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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
AZ CORP COMMISSION DOCKETED
DOCKET CONTROL

2013 FEB 6 PM 3 35 FEB 06 2013

DOCKETED BY [Signature]

IN THE MATTER OF:

RICHARD M. SCHMERMAN, individually and
d/b/a Diversified Financial and/or Diversified
Financial Planners, and Amy Schmerman, husband
and wife.

DOCKET NO. S-20757A-10-0373

RESPONDENTS.

**FOURTEENTH
PROCEDURAL ORDER
(Grants Leave to Withdraw)**

BY THE COMMISSION:

On September 9, 2010, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Richard M. Schmerman d/b/a Diversified Financial and/or Diversified Financial Planners ("Diversified") and Amy Schmerman, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") and the Investment Management Act ("IM Act") in connection with Respondent Richard A. Schmerman's practices in business and securities matters which allegedly involved mishandling of client funds and misrepresentation.

The Respondents were duly served with copies of the Notice.

On September 20, 2010, a request for hearing was filed by the Respondents.

On September 22, 2010, by Procedural Order, a pre-hearing conference was scheduled on October 21, 2010.

On October 21, 2010, at the pre-hearing conference, the Division and Respondents appeared through counsel. The parties are discussing a possible resolution of the issues raised by the Notice, but have agreed in the interim that a status conference be scheduled in approximately 60 days.

On October 22, 2010, by Procedural Order, a status conference was scheduled on December 16, 2010.

On December 16, 2010, the Division and Respondents appeared through counsel at the status

1 conference. The parties were continuing to discuss a resolution of the proceeding and in the interim,
2 the Division requested that another status conference be scheduled in approximately 60 days.

3 On December 16, 2010, by Procedural Order, a status conference was scheduled on February
4 23, 2011.

5 On February 22, 2011, the Division and Respondents filed a Joint Stipulation to Continue the
6 status conference for at least 60 days in order that the parties could continue to review matters and
7 attempt to resolve the issues raised by the Notice.

8 On February 23, 2011, by Procedural Order, the status conference was continued from
9 February 23, 2011, to April 25, 2011.

10 On April 22, 2011, the Division and Respondents filed another Joint Stipulation to Continue
11 the status conference for at least 60 days to allow the parties to continue to work towards a settlement
12 of the issues raised by the Notice.

13 On April 25, 2011, by Procedural Order, the status conference was continued from April 25,
14 2011, to July 7, 2011.

15 On July 5, 2011, the Division and Respondents filed another Joint Stipulation to Continue the
16 status conference for at least 60 days to allow the parties to continue to work towards a settlement of
17 the issues raised by the Notice. Subsequently, by Procedural Order, the status conference was
18 continued from July 7, 2011, to September 8, 2011.

19 On September 7, 2011, the Division and Respondents filed another Joint Stipulation to
20 Continue the status conference for sixty days or more to allow the parties to review additional
21 documentation and to discuss a possible resolution of the proceeding. Subsequently, by Procedural
22 Order, the status conference was continued to November 17, 2011.

23 On November 17, 2011, the Division and Respondents appeared through counsel. The
24 Division indicated that it was preparing to file a Motion to Amend the Notice adding additional
25 allegations against Respondents. The Division and Respondents were continuing to discuss a
26 possible resolution of the proceeding, but in the interim counsel agreed that an additional status
27 conference be scheduled in March 2012.

28 On November 21, 2011, by Procedural Order, a status conference was scheduled as agreed on

1 March 12, 2012.

2 On December 6, 2011, the Division filed a Motion to File Amended Notice (“Motion”).

3 On December 12, 2011, the Division and Respondents filed a Joint Stipulation regarding the
4 Division’s Motion. Respondents had no objections to the filing of the Amended Notice and the
5 parties stipulated that Respondents’ initial request for hearing filed September 20, 2010, would be
6 applicable as to the Amended Notice. Additionally, the parties stipulated that Respondents would
7 have at least 30 days to file an Answer from the date of an Order which authorizes the filing of the
8 Amended Notice.

