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11 *Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

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CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

10 In the matter of:

**DOCKET NO. S-20660A-09-0107**

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

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

15 TOM HIRSCH (aka THOMAS N.  
16 HIRSCH) and DIANE ROSE HIRSCH,  
17 husband and wife;

18 BERTA FRIEDMAN WALDER (aka  
19 BUNNY WALDER, a married person,

20 HOWARD EVAN WALDER, a  
21 married person,

22 HARISH PANNALAL SHAH and  
23 MADHAVI H. SHAH, husband and  
24 wife,

25 Respondents.

**MOTION  
TO STAY ISSUANCE OF RULING**

Arizona Corporation Commission

**DOCKETED**

NOV 15 2012

DOCKETED BY: *JM*

26  
27 Respondents Hirsch, Walder and Shaw hereby move to stay any ruling in  
28 this case until the conclusion of two related judicial matters. The questions of whether

1 the Radical Bunny interests were securities is presently pending before the Ninth Circuit  
2 (Case No. 11-16275) in an appeal of the District Court judgment relied upon by the  
3 Commission.<sup>1</sup> Obviously a ruling could have great effect on any ruling by this body. As  
4 has been previously discussed, the Legislature has mandated that the state statute be  
5 construed in accordance with “substantially similar provisions in the federal securities  
6 law of the United States” 1996 Ariz.Legis.Serv. ch.197, section 11 C (S.B.) 1383b.(app.  
7 3). That in turn would mandate that the hearing officer wait to see what the Ninth Circuit  
8 has to say on the very subjects before the Commission.

9

10 Perhaps even more importantly, the Arizona Supreme Court has granted  
11 and heard oral argument on a case in which the viability of aider and abettor liability in  
12 Arizona is being reviewed. In *Sell v. Gama*, Supreme Court No. CV-12-0211-PR the  
13 Arizona Supreme Court has before it issues concerning the very existence of aiding and  
14 abetting in securities cases. Those issues are crucial to any determination by this hearing  
15 officer. In our case, as the hearing officer knows, each violation can only sustain a \$5000  
16 penalty. If no aider and abettor liability exists in Arizona this case will have to be  
17 dismissed. At the very least, it would substantially reduce any potential liabilities.

18

19 All this is hardly news to the Department. The Corporation Commission  
20 has joined the Mortgages Limited class action plaintiffs to oppose the concept that aider  
21 and abettor liability does not exist, obviously with an eye to the consequences for this  
22 proceeding.

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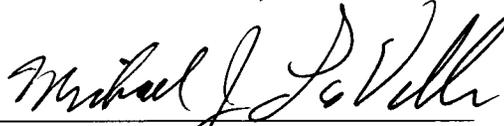
<sup>1</sup> That case has completed oral argument and is awaiting decision.

1 Conclusion

2  
3 This body should withhold its proposed ruling until the Ninth Circuit and  
4 Arizona Supreme Court have spoken on some of the same issues as are now pending  
5 before the Hearing Officer.

6  
7 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November, 2012.

8  
9 **LAVELLE & LAVELLE, PLC**

10  
11 By:   
12 Michael J. Lavelle  
13 2525 East Camelback Road, Suite 888  
14 Phoenix, Arizona 85016  
15 *Attorneys for Respondents Tom Hirsch, Diane Rose*  
16 *Hirsch, Berta Walder, Howard Walder, Harish P. Shah,*  
17 *Madhavi H. Shah and Horizon Partners, LLC*

18  
19 ORIGINAL and 13 COPIES filed this  
20 15<sup>th</sup> day of November, 2012 with:

21 Docket Control  
22 **ARIZONA CORPORATION COMMISSION**  
23 1200 West Washington St.  
24 Phoenix, Arizona 85007

25 COPY of the foregoing HAND- DELIVERED & MAILED  
26 this 15<sup>th</sup> day of November, 2012 to:

27 Lyn Farmer  
28 Administrative Law Judge  
**ARIZONA CORPORATION COMMISSION**  
Hearing Division  
1200 West Washington  
Phoenix, Arizona 85007

1 COPY of the foregoing MAILED  
2 (along with a courtesy copy via electronic mail to Jcoleman@azcc.gov)  
3 this 15<sup>th</sup> day of November, 2012 to:

4 Julie Coleman  
5 Chief Counsel of Enforcement  
6 **ARIZONA CORPORATION COMMISSION**  
7 Securities Division  
8 1300 West Washington, Third Floor  
9 Phoenix, Arizona 85007

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