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 15 and Michael Lee Christopher

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AZ CORP COMMISSION
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:

14 CRAIG RANDAL MUNSEY, an unmarried
 15 man,
 16 MARKETING RELIABILITY CONSULTING,
 17 LLC (d.b.a. MRC LLC), an Arizona limited
 18 liability company,
 19 DENVER ENERGY EXPLORATION, LLC, a
 20 Texas limited liability company,
 21 MICHAEL LEE CHRISTOPHER
 (CRD#2695315), an unmarried man,

Respondents.

Docket No. S-20804A-11-0208

**RESPONDENTS DENVER
ENERGY EXPLORATION, LLC's
AND MICHAEL L. CHRISTOPHER'S
FINAL REBUTTAL CLOSING BRIEF**

22 Despite the testimony and evidence presented at the hearing on October 1-3, 2012 showing
 23 that Respondents Denver Energy Exploration, LLC ("Denver Energy") and Michael Lee
 24 Christopher ("Christopher") (collectively, the "Denver Energy Respondents") did not violate the
 25 Arizona securities laws, the Division's Closing Brief persists in the Division's contentions that the
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1 Denver Energy Respondents committed a fraud and sets forth a litany of boilerplate allegations and
2 conclusions without substance or any evidence in the record. As was shown at the hearing, and in
3 the Denver Energy Respondents' Closing Brief, no fraud or securities violations occurred in this
4 case, and no restitution order, findings of fact, or penalties are warranted.
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6 Denver Energy is a legitimate oil and gas development company in business for more than
7 ten years operating in New Braunfels, Texas, without a single investor complaint, that attempted to
8 comply, and in fact, did comply with the Arizona securities regulations governing its activities
9 within the State. It relied upon Rule 506 offering exemption and therefore, is not subject to state
10 qualifications (15 USC 77r(a)(1-3)). It made the necessary notice filing within the State.

11 The Division continues to urge the prior Pennsylvania fine as a non-disclosure. However,
12 the minimal fine of \$1,500 by Pennsylvania related to a technical violation by a different
13 independent contractor is immaterial and irrelevant to the offerings involved in this case. The
14 technical violation was resolved and Denver Energy can lawfully do business in Pennsylvania. To
15 hold this to be a non-disclosure violation would be absurd and serve no legitimate investor
16 protection purpose. It was a matter involving a different independent contractor who supposedly
17 placed an internet bulletin board posting, and has nothing to do with any of these offerings. Denver
18 Energy has had no clients or investors in Pennsylvania at any time. In this case, it was not a
19 material omission to not mention the Pennsylvania fine to Arizona investors. None of the
20 millionaire accredited investors that were discussed at the hearing would have been concerned about
21 that \$1,500 fine that did not involve a single sale of any securities in Pennsylvania. Further, the
22 omission did not render any statement made in the subject offering documents misleading.
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25 The rest of the Division's closing brief is nothing more than a hodgepodge of alleged
26 violations that either were not part of the NOH or are immaterial. For example, the Division
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1 quibbled with certain representations of Denver Energy as to oil and gas production reports on
2 certain projects. However, Mr. Christopher testified, quite credibly, that the Texas Railroad
3 Commission on line printouts are notoriously behind in updating their online data. Hrg. Tr., Vol. II,
4 pp. 293-298; Vol. III, p. 453, l. 3-8, p. 454, l. 15-16. One only need compare this to the normal
5 delays involved in processing corporate records at the Arizona Corporation Commission, and not be
6 surprised that such delays are part of the process. Even the Court openly expressed reservation
7 about relying on "Internet documentation" as evidence and suggested "Usually, we sort of like to
8 see certified information". Hrg. Tr., Vol. II, p. 354, l. 14-16. Here, Denver Energy presented
9 evidence of its production records which it substantiated through Mr. Christopher's testimony. In
10 contrast, the Division did nothing to substantiate and prove its claims that the reporting by Denver
11 Energy was deficient or incorrect. It simply failed to carry its burden of proof on this issue.
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14 Another example is the Division's contention that "DEE cannot establish that the
15 unaccredited investors were sophisticated." Division's Closing Brief, p. 26. This is a silly
16 argument. The only unaccredited investor at issue in the case is Lori Cook. Ms. Cook, invested
17 less than \$10,000. Specifically, she invested a total of \$9,668. See Ex. S-37, 38 and 39. Ms. Cook
18 was not solicited by either Mr. Munsey or Mr. Christopher. While Ms. Cook was not an accredited
19 investor, she was certainly a suitable investor for the limited amount she invested given that she is
20 an accountant, with an accounting degree, works for an accounting firm, and has prior experience in
21 stocks, commodities and private placement investing all as set forth in her signed investor
22 questionnaire. Hrg. Tr., Vol. II, p. 334, l. 6 - 8; p. 335, l. 1-8; Ex. S-34. The Denver Energy
23 Respondents made a sufficient prima facie showing that this investor was suitable for the
24 investment she made. In response, the Division failed to call this investor as a witness or present
25 any evidence contradicting Denver Energy's evidence.
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1 The evidence clearly showed that the oil and gas projects are making progress and investors
2 of Denver Energy are being paid earnings on their investment. The Administrative Court received
3 testimony and documentation of such returns. Denver Energy is no fraudulent operation. It is
4 therefore, not surprising that the Division presented not one single investor complaint, nor did they
5 call any investors as witnesses. Further, the Division did not call the only Arizona investor
6 referenced in the hearing, Lori Cook, because she not only was happy with her investment, she
7 declined a rescission offer, and in fact asked to invest further monies with Denver Energy (which
8 request Denver Energy declined because of this pending proceeding and its decision not to accept
9 any further Arizona investors). Hrg. Tr., Vol. II, p. 334, l. 6 – 8; p. 335, l. 1-8; Ex. S-34.

