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AZ CORP COMMISSION  
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4 *Attorney for Respondents.*

5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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7  
8 **In the matter of:**

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

11 and

12 **MARK STEINER and SHELLY STEINER**,  
13 husband and wife.

14 Respondents.

) **Docket No. S-20837A-12-0061**

) **MOTION TO DISMISS**

) **AND, ALTERNATIVELY,**

) **MOTION TO FURTHER CONTINUE PRE-  
HEARING CONFERENCE**

) **AND**

) **REPLY TO SECURITY DIVISION'S  
RESPONSE TO RESPONDENT'S MOTION  
TO VACATE JANUARY 10, 2013 PRE-  
HEARING CONFERENCE**

17 Arizona Corporation Commission  
18 **DOCKETED**

19 **JAN 28 2013**

20 **DOCKETED BY**

21 **I.**

22 Although the issue addressed by the Security Division's January 8, 2013 Response to  
23 Respondent's motion to vacate now is MOOT, as the January 10, 2013 pre-hearing conference  
24 was vacated and rescheduled, the Securities Division's Response was sufficiently inappropriate in  
25 view of the situation and the cooperation of the Respondents to date (as well as being somewhat  
rude) to warrant Respondents reasserting now, by Motion to Dismiss, the absence of credible

1 evidence on which to base the Temporary Orders issued in this matter or to continue with further  
2 proceedings based on that absence of evidence. Respondents sought to cooperate, rather than  
3 proceed in this manner. Cooperation is a two way street, however.

4 In addition, Respondents have become aware of investigative attempts to discredit  
5 Respondent Mark Steiner with investors by asking questions which imply a knowledge by the  
6 investigator of improper uses of investor funds – something the investigator could not have proof  
7 of because it is wholly false. Whether malicious or merely overzealous, such conduct is wrong!!!

## 9 II.

10 Reasons of economy of effort suggest, however, that the status quo be continued for at  
11 least several more months. The Commission cannot have any basis whatever for doubting the  
12 genuineness of the Lunsford business or of the transactions which it is attempting to bring to  
13 fruition – or for doubting the level of income which will be derived from them, if and when they  
14 are closed. For the most part the investors are personal friends of Mr. Steiner. Lunsford has  
15 promised to pay a portion of its receipts to Blue and Blue is obligated to pay nearly all the  
16 amounts received from Lunsford to the investors, in perpetuity. In addition to the 1200 mw coal-  
17 fired electric generating plant in Kogi State, Nigeria, several other transactions, smaller and less  
18 complicated, also are now nearing the closing and funding stage and may close during the next  
19 three to four months.  
20

21 When those things have occurred, and not before, is when the Securities Division and  
22 Steiner should discuss possible remedies for his failure to be aware of, and therefore to conform  
23 with, the Commission's fee payment and filing requirements.  
24  
25

1 Since neither Blue nor Steiner are holding unexpended investor funds, there is no risk of  
2 further investor losses from the delay – and failing to permit Respondents the additional time  
3 could jeopardize transactions already near closing.

### 4 III.

5 Unlike most Securities Division cases involving an issuer, this case involves neither  
6 fraudulent conduct nor a failed business. Respondents' business is very active and in good  
7 condition. The Commission was provided, months ago, with clear and convincing evidence of the  
8 genuineness of the business plan and the fact that the claims made for the business prospects of  
9 Out of the Blue Processors, LLC ("Blue") were, are and will remain true. The Division neither has  
10 nor can it obtain any credible evidence to the contrary. Indeed, the first revenues are very nearly  
11 in hand.  
12

13 The exact timing of the receipt of revenues, like the dates of Mr. Steiner's travels to China,  
14 Nigeria, Uganda and Ecuador are not in Mr. Steiner's control. Every effort is being made to by the  
15 Chinese participants to complete the 1,200 mw. coal-fired electrical generating facility purchase  
16 contract prior to the Chinese New Year (that is, before February 9, 2013).  
17

18 That may or may not be achievable, but there is a basis for believing that the meetings at  
19 present occurring in Nigeria may, finally, resolve issues which were resolved a year ago, but  
20 resurfaced very recently.

