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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2013 MAY -7 A 9:59

Arizona Corporation Commission

DOCKETER

MAY 6 2013

DOCKETED BY [Signature]

In the matter of:

INTERNATIONAL AIR MEDICAL SERVICES, INC.,

THOMAS F. KELLEY and LAURA KELLEY, husband and wife,

Respondents.

DOCKET NO. S-20858A-12-0412

SECURITY DIVISION'S OPPOSITION TO RESPONDENTS' MOTION TO CONTINUE

The Securities Division of the Arizona Corporation Commission ("Division") hereby opposes Respondents' Motion to Continue ("Motion") filed on May 3, 2013. None of the reasons Respondents have provided in their Motion constitute good cause to reschedule the hearing dates that have been set for four months, by mutual agreement of counsel and the ALJ.

A. The Motion is untimely and causes inconvenience to counsel and witnesses.

The dates for the currently scheduled hearing were chosen and set by *mutual agreement* of counsel at the status conference on January 15, 2013. Respondents waited to bring this Motion mere weeks before the hearing is scheduled to begin, and only 14 days before the Division and Respondents are ordered to exchange their lists of witnesses and exhibits. The Division, through undersigned counsel, has expended significant time on this matter to prepare for the exchange of witnesses and exhibits, and to get ready for the June hearing. Multiple witnesses, including investors, have been contacted and recently subpoenaed to appear at the June hearing. A significant number of investors are busy physicians who have adjusted their schedules to be present as witnesses for the June hearing.

1 Counsel for Respondents asserts that he is “scheduled to travel to Utah during the latter
2 portion of the week of June 3, 2013.” Respondents’ counsel does not state this is an unavoidable
3 conflict or state why such travel should take precedence over the hearing dates the parties agreed
4 upon. In fact, counsel does not provide the reason for such travel at all (i.e. is it personal or
5 professional). There was no mention of a conflict in January at the time these dates were mutually
6 agreed upon, or any mention of this trip to Utah in the four months before the Motion was filed.
7 Counsel should not be able to schedule a last minute trip to Utah to avoid a hearing that has been
8 scheduled for months, and inconvenience witnesses.

9 While IAMS states that “Respondents have long desired to resolve this case without a
10 hearing” (Motion, p. 1), their actions do not support this statement. The Division has given IAMS
11 ample opportunity to resolve this matter without the need for a hearing, and IAMS has chosen to go
12 to hearing. At Respondents’ counsel’s request, the Division provided Respondents with draft
13 consent terms on October 31, 2012. A pre-hearing conference was set for November 19, 2012, and
14 the Division agreed to allow Respondents more time to discuss possible consent terms. The parties
15 returned in January for a status conference and set a mutually agreed hearing date because
16 Respondents had not responded to the Division’s consent proposal. To date, Respondents have
17 never responded nor indicated a willingness to enter into a consent agreement. While the Division
18 is willing to continue to discuss consent terms with Respondents, in light of the lack of progress for
19 the past seven months, the Division intends to proceed to hearing.

20 Further, IAMS arbitrary request for a four month continuance is just that – arbitrary. Such a
21 continuance would take this matter out to at least October 2013. Undersigned counsel is scheduled
22 for a five week hearing starting October 21, 2013 in *Tri-Core Companies, et al.*, S-20867A-12-
23 0459. Thus, continuing the hearing as Respondents request (and in which there is no valid basis)
24 will likely mean that the hearing would not occur until early 2014. This matter was filed in
25 September 2012. Such a delay is unnecessary and unwarranted by the Motion.

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B. Possible repayment of investment funds is not a valid basis to continue the hearing.

1 Respondents' second argument – essentially that they should get more time to repay
2 investors – does not constitute good cause to continue the hearing either. Respondents cannot
3 avoid a hearing because they may *possibly* be able to repay investors in four months. Respondents
4 argue that the continuance is appropriate because “IAMS is generating significant revenue” . . .
5 “and anticipates receiving substantial additional revenue over the next few months”. (Motion, p.
6 1). Respondents state that this revenue “would enable IAMS to repay or restructure its agreements
7 with its investors and/or lenders, and thereby resolve this matter with the Securities Division.” (*Id.*)
8 Given that Respondents are requesting a four month continuance, IAMS apparently believes
9 significant revenue will be generated in that time period, but provides no supporting evidence of the
10 source of such revenue. There is approximately \$1.5 million at issue in this matter, and
11 Respondents have provided no information to support their Motion as to how IAMS intends to
12 generate such an amount in four months. This is idle speculation at best by Respondents.

14 Notwithstanding, while the Division hopes that IAMS' statements are true and that it will,
15 in fact, soon be able to pay its investors back, this still does not “resolve” the matter in full. It is
16 correct that the relief requested by the Division includes restitution. However, any amounts repaid
17 to investors by IAMS – before, during, or after the hearing – would be subject to set-off any
18 restitution amount that the Commission may award in an order. See A.A.C. R14-4-308(C). Thus,
19 if IAMS does, in fact, come into a significant revenue source in the next four months, IAMS can
20 pay investors and that amount will be deducted from any restitution amount that may be ordered.
21 The possibility of payment does not, however, provide good cause to continue the hearing,
22 especially when restitution is not the only issue to be determined at hearing.

23 The Division also seeks administrative penalties for Respondents' alleged violations of
24 A.R.S. § 44-1841 (registration violations for offering and selling unregistered securities), A.R.S. §
25 44-1842 (registration violations for the offer or sale of securities by an unregistered salesman or
26 dealer), and A.R.S. § 44-1991 (fraud in connection with the offer or sale of securities). If the

1 Commission enters an order finding violations of these statutes after hearing, the order could
2 include an administrative penalty of up to \$5,000 per violation. *See* A.R.S. § 44-2036(A). Even
3 assuming IAMS might repay its investors and be entitled to a set-off, the hearing should proceed
4 because registration and fraud violations must be adjudicated.

5 **CONCLUSION**

6 Respondents have provided no basis to continue the hearing currently scheduled to begin on
7 June 3, 2013. This matter was scheduled for hearing by mutual agreement months ago, and
8 Respondents last minute filing is inappropriate and unsubstantiated. The sudden unsupported
9 schedule changes by counsel and speculation by Respondents that they *might* repay investors fail to
10 provide good cause to continue the hearing at the expense of resources expended by the Division to
11 prepare for the hearing as scheduled.

12
13 RESPECTFULLY SUBMITTED this 7th day of May, 2013.

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16 By: Stacy Luedtke

17 Stacy L. Luedtke
18 Attorney for the Securities Division of the Arizona
Corporation Commission

19 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
20 filed this 7th day of May 2013, with

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington
Phoenix, AZ 85007

24 COPY of the foregoing hand-delivered this
25 7th day of May, 2013, to:

26 ALJ Marc Stern
Arizona Corporation Commission/Hearing Division
1200 West Washington

1 Phoenix, AZ 85007

2 COPY of the foregoing mailed
3 this 1st day of May, 2013, to:

4 Alan Baskin, Esq.
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8 *Attorney for Respondents*

9 By: _____
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