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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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Arizona Corporation Commission
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In the matter of:

DOCKET NO. S-20846A-12-0135

ARIZONA GOLD PROCESSING, LLC, an
Arizona limited liability company,
AZGO, LLC, an Arizona limited liability company;
and
CHARLES L. ROBERTSON, a married man,
Respondents.

FIFTH
PROCEDURAL ORDER
(Amended)
(Allows Telephonic Testimony)

BY THE COMMISSION:

On April 6, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of Opportunity for Hearing ("Notice") against Arizona Gold Processing, LLC ("AGP"), an Arizona limited liability company, AZGO, LLC ("AZGO"), an Arizona limited liability company, and Charles L. Robertson, a married man, (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 membership interests and/or investment contracts.

The Respondents were duly served with copies of the T.O. and Notice.

On April 29, 2012, Respondent Charles Robertson filed a request for a hearing in this matter on behalf of himself and as manager of AGP and AZGO.

On May 7, 2012, by Procedural Order, a pre-hearing conference was scheduled on May 30, 2012.

On May 30, 2012, at the pre-hearing conference, the Division and Respondents appeared through counsel. The Division and Respondents were to discuss the issues raised by the T.O. and

1 Notice and were attempt to settle the proceeding. The Division requested that, in the interim, a
2 hearing be scheduled in the fall. Subsequently, by Procedural Order, a hearing was scheduled to
3 commence on October 9, 2012.

4 On September 20, 2012, Respondents filed a Motion to Continue the hearing. Respondents
5 stated that a key witness to their defense, Patrick Hayes, Ph.D., is scheduled to be in the Republic of
6 China during most of the month of October 2012. Respondents stated that Dr. Hayes possesses
7 unique and thorough knowledge to respond to the allegations which have been made by the Division.
8 Respondents further stated that Dr. Hayes' testimony would be highly relevant to the issues raised by
9 the Division.

10 On September 21, 2012, the Division filed a response to the Respondents' Motion to
11 Continue. The Division argued that the proceeding should not be continued. The Division stated that
12 the hearing should proceed as scheduled and that Dr. Hayes' testimony should be scheduled after the
13 balance of the proceeding was concluded. The Division also filed a Motion to Allow Telephonic
14 Testimony for five witnesses, all of whom reside outside of Arizona. Coincidentally, one of these
15 five Division witnesses was also to be in China during the scheduled hearing, but the Division
16 indicated he would be available to testify during the proceeding.

17 A review of the witness lists of the parties revealed that the Division had listed ten potential
18 witnesses and Respondents had listed twelve witnesses. Based on the motions, it appeared that the
19 proceeding would be fragmented at best and would not produce a coherent record upon which a
20 sound decision could be reached. The Division's five telephonic witnesses alone create a logistical
21 problem due to the time differences involved especially considering that one Division witness would
22 be testifying from China with at least a fifteen-hour time difference. Additionally, due to the number
23 of potential witnesses, it appeared that a longer hearing could be required.

24 On September 25, 2012, by Procedural Order, a continuance was granted, and a procedural
25 conference scheduled in place of the hearing on October 9, 2012.

26 On October 2, 2012, Respondents filed a Motion *in Limine* to exclude certain evidence which
27 is proposed to be offered by the Division at the hearing.
28

1 On October 9, 2012, the Division and Respondents appeared by counsel to discuss
2 rescheduling the hearing. The parties agreed to a hearing being scheduled during the last week in
3 February 2013. Respondents further requested that oral argument be heard on their Motion *in*
4 *Limine*. Counsel for the Division indicated that the Division will be filing a response in opposition to
5 the Motion *in Limine*.

6 On October 10, 2012, by Procedural Order, the proceeding was continued as agreed between
7 the parties, and oral argument was scheduled on Respondent's Motion *in Limine* on November 6,
8 2012.

9 On October 11, 2012, the Division filed a response to Respondents' Motion *in Limine* arguing
10 that Respondents offered and sold securities "within or from" Arizona by describing Respondents'
11 business-related activities within the State of Arizona.

12 On November 2, 2012, Respondents filed what was captioned Respondents' Objection to
13 Subpoena; Motion to Quash Subpoena; and Motion for Protective Order" arguing primarily that its
14 business activities were not conducted in Arizona and that the Division only had jurisdiction in
15 securities matters involving Arizona residents and domiciliaries.

16 On November 6, 2012, the Division filed a response to Respondents' November 2, 2012,
17 filing to quash the subpoena and for a protective order. The Division cited A.A.C. R14-3-109(O)
18 arguing that the only basis to quash a subpoena *duces tecum* is if it is "unreasonable or oppressive"
19 and there had been no such showing.

20 On November 6, 2012, the Division and Respondents appeared with counsel to present their
21 respective arguments with respect to Respondents' Motion *in Limine*.

22 On November 16, 2012, the Division filed a Motion to File an Amended Temporary Order to
23 Cease and Desist and Notice of Opportunity for Hearing. There was no response filed to this motion
24 by the Respondents.

25 On November 30, 2012, Respondents filed their Reply in Support of Their Objection to
26 Subpoena; Motion to Quash Subpoena; and Motion for Protective Order restating their arguments
27 against the extent of the Division's authority over their business activities.

28 On February 5, 2013, by Procedural Order, after a review of the arguments and

1 documentation filed herein, the Motion *in Limine* was denied and the Respondents' Objection to
2 Subpoena; Motion to Quash Subpoena; and Motion for Protective Order was also denied. The
3 Division's Motion to File Amended Temporary to Cease and Desist and Notice of Opportunity for
4 Hearing was granted. Additionally, the parties were advised that if more time was needed to prepare
5 for this proceeding as a result of the rulings, they should file for a continuance by February 15, 2013,
6 and the presently scheduled first day of hearing would be utilized as a procedural conference.
7 Additionally, the Division's Motion to Allow Telephonic Testimony should be granted.

8 IT IS THEREFORE ORDERED that Respondents' Motion *in Limine* is hereby denied.

9 IT IS FURTHER ORDERED that Respondents' Objection to Subpoena; Motion to Quash
10 Subpoena; and Motion for Protective Order is hereby denied.

11 IT IS FURTHER ORDERED that Division's Motion to File an Amended Temporary Order to
12 Cease and Desist and Notice of Opportunity for Hearing is hereby granted.

13 IT IS FURTHER ORDERED that the Division's Motion to Allow Telephonic Testimony is
14 hereby granted.

15 IT IS FURTHER ORDERED that a **hearing** shall be held on **February 25, 2013, at 10:00**
16 **a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,
17 Arizona, as previously ordered, unless a continuance is requested by February 15, 2013, and then this
18 proceeding shall be utilized as a procedural conference.

19 IT IS FURTHER ORDERED that the parties shall set aside **February 26, 27, 28, and March**
20 **1, 2013, for additional days of hearing**, if necessary.

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

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

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

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

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

10 DATED this 07th day of February, 2013.

11
12
13 
14 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered
16 this 07th day of February, 2013 to:

17 Scott M. Theobald
18 Mark A. Nickel
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By: 
Debra Broyles
Secretary to Marc E. Stern