21 The business of Lunsford Consulting LLC ("Lunsford") and Blue involves the finding of pre-  
22 defined civil and infrastructure engineering projects for a large and well funded State owned  
23 Chinese business entity (or in some cases, entities) and assisting the entity (or entities) to bring  
24 together the diverse participants needed to complete a transaction, including partial transaction  
25 funding from a bank or other institutional lender, by sovereign guaranties and by take or pay

1 contracts, and to assist all the participants to reach an agreement (or the several separate  
2 agreements) needed for a transaction to be completed. Persons and entities engaged in the  
3 finder/facilitator business understand that payment for the service will be based on a percentage  
4 of the value of each transaction and that the fee will be paid only when a transaction funds or  
5 otherwise is successfully "closed."

6  
7 The nature of such a business is not new or unique.<sup>2</sup> Many other persons are engaged, at  
8 differing levels of success, in such a business, domestically and, increasingly, internationally.  
9 Some are small "arms" of large engineering or investment banking firms who specialize in such  
10 transactions. Others are individuals or groups participating in the established profit potential of  
11 such businesses.

12 The finder/facilitator business involves high risk. The finder/facilitator must spread that risk  
13 among numerous potential transactions, for the reward for successful completion is sufficiently  
14 great to compensate for several unsuccessful attempts. Raising capital for such a venture  
15 generally involves private transactions. Exemptions to the registration requirement of federal  
16 securities law permit such transactions. That is precisely what occurred here, although not with  
17 the advance care and planning which would have been desirable and would have complied with  
18 the filing and fee payment requirements of the Commission.

19  
20 Blue and Steiner do not here seek to avoid the consequences of those failures. They do  
21 seek, however, to pursue completion of business transactions that are alive and being actively  
22 pursued by the Chinese, Nigerian, Ugandan, and recently the Ecuadorian, participants, so that  
23 the fees to be received upon completion of those transactions may be received and the proper  
24

25  

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<sup>2</sup> Bechtel Corporation (Bechtel Group) and Halliburton Company are examples of high end participants in the business.

1 percentage of those collections shared with the investors in accordance with the Operating  
2 Agreements.

3 Blue was served with Temporary Orders restraining its further efforts to raise capital before  
4 the Securities Division had any credible evidence of a violation of Arizona law. The Securities  
5 Division has yet to provide any evidence suggesting that it had a reasonable basis for obtaining  
6 and serving the Temporary Orders. Based on its allegations, the Division had, at most, evidence  
7 that Blue was approached by a person claiming to have heard about Blue as an investment  
8 opportunity who said she might be interested in making, and was capable of making, a  
9 substantial investment. At that person's request, Blue provided that person with the same  
10 information about its business it had provided to others. Steiner refused to proceed without  
11 meeting the person so that, among other things, Steiner could evaluate whether the person was  
12 qualified to make such an investment.  
13

14  
15 The person involved, moreover, claimed to be a resident of another state, not a resident of  
16 Arizona, as the Securities Division alleged. Respondent now believes the anonymous "Arizona  
17 resident" has never lived in Arizona, though she may have been a winter visitor at the time.  
18 Steiner refused to offer to sell the caller anything until he could meet her. Steiner never solicited  
19 her interest, never met her, never offered to sell her anything and never sold her anything!!! Those  
20 facts are established by the e-mails and text messages exchanged by them.

21  
22 No effort was made, apparently, by the Securities Division to verify the genuineness of the  
23 primary project information provided her, which truthfully identified the projects then being  
24 worked on by the finder/facilitator. The Division was skeptical so, on the basis of suspicion and its  
25 skepticism only, it took the highly damaging action of seeking Temporary Orders without any  
actual evidence of wrongdoing, apparently thinking the truthful statements made by Blue reeked

1 of fraud, but failing to do the work needed to establish that. Had it done that work, it would have  
2 discovered, a year ago, and without resorting to police state tactics, that Blue and Steiner were  
3 (and are still) engaged in a very legitimate business with several important transactions very near  
4 the "closing" stage. The number of potential projects has increased. Three and possibly four of  
5 them are now believed to be likely of early completion, partly because they are smaller and partly  
6 because a level of trust has been built among several of the essential participants.  
7

