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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2011 NOV 22 P 12: 25

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

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

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

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

TOM HIRSCH (aka THOMAS N. HIRSCH) and DIANE ROSE HIRSCH, husband and wife,

BERTA FRIEDMAN. WALDER (aka BUNNY WALDER), a married person,

HOWARD EVAN WALDER, a married person,

HARISH PANNALAL SHAH and MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET NO. S-20660A-09-0107

SECURITIES DIVISION'S UPDATED STATUS REPORT

(Assigned to the Hon. Lyn Farmer)

Arizona Corporation Commission

DOCKETED

NOV 22 2011

DOCKETED BY

Pursuant to the Procedural Order dated November 10, 2011, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby provides an updated status report regarding the granting of the Respondents' motion to add evidence to the record ("Motion to Reopen Hearing").

On November 15, 2011, the Division received Respondents' suggested portion of the transcript of the Christian Hoffmann III deposition taken on September 22-23, 2011 ("Hoffmann Deposition") which they are seeking to use as additional testimonial evidence in these proceedings.

On November 21, 2011, Respondents amended their original proposal, which the Division

1 declined. See attached Exhibit A. The parties are presently at an impasse. Accordingly, the
2 Division requests that a procedural conference be scheduled.

3 RESPECTFULLY SUBMITTED this 22nd day of November, 2011.

4 

5 Julie Coleman
6 Chief Counsel of Enforcement for the Securities
7 Division of the Arizona Corporation Commission

8 ORIGINAL and 13 copies of the foregoing
9 filed this 22nd day of November, 2011, with:

10 Docket Control
11 Arizona Corporation Commission
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 COPY of the foregoing hand-delivered
15 this 22nd day of November, 2011, to:

16 Lyn Farmer
17 Administrative Law Judge
18 Arizona Corporation Commission
19 1200 W. Washington St.
20 Phoenix, AZ 85007

21 COPY of the foregoing mailed
22 this 22nd day of November, 2011, to:

23 Michael J. LaVelle
24 LAVELLE & LAVELLE, PLC
25 2525 E. Camelback Road, Suite 888
26 Phoenix, AZ 85016
Attorneys for Respondents

By: 

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EXHIBIT A

Julie Coleman

From: Julie Coleman
Sent: Tuesday, November 22, 2011 7:49 AM
To: 'Mick Lavelle'
Cc: 'lreeves@lavelle-lavelle.com'
Subject: FW: Radical Bunny

Mick:

I am forwarding this to you, rather than simply to your paralegal in case you are out of the office.

Regards,

Julie Coleman

From: Julie Coleman
Sent: Monday, November 21, 2011 3:39 PM
To: 'Laurie Reeves'
Subject: RE: Radical Bunny

Mick:

First, I do not believe that the ALJ anticipated providing the videotaped portions of the Mr. Hoffmann's deposition. Second, the Division did not obtain a copy of the videotape. Thus, while I am willing to entertain its use, I cannot agree absent first viewing a complete copy (i.e., both days). Based on the additional cost, the Division asks that you provide a copy. If you cannot agree to provide a copy of the videotaped testimony (both days), then the Division cannot agree to its use, in part or in its entirety.

As it stands, you have proposed to use all of day two of Mr. Hoffmann's deposition testimony (pp. 232-368, except pp. 315-324), including referenced exhibits (deposition exhibits 66-80), some of which were not used but available to you at the time of the administrative hearing. Furthermore, much of your proposed testimony goes beyond the scope of the May 21, 2007 fax cover sheets and attachments (Deposition Exhibits 71 and 72) or is cumulative or duplicative of Mr. Hoffmann's prior testimony in the administrative hearing. The Division cannot agree to such an expansive use of Mr. Hoffmann's deposition testimony under the circumstances.

The Division will not agree to allow any other witness to testify, including your clients. Accordingly, you will need to seek permission from the ALJ.

Based on this impasse, I will file an update in the morning that simply states that we have had discussions but cannot reach an agreement and request that procedural conference be scheduled.

Regards,

Julie 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

11/22/2011

From: Laurie Reeves [mailto:lreeves@lavelle-lavelle.com]
Sent: Monday, November 21, 2011 2:21 PM
To: Julie Coleman
Subject: Radical Bunny

Julie,

I will use the video of Mr. Hoffman's testimony. After that I intend to call Mr. Hirsch and Mr. Walder to address Mr. Hoffman's disputed testimony and to put the missing e-mail in context.

Can we agree on that or should I respond to the statement you made in your filing of November 15th?

Very truly yours,
Michael J. LaVelle

Laurie M. Reeves, Paralegal to
Michael J. LaVelle
LaVelle & LaVelle, PLC
2525 East Camelback Road, Suite 888
Phoenix, Arizona 85016
Telephone: 602-279-2100
Fax: 602-279-2114
Email: lreeves@lavelle-lavelle.com

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