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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

AZ CORP COMMISSION
DOCKET CONTROL

2013 JAN 25 PM 2 47

In the matter of)
)
TRUE NORTH BUSINESS VENTURES)
)
LLC, a Wyoming limited liability company;)
)
and)
)
MARVIN QUINTON WILSON and KRISTA)
)
DIANNE WILSON, husband and wife,)
)
)
)
Respondents.)

DOCKET NO. S-20854A-12-0367

SECURITIES DIVISION'S
MOTION TO ALLOW
TELEPHONIC TESTIMONY

(Assigned to Administrative Law Judge
Marc E. Stern)

The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for leave to present telephonic testimony of a prospective Division witness during the hearing of the above-referenced matter beginning on February 4, 2013. True North Business Ventures investor Elinore Dye is expected to be called to testify regarding her communications with Respondents, Ms. Dye's investment and related documents.

This request is submitted on the grounds that, although this individual can provide testimony that will provide relevant information at this administrative hearing, special circumstances prevent her actual appearance in Phoenix, Arizona, during the course of this proceeding.

For this primary reason, and for others addressed in the following Memorandum of Points and Authorities, the Securities Division's Motion to Allow Telephonic Testimony should be granted.

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Arizona Corporation Commission

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Division anticipates calling Ms. Dye as a witnesses to this hearing. The witness can provide probative testimony that supports a number of the allegations brought by the Division. The task of traveling to Phoenix to provide testimony in person, however, is impractical for Ms. Dye because she resides in Hemet, California and is a senior citizen on a fixed income. The simple and well-recognized solution to this problem is to permit her to testify telephonically. Through this manner, not only will relevant evidence be preserved and introduced, but all parties will have a full opportunity for questioning, whether by direct or cross-examination.

II. Argument

A. **The use of telephonic testimony in administrative hearings is supported by administrative rules and court decisions.**

In administrative cases like this one, “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545 (1965). Procedural due process requires confrontation and cross-examination. The courts have acknowledged that telephonic testimony in administrative proceedings is permissible and consistent with the requirements of procedural due process. *See e.g., T.W.M. Custom Framing v. Industrial Comm’n of Arizona*, 198 Ariz. 41, 6 P.3d 745 (App. 2000).

The courts have also held that the Arizona Rules of Civil Procedure do not necessarily preclude telephonic testimony. *See In re MH 2004-001987*, 211 Ariz. 255, 258-59, 120 P.3d 210, 213-14 (App. 2005); *Arizona Dep’t of Econ. Sec. v. Valentine*, 190 Ariz. 107, 110, 945 P.2d 828, 831 (App. 1997) (citing *Murray v. Murray*, 894 P.2d, 607, 608 (Wyo. 1995) (holding an appearance by conference call meets the constitutional requirement of a meaningful opportunity to be heard)). In a civil case, “appearance by telephone is an appropriate alternative to personal appearance.” *Valentine*, 190 Ariz. at 110, 945 P.2d at 831. While the fact-finder’s ability to

observe the demeanor of the witness is limited, “the fact-finder can at least consider the pacing of the witness’s responses and the tenor of his voice” to determine the credibility of the witness. *Sabori v. Kuhn*, 199 Ariz. 330, 332-33, 18 P.3d 124, 126-27 (App. 2001); *see also T.W.M. Custom Framing*, 198 Ariz. at 48, 6 P.3d at 752 (noting “the telephonic medium preserves the paralinguistic features such as pitch, intonation, and pauses that may assist [the fact-finder] in making determinations of credibility”).

The Arizona Corporation Commission promulgated Rules of Practice and Procedure that were intended to “be liberally construed to secure just and speedy determination of all matters presented to the Commission.” *See* A.A.C. R14-3-101(B). The rules encompass the use of other forms of testimony during administrative hearings: “In conducting any investigation, inquiry, or hearing, neither the Commission, nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking of testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the Commission.” *See* A.A.C. R14-3-109(K).

Permitting the telephonic testimony of this witness at the administrative hearing will meet the constitutional requirement of providing Respondents with a meaningful opportunity to be heard. Evidence bearing on the outcome of this hearing will not be barred, and Respondents will still have every opportunity to question the witness about his testimony and/or about any exhibits discussed.

B. The Arizona Corporation Commission has a well-recognized history of permitting telephonic testimony during the course of administrative hearings.

In light of the relaxed evidentiary and procedural rules governing administrative hearings in this state and because telephonic testimony does not jeopardize the fundamental fairness underlying these proceedings, this tribunal has repeatedly recognized and approved the use of telephonic testimony in their administrative hearings to introduce probative evidence. *See, e.g., In the matter of Theodore J. Hogan and Associates, et al.*, Docket No. S-20714A-09-0553, *In the*

matter of Edward A. Purvis, et al., Docket No. S-20482A-06-0631; *In the matter of Yucatan Resorts, Inc., et al.*, Docket No. S-03539A-03-0000; *In the matter of Forex Investment Services Corporation et al.*, Docket No. S-03177A-98-0000.

Accordingly, granting leave to introduce the telephonic testimony of the Division's prospective witness is consistent with past determinations in administrative hearings before the Commission.

III. Conclusion

Permitting this witness to testify telephonically at the upcoming administrative hearing will allow the Division to present relevant witness evidence that is expected to be reliable and probative, is fundamentally fair, and does not compromise Respondents' due process rights. Therefore, the Division respectfully requests that its motion for leave to present such telephonic testimony be granted.

RESPECTFULLY SUBMITTED this 25th day of January, 2013

By



Steven Briggs, Esq.
Attorney for the Securities Division of the
Arizona Corporation Commission

ORIGINAL of the foregoing and 8 copies
filed this 25 day of January, 2013, with:

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COPY of the foregoing hand-delivered this
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