8 In fact there has been no wrongdoing. All Blue's offers and sales of member units fit  
9 comfortably within the SEC rules relating to exempt transactions and limited public offerings.  
10 Ignorance and a failure to consult with knowledgeable advisers caused a failure to touch the base  
11 of making required filings and paying required fees. That failure does not destroy the basis for  
12 exemption from registration. There was an interstate offering. The Division has the state of  
13 residence information on all members, and met the requirement for exempt transaction or limited  
14 public offering treatment under federal law. Section 18 of the Securities Act specifically prohibits  
15 state enforcement of a more restrictive local rule and the Arizona statutes acknowledge that  
16 restriction. See *Edgar v. MITE Corporation*, 457 U.S. 624, 102 S.Ct. 2629, 73 L.Ed.2d 269  
17 (1982). See also, *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d (1979);  
18 *Healy v. The Beer Institute, et al.*, 491 U.S. 324, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989).  
19

#### 20 IV.

21 Being without any reason not to cooperate with the Division's investigation, Steiner has  
22 provided extensive documentation showing (i) that the Lunsford-Blue finder/facilitator venture is  
23 genuine and has a strong business relationship with several very large and substantial Chinese  
24 business organizations; (ii) that the Chinese business organizations are actively pursuing business  
25 opportunities in Nigeria, Uganda and more recently Ecuador for each of which a Memorandum of

1 Understanding has been signed by the primary parties and for each of which the finder/facilitator  
2 is, together with the other parties involved, currently performing active work looking toward a final  
3 contract (generally in the form of an engineering procurement construction contract); and (iii)  
4 Lunsford-Blue will be paid substantial fees upon the funding of each such purchase contract. Blue  
5 is entitled to a specified portion of all fees received by Lunsford, in perpetuity, from closed  
6 transactions "found" by Lunsford for the Chinese entities with which they are working. In fact,  
7 Lunsford-Blue "found" and "facilitated" all the potential transactions which are in the  
8 Memorandum of Understanding stage and several more which are not yet at that stage (16 in all),  
9 but are, nevertheless being actively pursued.

11 Finding suitable projects for the Chinese companies has been a particularly important part  
12 of the Lunsford finder/facilitator effort. Indeed, while Mr. Lunsford has been working diligently  
13 with the Chinese entities, Mr. Steiner has been actively recruiting transactions. New projects,  
14 such as the Ecuador project discussed below have been added and the newest, involving a  
15 45mw. Hydro-electric generating facility in Ecuador, is most likely to close during the early Spring  
16 of this year. Being a smaller project, it is expected to generate a larger percentage of value fee for  
17 Lunsford.

19 The Division's impatience, while understandable, is nevertheless unseemly in light of the  
20 actual situation. Business transactions, particularly those involving international dealings and  
21 especially those involving more than one other nation, are difficult at best. Many countries impose  
22 restrictions on the travels of their citizens. China, Nigeria and Uganda are among those countries.  
23 The process of arranging meetings and obtaining travel permissions and entry permissions is often  
24 slow, delaying necessary meetings. Government units frequently cannot be relied upon to perform  
25 within the time periods they promise and government promises, however sincerely made, may be



1 approval, already arranged, may be formally approved. The executives of the Chinese business  
2 entities involved expect Mr. Steiner to be present for that event. It remains unscheduled, however.

3 Cooperation is difficult when one party is making such statements about the other or his or  
4 its representatives. As stated at Part II of this pleading, economy of effort suggest that the  
5 imminence of fruition, whether one month or many months hence, will provide a result desired by  
6 the Securities Division and accepted in concept as necessary by Respondents far more quickly  
7 than the pursuit of hard-line enforcement is likely to accomplish.  
8

9 Dated: January 28, 2013.

10 Respectfully submitted,

11 

12 Arthur P. Allsworth  
13 Attorney for Respondents

14 Original and Nine copies HAND DELIVERED  
15 on January 28, 2013 to:  
16 DOCKET CONTROL,  
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18 Copies HAND DELIVERED to the Securities  
19 Division, Paul Huynh, Esquire, at:  
1300 West Washington, Third Floor, and  
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