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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
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COMMISSIONERS

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

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 Scherman, husband  
and wife.

**TWELFTH**  
**PROCEDURAL ORDER**  
**(Denies Motion to Withdraw**  
**and Motion for a Continuance)**

RESPONDENTS.

**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. Scherman d/b/a Diversified Financial and/or Diversified Financial Planners ("Diversified") and Amy Scherman, 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. Scherman'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 On May 14, 2012, by Procedural Order, the proceeding was continued as agreed between the  
22 parties to September 10, 2012.

23 On August 29, 2012, Respondents’ counsel filed a Motion to Withdraw and Motion for a  
24 Continuance. Although counsel indicated that Respondents wish to enter into a Consent Order with  
25 respect to the Division’s allegations contained in the Amended Notice, it is not made clear why they  
26 require a continuance for additional time to conclude a settlement of the proceeding. Counsel  
27 additionally stated that his reasons for withdrawing from the proceeding “would violate attorney-  
28 client privilege,” but stated no other reason.

1 On August 31, 2012, the Division responded to the aforementioned motions filed on August  
2 29, 2012, by Respondents' counsel, and urged their denial. The Division stated that the proceeding  
3 was set for hearing in a short time and cited Commission Rule A.A.C. R14-3-104(E) which requires  
4 good cause to be shown for withdrawal from a proceeding, and that by itself violation of attorney-  
5 client privilege is insufficient cause. Further, the Division described ways for counsel to show good  
6 cause citing Ariz. Rules of Civ. Proc. 5.1(a)(2)(C) which describes the steps to be taken to withdraw  
7 from a proceeding once it has been set for trial, and these steps have not been followed.

8 Accordingly, the Motion to Withdraw and Motion for a Continuance should be denied unless  
9 good cause can be shown. Additionally, there is no reason to terminate representation consistent with  
10 Rule 1.16 of the Rules of Professional Conduct stated either.

11 IT IS THEREFORE ORDERED that the Motion to Withdraw and the Motion for a  
12 Continuance are hereby denied.

13 IT IS FURTHER ORDERED that **the hearing shall commence on September 10, 2012, at**  
14 **10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,  
15 Phoenix, Arizona, as previously ordered.

16 IT IS FURTHER ORDERED that the parties shall also set aside **September 11, 12, 13 and**  
17 **14, 2012, for additional days of hearing**, if necessary, as previously ordered.

18 IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in**  
19 **the Notice prior to the hearing, the Division shall file a Motion to Vacate the proceeding, as**  
20 **previously ordered.**

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

23 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
24 with A.A.C. F14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
25 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
26 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
27 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
28 Administrative Law Judge or the Commission.

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

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

6 DATED this 5<sup>th</sup> day of September, 2012.

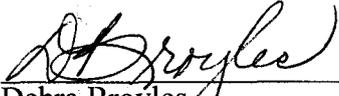
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9   
10 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered  
12 this 5<sup>th</sup> day of September, 2012 to:

13 Alan Baskin  
14 BADE BASKIN RICHARDS PLC  
15 80 East Rio Salado Parkway, Suite 511  
16 Tempe, AZ 85281  
17 Attorney for Respondents

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19 Amy Schmerman  
20 2613 East Mitchell Drive  
21 Phoenix, AZ 85016

22 Matt Neubert, Director  
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24 ARIZONA CORPORATION COMMISSION  
25 1300 West Washington Street  
26 Phoenix, AZ 85007

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