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BEFORE THE ARIZONA CORPORATIO

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COMMISSIONERS

BOB STUMP - Chairman 2013 JUL 29 P 2:56
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. S-20846A-12-0135

NINTH
PROCEDURAL ORDER
(Grants Motion to Continue)

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.

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Arizona Corporation Commission
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1 On May 30, 2012, at the pre-hearing conference, the Division and Respondents appeared
2 through counsel.¹ The Division and Respondents were to discuss the issues raised by the T.O. and
3 Notice and were to attempt to settle the proceeding. The Division requested that, in the interim, a
4 hearing be scheduled in the fall. Subsequently, by Procedural Order, a hearing was scheduled to
5 commence on October 9, 2012.

6 On June 7, 2012, Attorneys filed a Motion to Associate Counsel *Pro Hac Vice*, Darin H.
7 Mangum, Esq., an attorney from Utah (“Utah Attorney”).

8 On June 25, 2012, by Procedural Order, Respondents’ Utah Attorney was authorized to
9 appear *pro hac vice* in the proceeding.

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

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

23 A review of the witness lists of the parties revealed that the Division had listed ten potential
24 witnesses and Respondents had listed twelve witnesses. Based on the motions, it appeared that the
25 proceeding would be fragmented at best and would not produce a coherent record upon which a
26 sound decision could be reached. The Division’s five telephonic witnesses alone create a logistical
27

28 ¹ On May 30, 2012, a Notice of Appearance was filed by local Arizona Attorneys (“Attorneys”) on behalf of Respondents.

1 problem due to the time differences involved especially considering that one Division witness would
2 be testifying from China with at least a fifteen-hour time difference. Additionally, due to the number
3 of potential witnesses, it appeared that a longer hearing could be required.

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

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

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

13 On October 10, 2012, by Procedural Order, the proceeding was continued as agreed between
14 the parties, and oral argument was scheduled on Respondent's Motion *in Limine* on November 6,
15 2012.

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

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

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

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

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

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

7 On February 5, 2013, by Procedural Order, after a review of the arguments and
8 documentation filed herein, the Motion *in Limine* was denied and the Respondents' Objection to
9 Subpoena; Motion to Quash Subpoena; and Motion for Protective Order was also denied. The
10 Division's Motion to File Amended Temporary to Cease and Desist and Notice of Opportunity for
11 Hearing was granted. Additionally, the parties were advised that if more time was needed to prepare
12 for this proceeding as a result of the rulings, they should file for a continuance by February 15, 2013,
13 and the presently scheduled first day of hearing would be utilized as a procedural conference.

14 On February 6, 2013, by Procedural Order, the Division's Motion to Allow Telephonic
15 Testimony was granted.

16 On February 13, 2013, Respondents filed a Motion to Continue the hearing which is
17 scheduled to commence on February 25, 2013, citing the granting of the Division's Motion to file an
18 Amended T.O. and Notice and the denial of Respondents' Motion in Limine and related motions.

19 On February 15, 2013, the Division filed its response to Respondents' Motion to Continue
20 arguing that Respondents failed to show good cause for the continuance.

21 On February 20, 2013, by Procedural Order, the hearing was continued, and the time and date
22 of the hearing was used as a procedural conference to discuss rescheduling the hearing to July 29,
23 2013.

24 On March 5, 2013, by Procedural Order, the proceeding was continued to July 29, 2013.

25 On May 13, 2013, Respondents' Arizona Attorneys filed a Motion to Withdraw as Counsel of
26 Record in the proceeding. Attorneys stated that there had been "a complete breakdown in the
27 attorney-client relationship which prevents the attorneys from continuing to represent the
28 Respondents effectively." Attorneys stated that this factor satisfied the requirement pursuant to

1 A.A.C. R14-3-104(E) of “good cause” to withdraw from the representation of the Respondents.
2 Attorneys further stated that the Respondents have consented to the withdrawal of Attorneys from the
3 proceeding, and Attorneys attached a copy of Respondents’ written consent. Additionally, Attorneys
4 stated that, pursuant to Rule 38(a) of the Rules of the Supreme Court of Arizona, they had provided
5 “notice that they are no longer associated as local counsel with Darin H. Mangum, Esq. who was
6 admitted *pro hac vice* in Arizona as counsel for the Respondents in this proceeding.”

7 Attorneys further represented that Respondents and their Utah Attorney, Mr. Mangum, had
8 been informed of the pending hearing date on July 29, 2013, and all pending deadlines, and the need
9 to retain new local counsel to associate with Respondents’ Utah Attorney. Upon approval by the
10 Commission of the instant motion, Attorneys would provide notice of same to the Respondents, to
11 Mr. Mangum and to the State Bar of Arizona.

12 On May 16, 2013, the Division filed a response indicating that the Division had no objections
13 to Respondents’ Arizona Attorneys withdrawing from the proceeding so long as the withdrawal was
14 not used as the basis for a continuance.

15 On May 17, 2013, by Procedural Order, the Motion to Withdraw by Respondents’ Arizona
16 Attorneys was granted.

17 On July 26, 2013, the Division filed a Motion to Continue the proceeding pending approval
18 by the Commission of a proposed Consent Order by the Commission at its next scheduled Open
19 Meeting.

20 Accordingly, the hearing should be vacated pending further Commission action.

21 IT IS THEREFORE ORDERED that the Motion to Continue is hereby granted, and the
22 hearing is hereby vacated.

23 IT IS FURTHER ORDERED that the Division shall file a Motion to Schedule a hearing in the
24 event that the proposed Consent Order is not approved by the Commission.

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

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

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

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

13 DATED this 29TH day of July, 2013.

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17 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

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19 Copies of the foregoing mailed/delivered
this 29TH day of July, 2013 to:

20 Darin H. Mangum
21 DARIN H. MANGUM, PLLC
22 4692 North 300 West, Suite 210
Provo, UT 84604
Attorneys for Respondents *Pro Hac Vice*

By: 
Tammy Velarde
Assistant to Marc E. Stern

23 Matt Neubert, Director
24 Securities Division
25 ARIZONA CORPORATION COMMISSION
1300 West Washington Street
Phoenix, AZ 85007
26 ARIZONA REPORTING SERVICE, INC.
27 2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

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