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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DOCKETED BY

COMMISSIONERS

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

In the matter of:

DOCKET NO. S-20839A-12-0083

ANDREW C. MENICHINO, a married individual;

INNOVATIVE CONSTRUCTION, INC., a Pennsylvania Corporation; and

ATLANTIC LEXUS, LTD., a Turks and Caicos Corporation;

Respondents.

**FIFTH**  
**PROCEDURAL ORDER**  
**(Grants Motions to Allow Telephonic Testimony)**

**BY THE COMMISSION:**

On March 5, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Andrew C. Menichino, Innovative Construction, Inc., a Pennsylvania Corporation ("ICP"), and Atlantic Lexus, Ltd., a Turks and Caicos Corporation ("ALL"), (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes or investment contracts.

The Respondents were duly served with copies of the Notice.

On April 6, 2012, Respondent Andrew C. Menichino filed a request for hearing in this matter.

On April 11, 2012, by Procedural Order, a pre-hearing conference was scheduled on May 16, 2012.

On May 4, 2012, Respondent Menichino filed a request to continue the pre-hearing conference for approximately 30 to 45 days to secure counsel to represent him in the proceeding. The Division had no objections to this request.

On May 7, 2012, by Procedural Order, Mr. Menichino's request was granted, and the pre-

1 hearing conference was continued to June 21, 2012.

2 On June 20, 2012, an attorney representing the Respondents filed a Notice of Appearance and  
3 a Stipulated Motion to Continue the pre-hearing conference which had been agreed to by the  
4 Division.

5 On June 21, 2012, by Procedural Order, a continuance was granted to July 26, 2012.

6 On July 26, 2012, the Division and Respondents appeared through counsel. Although the  
7 parties are discussing a resolution of the proceeding, the Division requested that a hearing be  
8 scheduled to avoid a scheduling conflict in the future.

9 On July 7, 2012, by Procedural Order, a hearing in this matter was scheduled to commence on  
10 December 12, 2012, with additional days of hearing set for December 13 and 14, 2012, if necessary.

11 On December 3, 2012, the parties filed a Stipulated Motion to Continue Hearing due to on-  
12 going construction renovations at the Commission during the dates of the scheduled hearing.  
13 Respondents also indicated they will not oppose telephonic testimony by a witness offered by the  
14 Division.

15 On December 4, 2012, the hearing was continued to January 14, 2012.

16 On December 6, 2012, the Division filed a Motion to Allow Telephonic Testimony of a  
17 second witness from Virginia that it wishes to call as a witness citing the fact that the witness will  
18 testify only briefly and that the expense of his appearing would be unduly burdensome.

19 On December 26, 2012, the Respondents filed a Motion to Allow Telephonic Testimony of  
20 one of its witnesses citing the fact that their witness is a Canadian resident not subject to a  
21 Commission subpoena, that his Canadian passport had expired<sup>1</sup>, and that the expense for the witness'  
22 brief testimony in Phoenix would be unduly burdensome.

23 On December 27, 2012, Respondents filed a Response in Opposition to the Division's Motion  
24 to Allow Telephonic Testimony arguing that much of the Division's witnesses' testimony would be  
25 irrelevant and that Respondent Menichino had consulted with this witness, who is an attorney on a  
26 legal matter and that his testimony would involve privileged communications, and that Mr.

27  
28 <sup>1</sup> On December 27, 2012, Respondents filed a supplemental pleading which indicates that Respondents' proposed witness had recently renewed his passport.

1 Menichino had not waived his privilege.

2       Accordingly, both Motions to Allow Telephonic Testimony by the Division and Respondents  
3 should be approved. The relevance and privilege issues raised by Respondents' Response in  
4 Opposition can be addressed, if necessary, during the hearing.

5       IT IS THEREFORE ORDERED that the Motions to Allow Telephonic Testimony by the  
6 Division and the Respondents are hereby granted.

7       IT IS FURTHER ORDERED that the **hearing** shall commence on **January 14, 2013, at**  
8 **10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2,  
9 Phoenix, Arizona, as previously ordered.

10       IT IS FURTHER ORDERED that the parties shall also reserve **January 16 and 17, 2013, for**  
11 **additional days of hearing**, if necessary, as previously ordered.

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

14       IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
15 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
16 matter is final and non-appealable.

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

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

26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
3 ruling at hearing.

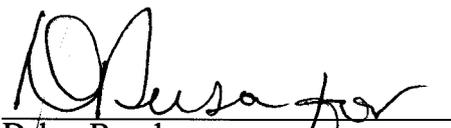
4 DATED this 14<sup>th</sup> day of January, 2013.

5  
6  
7   
8 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
this 14<sup>th</sup> day of January, 2013 to:

10 Alan S. Baskin  
11 Michelle M. Lauer  
12 BADE BASKIN RICHARDS PLC  
13 80 East Rio Salado Parkway, Suite 511  
14 Tempe, AZ 85281  
15 Attorneys for Respondents

16 Matt Neubert, Director  
17 Securities Division  
18 ARIZONA CORPORATION COMMISSION  
19 1300 West Washington Street  
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22  
23  
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25  
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By:   
Debra Broyles  
Secretary to Marc E. Stern