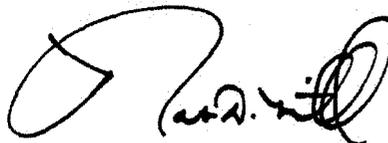
11 As federally covered securities Rule 506 offerings are not subject to state qualifications (15
12 USC 77r(a)(1-3) for the offering itself, only to state notice filings and fee requirements. See 15 USC
13 Sec. 77r. This federal regulatory scheme is intended to provide a safe harbor to a company doing
14 financing to allow it to avoid the type of regulatory red tape that the Division would like to impose.
15 Further, Denver Energy complied with the notice requirement by submission of a Form D to the
16 State of Arizona. Denver Energy did in fact submit the appropriate Form D notice of the offering in
17 Arizona, as it did in other states in which Denver Energy has investors. See June 7, 2011 Letter to
18 Arizona Securities Division enclosing Form D and \$250 submission fee, Ex. R-50. Hrg. Tr., Vol.
19 II, pp. 381-382. Moreover, the Corporation Commission negotiated the check. See Canceled
20 check, Ex. R-83.

23 In conclusion, the findings and order sought by the Division would destroy a legitimate
24 company, harm rather than hurt its investors, and forever tarnish the business reputation of Mr.
25 Christopher undeservedly. Accordingly, the Division's request should be denied. Alternatively, if
26 some technical violation is determined by the Court to have occurred, we respectfully request that
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1 minimal fines be entered to commensurate with the technical and inconsequential violations, if any,
2 that may have occurred.

3 DATED this 19th day of December, 2012.

4 MITCHELL & ASSOCIATES
5 A Professional Corporation

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1 ORIGINAL of the foregoing plus 13 copies
2 filed on this 19th day of December, 2012 with:

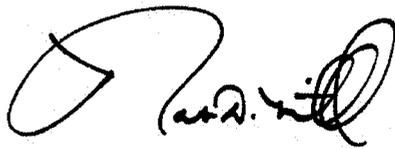
3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
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7 COPIES of the foregoing mailed
8 on this 19th day of December, 2012 to:

9 Hon. Marc E. Stern
10 Administrative Law Judge
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25 denver energy/pldgs/denver energy resps.' final rebuttal closing brief
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