig@azcc.gov

From: lilbm1 [mailto:lilbm1@cox.net]
Sent: Monday, August 03, 2009 5:53 PM
To: Aaron Ludwig
Cc: Goulder, Jeffrey; mbrockaw@azcc.gov
Subject: Certification of Release - Three Gringos Mexican Investments, LLC

Mr. Ludwig,

In a previous phone discussion regarding a potential settlement between the Financial Creditors / Investors and Three Gringos Mexican Investments, LLC, I advised you that I would forward a statement from the investors when a settlement was finalized. That settlement has now been finalized and a release document is attached for your records.

Bob May, Spokesperson
Laguna Shorebirds Board of Directors
16768 W. McKinley St.
Goodyear, AZ 85338
Cell: (623) 203-8636

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OPPOSITION EXHIBIT 5

Julie Coleman

From: Julie Coleman
Sent: Friday, August 13, 2010 9:31 AM
To: 'theboz@cox.net'
Subject: S-20600A-08-0340

Importance: High

Attachments: 2010 08-13 Consent Order_Revised.pdf

Mark:

Per our telephone conversation, attached is the revised proposed consent.



2010 08-13
onsent Order_Revis.

The only changes from the June 3, 2010 proposed consent are: (1) the language of Paragraph 8 of Findings of Fact; and (2) the interest calculation in the restitution ordering paragraph (p. 5, line 9) to reflect the accrued interest from "date of purchase" to September 16, 2010 (the date of the next Securities Open Meeting).

Assuming that this matter is resolved by next Wednesday, the proposed consent will be docketed and put on the Commission's open meeting agenda for Thursday, September 16, 2010 at 10:00 am. The date and time are subject to change so please make sure to verify with the notice that is sent out by Docket Control shortly before the open meeting. It is often sent by certified mail. Your address on record is reflected on the last page of the proposed consent. If your address has changed, please notify docket control and me.

As you know, the proposed consent must be approved by the Commission. If the Commission does not approve the consent, then the matter will be returned to the Hearing Division. Should you appear at open meeting, having both the Division's and your support of all of the terms of the order is paramount to their consideration.

Finally, as I indicated in our conversation, I am happy to send an investigator that is a notary to your home or other location to assist in obtaining both you and Lisa's signatures. Please let me know on Monday of your preference.

In the interim, if you should have any questions, please feel free to contact me.

Julie A. Coleman
Chief Counsel of Enforcement
Arizona Corporation Commission, Securities Division
1300 W. Washington St., Third Floor
Phoenix, AZ 85007
Direct Phone: (602) 542-0639
Fax: (602) 594-7427
Email: jcoleman@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 In the matter of

DOCKET NO. S-20600A-08-0340

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

DECISION NO. _____

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

**ORDER TO CEASE AND DESIST, FOR
RESTITUTION, AND FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

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

15 ROBERT BORNHOLDT and JANE DOE
16 BORNHOLDT, husband and wife;

**MARK W. BOSWORTH and LISA A.
BOSWORTH**

17 MARK BOSWORTH & ASSOCIATES,
18 L.L.C., an Arizona limited liability
19 company;

MARK BOSWORTH & ASSOCIATES, L.L.C.

20 3 GRINGOS MEXICAN INVESTMENTS,
21 L.L.C., an Arizona limited liability
22 company;

**3 GRINGOS MEXICAN INVESTMENTS,
L.L.C.**

23 Respondents.

24 Respondents MARK W. BOSWORTH; LISA A. BOSWORTH; MARK BOSWORTH &
25 ASSOCIATES, L.L.C.; and, 3 GRINGOS MEXICAN INVESTMENTS, L.L.C. elect to
26 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And
Desist, for Restitution, and for Administrative Penalties ("Order"). Respondents MARK W.
BOSWORTH; LISA A. BOSWORTH; MARK BOSWORTH & ASSOCIATES, L.L.C.; and, 3
GRINGOS MEXICAN INVESTMENTS, L.L.C. admit the jurisdiction of the Arizona Corporation

1 Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of
2 Law contained in this Order; and consent to the entry of this Order by the Commission.

3 **I.**

4 **FINDINGS OF FACT**

5 1. MARK BOSWORTH & ASSOCIATES, L.L.C. ("MBA") is an Arizona limited
6 liability company that, at all relevant times, was doing business in Maricopa County, Arizona.
7 MBA is the holder of a real estate license issued by the Arizona Department of Real Estate.

8 2. 3 GRINGOS MEXICAN INVESTMENTS, L.L.C. ("3GMI") is an Arizona limited
9 liability company that, at all relevant times, was doing business in Maricopa County, Arizona.

10 3. MARK W. BOSWORTH ("BOSWORTH") is an individual last known to reside in
11 Maricopa County, Arizona. BOSWORTH is the manager of MBA and a member of 3GMI.

