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ARIZONA CORP COMMISSION
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 10 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch,*
 11 *Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

BEFORE THE ARIZONA CORPORATION COMMISSION

10 In the matter of:

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 married
 21 person,

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

DOCKET NO. S-20660A-09-0107

**REPLY
 TO SECURITIES DIVISION'S
 RESPONSE IN OPPOSITION TO
 RESPONDENTS' MOTION TO STAY
 THE ISSUANCE OF A
 RECOMMENDED OPINION AND
 ORDER**

(Assigned to Hon. Lyn Farmer)

24
25 **A. This Motion Is Not About the Correct Interpretation of the Arizona Securities**
26 **Statute.**

27 Staff misses the point. Its first argument is that 1996 session laws section session

Arizona Corporation Commission

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1 11C does not require state courts to follow interpretation provided by the federal courts.
2 That is the same argument they have made in the *Sell v Gama*, Supreme Court No. CV-
3 12-0211-PR case on review in the Arizona Supreme Court. This body should wait to see
4 what the Arizona Supreme Court does with that argument and that was the entire point
5 of the Motion. The Commission has just regurgitated its brief to the Supreme Court on
6 the same point. It is not the Respondents purpose at this point to re-argue that case. That
7 case will be decided and it and it will apply to this one. Suffice to say that if the
8 Respondents have any liability, the best that can be said is that they aided and abetted
9 Mortgages Limited in its continual fundraising as its business and the value of its assets
10 declined. In fact we deny that they had any knowledge of that decline we urge that they
11 were misled by Mortgages Limited as were all of the other investors. After all, many
12 times as many dollars went into Mortgages Limited directly as went through Radical
13 Bunny. This court should wait and see what the Supreme Court does with the aiding and
14 abetting argument based on the Arizona Statute and the comment by the legislature in
15 prior briefing.

16

17 **B. Whether the Participations are Securities Will Be Decided by the Ninth Circuit.**
18 In prior briefing, the staff has made a point of the Federal Trial Court's determination
19 that the interest provided to the Radical Bunny participants were securities. That and the
20 issue of whether there are questions of fact are both on appeal to the Ninth Circuit. No
21 one can say it would not be instructive to this body to know what the Ninth Circuit
22 thinks about whether the Radical Bunny participations are securities.

23

24 **C. The Issue of Proof of the Number of Violations Is Not Before the Hearing Officer**
25 **on This Motion.**

26 Finally the staff wanders off into the question of how the \$5000 maximum
27 amount for each violation works. They do not deny that the record in this matter is very
28 limited as to the potential number of violations proven. Obviously, the statute of

1 limitations makes the staff's argument that there was an eight year duration to this
2 conduct completely inappropriate. The consideration of this Motion is the same whether
3 there is one violation or millions. All that is a matter for a final determination.

4
5 For the reasons set forth above, the Respondents' Motion to Stay should be
6 granted.

7
8 RESPECTFULLY SUBMITTED this 13th day of December, 2012.

9
10 **LAVELLE & LAVELLE, PLC**

11
12 By: 
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18 ORIGINAL and 13 COPIES filed this
19 13th day of December, 2012 with:

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

23 COPY of the foregoing HAND- DELIVERED & MAILED
24 this 13th day of December, 2012 to:

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

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COPY of the foregoing MAILED
(along with a courtesy copy via electronic mail to Jcoleman@azcc.gov)
this 13th day of December, 2012 to:

Julie Coleman
Chief Counsel of Enforcement
ARIZONA CORPORATION COMMISSION
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007


