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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission 2562

COMMISSIONERS

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

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MAY 14 2012

ARIZONA CORPORATION COMMISSION DOCKET CONTROL

DOCKETED BY JM

IN THE MATTER OF:

DOCKET NO. S-20757A-10-0373

RICHARD M. SCHMERMAN, individually and d/b/a Diversified Financial and/or Diversified Financial Planners, and Amy Schmerman, husband and wife.

RESPONDENTS.

ELEVENTH PROCEDURAL ORDER (Continues Hearing)

BY THE COMMISSION:

On September 9, 2010, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Richard M. Schmerman d/b/a Diversified Financial and/or Diversified Financial Planners ("Diversified") and Amy Schmerman, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") and the Investment Management Act ("IM Act") in connection with Respondent Richard A. Schmerman's practices in business and securities matters which allegedly involved mishandling of client funds and misrepresentation.

The Respondents were duly served with copies of the Notice.

On September 20, 2010, a request for hearing was filed by the Respondents.

On September 22, 2010, by Procedural Order, a pre-hearing conference was scheduled on October 21, 2010.

On October 21, 2010, at the pre-hearing conference, the Division and Respondents appeared through counsel. The parties are discussing a possible resolution of the issues raised by the Notice, but have agreed in the interim that a status conference be scheduled in approximately 60 days.

On October 22, 2010, by Procedural Order, a status conference was scheduled on December 16, 2010.

On December 16, 2010, the Division and Respondents appeared through counsel at the status

1 conference. The parties were continuing to discuss a resolution of the proceeding and in the interim,  
2 the Division requested that another status conference be scheduled in approximately 60 days.

3 On December 16, 2010, by Procedural Order, a status conference was scheduled on February  
4 23, 2011.

5 On February 22, 2011, the Division and Respondents filed a Joint Stipulation to Continue the  
6 status conference for at least 60 days in order that the parties could continue to review matters and  
7 attempt to resolve the issues raised by the Notice.

8 On February 23, 2011, by Procedural Order, the status conference was continued from  
9 February 23, 2011, to April 25, 2011.

10 On April 22, 2011, the Division and Respondents filed another Joint Stipulation to Continue  
11 the status conference for at least 60 days to allow the parties to continue to work towards a settlement  
12 of the issues raised by the Notice.

13 On April 25, 2011, by Procedural Order, the status conference was continued from April 25,  
14 2011, to July 7, 2011.

15 On July 5, 2011, the Division and Respondents filed another Joint Stipulation to Continue the  
16 status conference for at least 60 days to allow the parties to continue to work towards a settlement of  
17 the issues raised by the Notice. Subsequently, by Procedural Order, the status conference was  
18 continued from July 7, 2011, to September 8, 2011.

19 On September 7, 2011, the Division and Respondents filed another Joint Stipulation to  
20 Continue the status conference for sixty days or more to allow the parties to review additional  
21 documentation and to discuss a possible resolution of the proceeding. Subsequently, by Procedural  
22 Order, the status conference was continued to November 17, 2011.

23 On November 17, 2011, the Division and Respondents appeared through counsel. The  
24 Division indicated that it was preparing to file a Motion to Amend the Notice adding additional  
25 allegations against Respondents. The Division and Respondents were continuing to discuss a  
26 possible resolution of the proceeding, but in the interim counsel agreed that an additional status  
27 conference be scheduled in March 2012.

28 On November 21, 2011, by Procedural Order, a status conference was scheduled as agreed on

1 March 12, 2012.

2 On December 6, 2011, the Division filed a Motion to File Amended Notice (“Motion”).

3 On December 12, 2011, the Division and Respondents filed a Joint Stipulation regarding the  
4 Division’s Motion. Respondents had no objections to the filing of the Amended Notice and the  
5 parties stipulated that Respondents’ initial request for hearing filed September 20, 2010, would be  
6 applicable as to the Amended Notice. Additionally, the parties stipulated that Respondents would  
7 have at least 30 days to file an Answer from the date of an Order which authorizes the filing of the  
8 Amended Notice.

9 On December 14, 2011, the Division was authorized to file the Amended Notice as stipulated  
10 by the parties.

11 On March 12, 2012, at the status conference, the Division and Respondents appeared through  
12 counsel. The Division’s counsel indicated that the parties were continuing to negotiate a settlement  
13 of the proceeding, but more time would be required for a resolution of the issues raised by the Notice.  
14 The Division and Respondents agreed that a hearing should commence on June 25, 2012 if a  
15 settlement could not be reached.

16 On March 13, 2012, by Procedural Order, a hearing was scheduled on June 25, 2012, with the  
17 exchange of documentation scheduled on May 15, 2012.

18 On May 11, 2012, the Division and Respondents filed a Joint Stipulation to continue the  
19 hearing for at least 60 days and to delay the exchange of documentation until 20 days before the date  
20 of the continued hearing.

21 Accordingly, the proceeding should be continued as stipulated.

22 IT IS THEREFORE ORDERED that **the hearing shall be continued from June 25, 2012, to**  
23 **September 10, 2012, at 10:00 a.m.**, at the Commission’s offices, 1200 West Washington Street,  
24 **Hearing Room No. 1**, Phoenix, Arizona.

25 IT IS FURTHER ORDERED that the parties shall also set aside **September 11, 12, 13 and**  
26 **14, 2012, for additional days of hearing**, if necessary.

27 IT IS FURTHER ORDERED that the **Division and Respondents shall exchange copies of**  
28 **their Witness Lists and copies of their Exhibits by August 20, 2012**, with courtesy copies

1 provided to the presiding Administrative Law Judge.

2 IT IS FURTHER ORDERED that if the parties reach a resolution of the issues raised in  
3 the Notice prior to the hearing, the Division shall file a Motion to Vacate the proceeding.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
5 Communications) applies to this proceeding as the matter is now set for public hearing.

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

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

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

17 DATED this 14<sup>TH</sup> day of May, 2012.

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20  
21   
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed/delivered  
23 this 14<sup>th</sup> day of May, 2012 to:

24 Alan Baskin  
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Attorney for Respondents

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26 Matt Neubert, Director  
27 Securities Division  
ARIZONA CORPORATION COMMISSION  
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28 Phoenix, AZ 85007

By:   
Debra Broyles  
Secretary to Marc E. Stern