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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

GARY PIERCE - Chairman  
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Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION  
DOCKET CONTROL

JAN 17 2012

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-20660A-09-0107

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

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

TOM HIRSCH (aka TOMAS 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.

PROCEDURAL ORDER

BY THE COMMISSION:

On March 12, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing against Radical Bunny, L.L.C.; Horizon Partners, L.L.C.; Tom Hirsch (aka Tomas N. Hirsch); Berta Friedman Walder (aka Bunny Walder); Howard Evan Walder; Harish Pannalal Shah; and Madhavi H. Shah, in which the Division alleged multiple violations of the Arizona Securities Act in connection with the offer and sale of securities in the form of notes and investment contracts.

On March 26, 2009, a request for hearing was filed on behalf of Horizon Partners, L.L.C.; Tom Hirsch; Diane Rose Hirsch; Berta Friedman Walder; Howard Evan Walder; Harish Pannalal Shah; and Madhavi H. Shah ("Respondents").

On April 28, 2010, the Commission issued Decision No. 71682, a Consent Order against

1 Respondent Radical Bunny, L.L.C., an Arizona limited liability company.

2 On October 14, 2010, the hearing concerning the remaining Respondents commenced as  
3 scheduled and was concluded on November 17, 2010. Briefs were filed by the parties on February  
4 18, 2011; April 4, 2011; and April 25, 2011.

5 On April 13, 2011, the Division filed a Post-Hearing Motion to Supplement the Evidentiary  
6 Record ("Motion to Supplement").

7 On April 29, 2011, the Respondents filed their Response and Objection to Post Hearing  
8 Motion to Supplement the Evidentiary Record.

9 On May 3, 2011, the Division filed its Reply to Respondents' Response and Objection to  
10 Motion to Supplement the Evidentiary Record.

11 By Procedural Order issued July 1, 2011, the Motion to Supplement was granted and official  
12 notice was taken of several documents.

13 On August 1, 2011, Respondents filed a Motion to Reopen Hearing and to Add Evidence to  
14 the Record ("Motion"). The Respondents requested that the hearing be re-opened; that a witness be  
15 ordered to re-appear for cross examination; and that additional testimony be taken on the subject of  
16 documents attached to the Motion and related events. The Respondents also requested oral argument  
17 on the Motion.

18 On August 15, 2011, the Division filed its Opposition to Respondents' Motion to Reopen  
19 Hearing and Add Evidence to the Record.

20 On August 26, 2011, the Respondents filed their Reply on Motion to Reopen Hearing and  
21 Add Evidence to the Record.

22 On September 20, 2011, oral arguments were held on the Motion, and the Motion was  
23 granted. The parties were instructed to discuss how the additional testimony and evidence could be  
24 made part of the record and to make a filing with the Commission.

25 On November 10, 2011, a Procedural Order was issued directing the parties to file either a  
26 joint or separate statements updating the Commission on the status of the discussions concerning the  
27 additional testimony and evidence.

28 On November 15, 2011, the Division filed its Status Report.

1 On November 22, 2011, the Respondents filed their Status Report and Response to Securities  
2 Division's Status Report and the Division filed an Updated Status Report.

3 On November 28, 2011, a Procedural Order was issued that scheduled a procedural  
4 conference for December 1, 2011.

5 On November 29, 2011, Counsel for the Division contacted the Hearing Division and  
6 requested that the procedural conference be rescheduled due to a scheduling conflict. The Division  
7 indicated that Respondents' counsel had no objections to the request and alternative dates for the pre-  
8 hearing conference were suggested.

9 On November 29, 2011, the procedural conference was rescheduled for December 12, 2011.

10 The procedural conference was held as scheduled and the parties reported that they were  
11 unable to resolve the issue of the appropriate method of supplementing the record. The parties were  
12 directed to make filings delineating the transcript portions from the deposition of Mr. Christian J.  
13 Hoffmann, III that each wanted to be included in the record, and then to file any objections to the  
14 portions identified by the other party.

15 On December 16, 2011, the Respondents filed their Proposed Hoffmann Deposition Excerpts  
16 and the Division filed its Proposal Regarding the Respondents' Request to Add Evidence to the  
17 Administrative Hearing Record.

18 On December 23, 2011, the Respondents filed their Memo Regarding State's Proposed Scope  
19 of Reopened Hearing and the Division filed its Response in Opposition to Respondents' Proposed  
20 Hoffmann Deposition Excerpts.

21 The suggested use of the deposition was intended as an efficient method to incorporate  
22 additional evidence concerning a document purportedly not available to the parties at the time of the  
23 administrative hearing. After review of the proposed transcript portions and the arguments in  
24 opposition to admitting selected portions of the transcripts, it is now apparent that the use of the  
25 deposition would not achieve the intended result.

26 The Respondents' Motion requested that the hearing be re-opened and that the witness be  
27 ordered to re-appear for cross examination on the subject of the document attached to the Motion and  
28

1 related events.<sup>1</sup> That Motion was granted at the conclusion of the oral argument on the Motion on  
2 September 20, 2011, and the re-opening of the record was limited to testimony concerning the  
3 document attached to the Motion.<sup>2</sup>

4 Accordingly, the hearing should be reconvened to hear testimony and evidence solely on the  
5 issue of the document identified herein. The Division is directed to recall Mr. Hoffmann and to  
6 submit dates when he is available to testify, no later than January 27, 2012. Any rebuttal testimony  
7 by the Respondents will be taken immediately upon conclusion of Mr. Hoffmann's testimony. A  
8 subsequent procedural order will be issued scheduling the date for hearing.

9 IT IS THEREFORE ORDERED that no later than January 27, 2012, the Division shall file dates  
10 during which Mr. Hoffmann is available to testify concerning the document identified herein.

11 IT IS FURTHER ORDERED that a subsequent procedural order shall be issued scheduling the  
12 reconvened hearing.

13 IT IS FURTHER ORDERED that the reconvened hearing shall be for the limited purpose as set  
14 forth herein.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
16 Communications) continues to apply to this proceeding until the Commission's decision in this matter  
17 is final and non-appealable.

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

24 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules

25 \_\_\_\_\_  
26 <sup>1</sup> The document is a one page Quarles & Brady, LLP fax transmittal cover sheet from Christian J. Hoffmann, III to Tom  
27 Hirsch, et al. dated Monday, May 21, 2007 7:22:06 PM; six pages of a "Participation Agreement" with handwritten notes;  
28 and another one page Quarles & Brady, LLP fax transmittal cover sheet from Christian J. Hoffmann, III to Tom Hirsch, et  
al. dated Monday, May 21, 2007 7:25:16 PM.

<sup>2</sup> Including the version attached to the August 15, 2011 filing made by the Division in opposition to the Respondents'  
Motion.

1 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*  
2 *hac vice*.

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

5 DATED this 17<sup>th</sup> day of January, 2012

6  
7  
8   
9 LYN FARMER  
CHIEF ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered  
11 this 17<sup>th</sup> day of January, 2012.

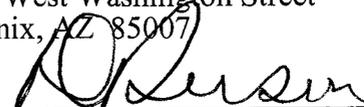
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