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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2011 DEC 22 P 2:45

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

DOCKET NO. S-20600A-08-0340

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

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

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

ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.

Arizona Corporation Commission
DOCKETED

DEC 22 2011

DOCKETED BY [Signature]

**TWENTY-SECOND
PROCEDURAL ORDER
(Schedules Oral Argument)**

BY THE COMMISSION:

On July 3, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Mark W. Bosworth and Lisa A. Bosworth, husband and wife; Stephen G. Van Campen and Diane V. Van Campen, husband and wife; Michael J. Sargent and Peggy L. Sargent, husband and wife; Robert Bornholdt and Jane Doe Bornholdt, husband and wife; Mark Bosworth & Associates, LLC ("MBA"); and 3 Gringos Mexican Investments, LLC ("3GMI") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and investment contracts.

Respondents were duly served with copies of the Notice. Requests for hearing were filed by all Respondents except 3GMI. Subsequent to the filing of these requests for hearing, a number of

1 pre-hearing and status conferences were held.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Subsequently, after the procedural conference, a scheduling conflict arose and the week of June
26 6, 2011, was no longer available. As a result, the week of June 13, 2011, was substituted in its place.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 On August 3, 2011, by Procedural Order, the hearing was continued to October 17, 2011.

1 On September 2, 2011, an attorney filed a Notice of Appearance on behalf of the Bosworths.

2 On September 13, 2011, the Bosworth Respondents' recently retained counsel filed a Motion
3 to Continue the hearing which had been continued to October 17. Their attorney stated that he
4 "estimates that it will take a considerable amount of time to adequately prepare for Respondents'
5 defense" due to the voluminous nature of the proceeding to date.

6 On September 20, 2011, the Division filed a response to the request and stated that it did not
7 oppose a short continuance.

8 The Sargent Respondents did not file a response to the request for a continuance.

9 On September 28, 2011, by Procedural Order, a continuance was granted due to the
10 complexities involved in the proceeding and counsel's recent retention by the Bosworths. In order to
11 reschedule the proceeding and to avoid scheduling conflicts, the resumption of the proceeding on
12 October 17, 2011 was to be held as a procedural conference.

13 On October 12, 2011, the Bosworth Respondents filed the following Motions: Motion to
14 Dismiss or in the Alternative to Strike Evidence and Motion for Sanctions for Prosecutorial
15 Misconduct; and Motion to Dismiss. The Bosworth Respondents requested oral argument on their
16 motions.

17 On October 17, 2011, a procedural conference was held with the Division, the Bosworth
18 Respondents and the Sargents represented by counsel. A discussion concerning responses and replies
19 being filed to the outstanding motions, procedural matters and scheduling were also discussed.

20 On October 26, 2011, the Division filed a Response to the Bosworth's recent Motion to
21 Dismiss.

22 On October 28, 2011, the Division filed a Response to the Bosworths' Motion to Dismiss or
23 in the Alternative to Strike Evidence and Motion for Sanctions for Prosecutorial Misconduct.

24 On November 15, 2011, the Bosworths filed their replies to the Division's responses to the
25 Bosworths' outstanding motions.

26 Accordingly, oral argument on the Bosworths' recent outstanding motions should be
27 scheduled.

28 IT IS THEREFORE ORDERED that the **oral argument shall be held on January 18,**

1 2012, at 2:00 p.m., shall be held at the Commission's offices, 1200 West Washington Street,
2 Hearing Room No. 1, Phoenix, Arizona.

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

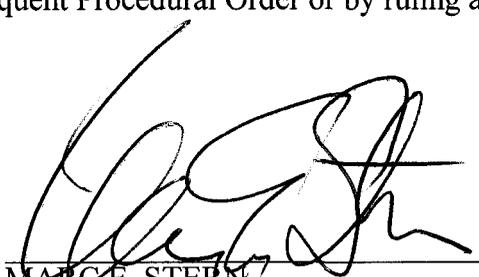
6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
7 Communications) is in effect and shall remain in effect until the Commission's Decision in this
8 matter is final and non-appealable.

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

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

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

20 Dated this 27th day of December, 2011.

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23 
24 MARC E. STERN
25 ADMINISTRATIVE LAW JUDGE
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28

1 Copies of the foregoing were mailed/delivered
2 this 2nd day of December, 2011 to:

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27 By: 
28 Debra Broyles
Secretary to Marc E. Stern

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