12 4. LISA A. BOSWORTH was at all relevant times the spouse of BOSWORTH and may
13 be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-
14 2031(C) solely for purposes of determining the liability of the marital community.

15 5. At all relevant times, BOSWORTH acted for his own benefit and for the benefit or in
16 furtherance of the marital community.

17 6. BOSWORTH, MBA, and 3GMI may be referred to collectively as "Respondents."

18 7. At all relevant times, Respondents were not registered with the Commission as
19 securities dealers or salesmen.

20 8. From on or about February 2006 to October 2007 in Maricopa County, Arizona,
21 Respondents offered and sold 48 investment contracts and promissory notes issued by MBA and
22 3GMI with titles such as "Investment Agreement," "Promissory Note," and "Receipt of Investment
23 Funds" (collectively the "Investments") totaling \$5,352,586 to Investors. Investors have been
24 repaid \$1,216,492.

25 9. Respondents solicited investors through Arizona newspaper advertisements,
26 websites, Arizona seminars, and van trips to Puerto Peñasco, Mexico ("Rocky Point").

1 IT IS FURTHER ORDERED that Respondents and Respondent Spouse comply with the
2 attached Consent to Entry of Order.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that MBA and BOSWORTH,
4 individually, and the marital community of BOSWORTH and Respondent Spouse, jointly and
5 severally shall, jointly and severally with any other Respondents against whom the Commission
6 enters an order under Docket No. S-20600A-08-0340, pay restitution to the Commission in the
7 principal amount of \$2,758,043. Any principal amount outstanding shall accrue interest at the rate
8 of 10 percent per annum from the date of purchase until paid in full. Interest in the amount of
9 \$1,156,425.92 has accrued from the date of purchase to the date of this Order. Payment shall be
10 made in full on the date of this Order. Payment shall be made to the "State of Arizona" to be
11 placed in an interest-bearing account controlled by the Commission.

12 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
13 records of the Commission. Any restitution funds that the Commission cannot disburse because an
14 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
15 investor because the investor is deceased and the Commission cannot reasonably identify and
16 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
17 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
18 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
19 disburse shall be transferred to the general fund of the state of Arizona.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents,
21 individually, and the marital community of BOSWORTH and Respondent Spouse, jointly and
22 severally, shall pay an administrative penalty in the amount of \$150,000. Payment shall be made
23 to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law. The
24 payment obligations for these administrative penalties shall be subordinate to any restitution
25 obligations ordered herein and shall become immediately due and payable only after restitution
26

1 payments have been paid in full or upon Respondents' or Respondent Spouse's default with respect
2 to Respondents' and Respondent Spouse's restitution obligations.

3 For purposes of this Order, a bankruptcy filing by any of the Respondents or Respondent
4 Spouse shall be an act of default.¹ Nothing in this Order is intended to prejudice the rights of
5 Respondents and Respondent Spouse under the U.S. Bankruptcy Code. If any Respondent or
6 Respondent Spouse does not comply with this Order, any outstanding balance may be deemed in
7 default and shall be immediately due and payable.

8 IT IS FURTHER ORDERED that, if any Respondent or Respondent Spouse fails to comply
9 with this order, the Commission may bring further legal proceedings against that Respondent or
10 Respondent Spouse, including application to the superior court for an order of contempt.

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25 ¹ The Division acknowledges that Mark W. Bosworth and Lisa A. Bosworth filed for bankruptcy protection under
26 Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona, Case No. 2:08-bk-03098-SSC, on March 25, 2008 ("Bosworth Bankruptcy"). The Bosworth Bankruptcy is pending. Any subsequent bankruptcy petitions filed by Mark W. Bosworth and/or Lisa A. Bosworth following a discharge or dismissal of the Bosworth Bankruptcy shall be viewed as a default.

1 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
17 _____, 2010.

18 _____
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21
22 _____
23 DISSENT

24
25 _____
26 DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(ASL)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents and Respondent Spouse admit the jurisdiction of the Commission over
3 the subject matter of this proceeding. Respondents and Respondent Spouse acknowledge that they
4 have been fully advised of their right to a hearing to present evidence and call witnesses and they
5 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. Respondents and Respondent Spouse acknowledge that this Order To Cease
8 And Desist, for Restitution, and for Administrative Penalties (“Order”) constitutes a valid final
9 order of the Commission.

10 2. Respondents and Respondent Spouse knowingly and voluntarily waive any right
11 under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
12 extraordinary relief resulting from the entry of this Order.

13 3. Respondents and Respondent Spouse acknowledge and agree that this Order is
14 entered into freely and voluntarily and that no promise was made or coercion used to induce such
15 entry.

