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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

2013 JAN -8 A

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION JAN 08 2013
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In the matter of:

OUT OF THE BLUE PROCESSORS, LLC,
an Arizona limited liability company, d/b/a
Out of the Blue Processors II, LLC,

MARK STEINER (CRD# 1834102) and
SHELLY STEINER, husband and wife,

Respondents.

DOCKET NO. S-20837A-12-0061
**SECURITIES DIVISION'S RESPONSE
TO RESPONDENT'S MOTION TO
VACATE PRE-HEARING CONFERENCE
FOR JANUARY 10, 2013**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") responds to Respondents' Motion to Vacate Pre-Hearing Conference for January 10, 2013, ("Motion") and ask that it be denied. Alternatively, the Division requests that the matter be set for a telephonic status conference so that a hearing date can be set to avoid further delays.

The Division asks that the Motion be denied since the pattern of delay by the Respondents in this matter is becoming burdensome, prevents this case from proceeding, and more importantly, is not based on a showing of good cause. Pursuant to A.A.C. R14-3-109(Q), continuances will be granted "on a showing of good cause ... or for any other proper purpose." The cause presented by Respondents can be summarized as: (1) Respondent Steiner will not be physically available for the third time in about four months because he flies out of the country and (2) that Respondents and/or Respondents' Counsel has failed to comply with the Division's October 23, 2012, subpoena duces tecum for documents, as ordered by the Administrative Law Judge's ("ALJ"), because other matters took priority or Respondent Steiner was not available "to devote substantial time and effort to assist counsel to provide the additional documentation demanded" by the Division's subpoena. *Respt. Mot.*

1 p.2, ln. 16-17. Neither of these excuses are a showing of good cause because they are solely created
2 by the Respondents' and Counsel's oversight or lack of effort.

3 First, Respondent Steiner's physical presence is not mandatory at the status conference since
4 counsel can be present. Respondent Steiner can easily provide his upcoming dates of availability in
5 order to reduce any scheduling conflicts and Counsel can attend telephonically.

6 Second, Respondents' contempt of the ALJ's Seventh Procedural Order requiring the
7 Respondents to comply with the Division's subpoena duces tecum by no later than January 4, 2013, is
8 inexcusable. The Division's subpoena was served in late October 2012 and over the course of
9 multiple months; either the Respondent did not provide the required documentation to his Counsel
10 before he departed or Counsel received them but had not reviewed them in order to submit them
11 timely to the Division. In either case, the delay is caused solely by the inactions of Respondents and
12 Respondents' Counsel.

13 It appears that delay is the goal since the responsive documents could have easily been
14 provided to Respondents' Counsel in the numerous weeks that Respondent Steiner was still in
15 Arizona thereby allowing Respondents' Counsel plenty of time to review them. Though Counsel
16 continues to supply numerous excuses on why more time should be granted to them, they have
17 already shown that being granted continuances are fruitless because they have not put forth the
18 required effort to comply. Counsel does not provide any specific details regarding the actual matter
19 before the Commission, (i.e. that he was handed a large volume of documents to review yesterday and
20 thus needs more time or that he is bates labeling the information but needs another few days before it
21 can be transmitted, etc...), but instead continues to cite other legal or personal reasons that take
22 precedence over the current proceeding. The first few times, the Division was willing to extend such
23 professional courtesies, but enough is enough since this is the third continuance request since October
24 2012. The latest continuance request appears to show the real reason – that they just haven't gotten
25 around to it. Proceedings should not be dictated by the whims of Respondents who comply only
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1 when it's convenient for them. Additionally, if Respondents' Counsel is continuously unavailable,
2 then Respondents may engage new counsel who can provide timely legal assistance.

3 Finally, The Commission is constitutionally and legislatively tasked with enforcing the
4 Arizona Securities Act to protect the integrity of the financial markets, the public, and investors.
5 This task is frustrated when Respondents continuously refuse to comply with procedural orders
6 and properly issued subpoenas. Therefore, it appears the only way the Division will obtain all
7 relevant information from Respondents regarding additional investors is at a hearing. As such, the
8 Division would request that a three day hearing be scheduled.

9 WHEREFORE, the Division requests that the Respondents' Motion be denied and that this
10 matter be set for a telephonic status conference to set the final contested hearing dates.

11
12 Dated this 8th day of January, 2013.

13 ARIZONA CORPORATION COMMISSION

14 By _____

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16 Phong (Paul) Huynh
17 Attorney for the Securities Division of the
18 Arizona Corporation Commission
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filed this 8th day of January, 2013 with

Docket Control
Arizona Corporation Commission
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Phoenix, AZ 85007

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mailed this 8th day of January, 2013 with

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BY: Karen Houde