9 On December 14, 2011, the Division was authorized to file the Amended Notice as stipulated
10 by the parties.

11 On March 12, 2012, at the status conference, the Division and Respondents appeared through
12 counsel. The Division’s counsel indicated that the parties were continuing to negotiate a settlement
13 of the proceeding, but more time would be required for a resolution of the issues raised by the Notice.
14 The Division and Respondents agreed that a hearing should commence on June 25, 2012 if a
15 settlement could not be reached.

16 On March 13, 2012, by Procedural Order, a hearing was scheduled on June 25, 2012, with the
17 exchange of documentation scheduled on May 15, 2012.

18 On May 11, 2012, the Division and Respondents filed a Joint Stipulation to continue the
19 hearing for at least 60 days and to delay the exchange of documentation until 20 days before the date
20 of the continued hearing.

21 On May 14, 2012, by Procedural Order, the proceeding was continued as agreed between the
22 parties to September 10, 2012.

23 On August 29, 2012, Respondents’ counsel filed a Motion to Withdraw and Motion for a
24 Continuance. Although counsel indicated that Respondents wish to enter into a Consent Order with
25 respect to the Division’s allegations contained in the Amended Notice, it is not made clear why they
26 require a continuance for additional time to conclude a settlement of the proceeding. Counsel
27 additionally stated that his reasons for withdrawing from the proceeding “would violate attorney-
28 client privilege,” but stated no other reason.

1 On August 31, 2012, the Division responded to the aforementioned motions filed on August
2 29, 2012, by Respondents' counsel, and urged their denial. The Division stated that the proceeding
3 was set for hearing in a short time and cited Commission Rule A.A.C. R14-3-104(E) which requires
4 good cause to be shown for withdrawal from a proceeding, and that by itself violation of attorney-
5 client privilege is insufficient cause. Further, the Division described ways for counsel to show good
6 cause citing Ariz. Rules of Civ. Proc. 5.1(a)(2)(C) which describes the steps to be taken to withdraw
7 from a proceeding once it has been set for trial, and these steps have not been followed.

8 On September 5, 2012, a Procedural Order was issued denying the Respondents' Motion to
9 Withdraw and Motion for a Continuance "unless good cause can be shown." The Procedural Order
10 further found that the Respondents had not stated a reason to terminate representation consistent with
11 Rule 1.16 of the Rules of Professional Conduct.

12 On September 6, 2012, the Respondents' counsel submitted to the Commission's Hearing
13 Division, under seal, a Motion for Reconsideration of Motion to Withdraw and Motion to Continue.
14 The undersigned Administrative Law Judge undertook an in-camera review of the Respondents'
15 Motion and concluded that good cause had been stated to grant a 60-day continuance of the hearing.
16 The request for reconsideration regarding the withdrawal of counsel was taken under further
17 advisement.

18 On September 7, 2012, by Procedural Order, the Respondents' request for a continuance of
19 the hearing was granted, and the request for withdrawal of counsel was taken under advisement.

20 On December 12, 2012, the Division filed a Motion to Set a Status Conference and Other
21 Affirmative Action. There have been no responses filed by either the Respondents or their counsel.

22 Under the circumstances, after further consideration, Respondents' counsel should be
23 permitted to withdraw from the proceeding.

24 IT IS THEREFORE ORDERED that Alan Baskin and Bade Baskin Richards is hereby
25 granted leave to withdraw as counsel of record to the Respondents.

26 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
27 Communications) continues to apply to this proceeding.

28 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance

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

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

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

12 DATED this 6th day of February, 2013.

14 

15 _____
16 DWIGHT D. NODES
17 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered
19 this 6th day of February, 2013 to:

20 Alan Baskin
21 BADE BASKIN RICHARDS PLC
22 80 East Rio Salado Parkway, Suite 511
23 Tempe, AZ 85281
24 Attorney for Respondents

25 Richard Schmerman
26 Amy Schmerman
27 2613 East Mitchell Drive
28 Phoenix, AZ 85016

29 Matt Neubert, Director
30 Securities Division
31 ARIZONA CORPORATION COMMISSION
32 1300 West Washington Street
33 Phoenix, AZ 85007

34 By: 
35 _____
36 Debra Broyles
37 Secretary to Dwight D. Nodes