16 4. Respondents and Respondent Spouse understand and acknowledge that they have a
17 right to seek counsel regarding this Order and that they have had the opportunity to seek counsel
18 prior to signing this Order. Respondents acknowledge and agree that, despite the foregoing, they
19 freely and voluntarily waive any and all right to consult or obtain counsel prior to signing this
20 Order.

21 5. Respondents and Respondent Spouse neither admit nor deny the Findings of Fact
22 and Conclusions of Law contained in this Order. Respondents and Respondent Spouse agree that
23 they shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this
24 Order in any present or future proceeding in which the Commission is a party.

25 6. By consenting to the entry of this Order, Respondents and Respondent Spouse agree
26 not to take any action or to make, or permit to be made, any public statement denying, directly or

1 indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that
2 this Order is without factual basis. Respondents and Respondent Spouse will undertake steps
3 necessary to assure that all of their agents and employees understand and comply with this
4 agreement.

5 7. While this Order settles this administrative matter between Respondents,
6 Respondent Spouse, and the Commission, it is understood by Respondents and Respondent Spouse
7 that this Order does not preclude the Commission from instituting other administrative or civil
8 proceedings based on violations that are not addressed by this Order.

9 8. Respondents and Respondent Spouse understand that this Order does not preclude
10 the Commission from referring this matter to any governmental agency for administrative, civil, or
11 criminal proceedings that may be related to the matters addressed by this Order.

12 9. Respondents and Respondent Spouse understand that this Order does not preclude
13 any other agency or officer of the state of Arizona or its subdivisions from instituting
14 administrative, civil, or criminal proceedings that may be related to matters addressed by this
15 Order.

16 10. Respondents agree that they will not sell any securities in or from Arizona without
17 being properly registered in Arizona as a dealer or salesman, or exempt from such registration;
18 Respondents will not sell any securities in or from Arizona unless the securities are registered in
19 Arizona or exempt from registration; and, Respondents will not transact business in Arizona as an
20 investment adviser or an investment adviser representative unless properly licensed in Arizona or
21 exempt from licensure.

22 11. Respondents and Respondent Spouse agree that they will continue to cooperate with
23 the Securities Division by, including but not limited to, providing complete and accurate testimony
24 at any hearing in this matter and cooperating with the state of Arizona in any related investigation
25 or any other matters arising from the activities described in this Order.
26

1 12. BOSWORTH and Respondent Spouse acknowledge that any restitution or penalties
2 imposed by this Order are obligations of BOSWORTH as well as the marital community, but not
3 the sole and separate obligation of Respondent Spouse.

4 13. Respondents and Respondent Spouse consent to the entry of this Order and agree to
5 be fully bound by its terms and conditions.

6 14. Respondents and Respondent Spouse acknowledge and understand that, if they fail
7 to comply with the provisions of the order and this consent, the Commission may bring further
8 legal proceedings against them, including application to the superior court for an order of
9 contempt.

10 15. Respondents and Respondent Spouse understand that default shall render them
11 liable to the Commission for its costs of collection and interest at the maximum legal rate.

12 16. Respondents and Respondent Spouse agree and understand that, if they fail to make
13 any payment as required in the Order, any outstanding balance shall be in default and shall be
14 immediately due and payable without notice or demand. Respondents and Respondent Spouse
15 agree and understand that acceptance of any partial or late payment by the Commission is not a
16 waiver of default by the Commission.

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1 SERVICE LIST FOR: In the Matter of Mark W. Bosworth, et al.

2
3 Mark W. Bosworth
4 Lisa A. Bosworth
5 Mark Bosworth & Associates, LLC
6 3 Gringos Mexican Investments, LLC
7 18094 N. 100th St.
8 Scottsdale, AZ 85255

9 Michael J. Sargent
10 Peggy L. Sargent
11 c/o Paul J. Roshka, Esq.
12 ROSHKA DeWULF & PATTEN, PLC
13 One Arizona Center
14 400 E. Van Buren St., Ste. 800
15 Phoenix, AZ 85004
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OPPOSITION EXHIBIT 6

Julie Coleman

From: Julie Coleman
Sent: Tuesday, December 07, 2010 1:38 PM
To: 'theboz50@gmail.com'
Subject: RE: Bosworth settlement discussion
Attachments: 2010 12-07 Coleman to Bosworth_settlement.pdf

Mark:

Please see attached correspondence.

Julie A. Coleman
Chief Counsel of Enforcement
Arizona Corporation Commission, Securities Division
1300 W. Washington St., Third Floor
Phoenix, AZ 85007
Direct Phone: (602) 542-0639
Fax: (602) 594-7427
Email: jcoleman@azcc.gov

From: Mark Bosworth [<mailto:theboz50@gmail.com>]
Sent: Monday, December 06, 2010 11:14 AM
To: Wendy Coy
Subject: Bosworth settlement discussion

I am writing make sure you are aware of my desire to reach a settlement in this case. I have no desire to invest the time, effort and energy required to properly prepare for hearings. I have an offer from a close friend to fund a 25k retainer for counsel which I have already interviewed. This would certainly not cover all my costs for the entire hearing process while my expectations are a mistrial or many documents and testimony stricken from the record. I would much rather put those funds towards reaching a settlement in this case. I also do not see a need for Arizona taxpayers to spend the enormous amount of money the state will spend in this process. With today's budget issues I don't see why we can't reach a common sense settlement that benefits all parties financially while putting aside politics and egos, if any. I am not interested in the State's previous offer. I believe they should have kept it. It was re-offered in full by Ms. Coleman.

If the State is seriously interested I would be glad to meet or put together a bullet point list of my position and offer. We have the ability to resolve this in a few days and spend the taxpayers money on something else. Many thanks, Mark

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

December 7, 2010

via electronic and first class mail

Mr. Mark Bosworth
Mark Bosworth & Associates, LLC
3 Gringos Mexican Investments, LLC
18094 N. 100th St.
Scottsdale, AZ 85255

*Re: In the matter of Mark W. Bosworth and Lisa A. Bosworth, husband and wife, et al.
S-20660A-08-0340*

Dear Mr. Bosworth:

Please be advised that the Securities Division is in receipt of your electronic mail message dated December 6, 2010 addressed to Ms. Wendy Coy ("Email"). In this regard, pursuant to your Email, the Securities Division hereby acknowledges that all previous settlement offers from the Securities Division have been rejected by you, individually and on behalf of Mark Bosworth & Associates, LLC and 3 Gringos Investments, LLC. As you were advised by the Administrative Law Judge, you cannot represent your wife, Lisa. Therefore, so that there is no misunderstanding with respect to any previous settlement negotiations, the Securities Division hereby withdraws all previous settlement proposals including, without limitation, the June 3, 2010 and August 13, 2010 proposed consents.

In the event that you desire to resolve this matter, please provide all settlement proposals in writing to me.

Sincerely,



Julie A. Coleman

c: Ms. Lisa Bosworth
18094 N. 100th St.
Scottsdale, AZ 85255

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OPPOSITION EXHIBIT 7

Julie Coleman

→ **From:** Mark Bosworth [theboz50@gmail.com]
Sent: Tuesday, December 07, 2010 1:58 PM
→ **To:** Lisa bosworth
Cc: Julie Coleman
Subject: FW: Bosworth settlement discussion
Attachments: 2010 12-07 Coleman to Bosworth_settlement.pdf

----- Forwarded Message

From: Julie Coleman <jcoleman@azcc.gov>
Date: Tue, 7 Dec 2010 13:37:46 -0700
To: Mark Bosworth <theboz50@gmail.com>
Subject: RE: Bosworth settlement discussion

Mark:

Please see attached correspondence.

Julie A. Coleman
Chief Counsel of Enforcement
Arizona Corporation Commission, Securities Division
1300 W. Washington St., Third Floor
Phoenix, AZ 85007
Direct Phone: (602) 542-0639
Fax: (602) 594-7427
Email: jcoleman@azcc.gov

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Sent: Monday, December 06, 2010 11:14 AM
To: Wendy Coy
Subject: Bosworth settlement discussion

I am writing make sure you are aware of my desire to reach a settlement in this case. I have no desire to invest the time, effort and energy required to properly prepare for hearings. I have an offer from a close friend to fund a 25k retainer for counsel which I have already interviewed. This would certainly not cover all my costs for the entire hearing process while my expectations are a mistrial or many documents and testimony stricken from the record. I would much rather put those funds towards reaching a settlement in this case. I also do not see a need for Arizona taxpayers to spend the enormous amount of money the state will spend in this process. With today's budget issues I don't see why we can't reach a common sense settlement that benefits all parties financially while putting aside politics and egos, if any. I am not interested in the State's previous offer. I believe they should have kept it. It was re-offered in full by Ms. Coleman.

If the State is seriously interested I would be glad to meet or put together a bullet point list of my position and offer. We have the ability to resolve this in a few days and spend the taxpayers money on something else. Many thanks, Mark

===== This footnote confirms that this email message has been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov =====

----- End of Forwarded Message

10/14/2011

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

December 7, 2010

via electronic and first class mail

Mr. Mark Bosworth
Mark Bosworth & Associates, LLC
3 Gringos Mexican Investments, LLC
18094 N. 100th St.
Scottsdale, AZ, 85255

Re: *In the matter of Mark W. Bosworth and Lisa A. Bosworth, husband and wife, et al.*
S-20660A-08-0340

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In the event that you desire to resolve this matter, please provide all settlement proposals in writing to me.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Coleman".
Julie A. Coleman

c: Ms. Lisa Bosworth
18094 N. 100th St.
Scottsdale, AZ 85255