

ORIGINAL



0000149588

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2013 NOV 19 A 8:19

NOV 19 2013

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

COMMISSIONERS

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

In the matter of:

DOCKET NO. S-20867A-12-0459

TRI-CORE COMPANIES, LLC an Arizona limited liability company,
TRI-CORE MEXICO LAND DEVELOPMENT, LLC, an Arizona limited liability company,
TRI-CORE BUSINESS DEVELOPMENT, LLC, an Arizona limited liability company,
ERC COMPACTORS, LLC, an Arizona limited liability company,
ERC INVESTMENTS, LLC, an Arizona limited liability company,
C&D CONSTRUCTION SERVICES, INC. a Nevada corporation,
PANGAEA INVESTMENT GROUP, LLC, an Arizona limited liability company, d/b/a Arizona Investment Center,
JASON TODD MOGLER, an Arizona resident,
BRIAN N. BUCKLEY and CHERYL BARRETT BUCKLEY, husband and wife,
CASIMER POLANCHEK, an Arizona resident,
NICOLE KORDOSKY, an Arizona resident,
Respondents.

SEVENTH
PROCEDURAL ORDER
(Grants Motion to Withdraw)
(Continues Hearing)
(Schedules Procedural Conference)

BY THE COMMISSION:

On November 8, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Tri-Core Companies, LLC, ("Tri-Core"); Tri-Core Mexico Land Development, LLC ("TC Mexico"); Tri-Core Business Development, LLC ("TC Business"); ERC Compactors, LLC ("ERC Compactors"); ERC

1 Investments, LLC (“ERC Investments”); C&D Construction Services, Inc. (“C&D”); Pangaea
2 Investment Group, LLC (“Pangaea”), d/b/a Arizona Investment Center (“AIC”); Jason Todd Mogler;
3 Brian N. Buckley and Cheryl Barrett Buckley, husband and wife; Cassimere Panache; and Nicole
4 Kordosky (collectively “Respondents”). In the Notice, the Division alleged multiple violations of the
5 Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of
6 notes.¹

7 The Respondents were duly served with a copy of the Notice.

8 On November 26, 2012, a request for hearing in this matter was filed on behalf of C&D.

9 On November 30, 2012, Respondents Tri-Core, TC Business, ERC Compactors, ERC
10 Investments, Jason Todd Mogler, Brian N. Buckley and Cheryl Barrett Buckley filed requests for
11 hearing.

12 On December 10, 2012, by Procedural Order, a pre-hearing conference was scheduled on
13 January 15, 2013.

14 On January 15, 2013, at the pre-hearing conference, Respondents Tri-Core, TC Business,
15 ERC Compactors, ERC Investments, and Jason Mogler appeared through counsel. Respondents
16 Brian and Cheryl Buckley appeared on their own behalf. The Division also appeared through
17 counsel. Although the parties who requested a hearing were discussing a possible resolution of the
18 proceeding, the Division requested a status conference be scheduled to determine if a hearing should
19 be scheduled in the event settlement did not occur.

20 On January 16, 2013, by Procedural Order, a status conference was scheduled on March 20,
21 2013.

22 On January 29, 2013, Respondent Nicole Kordosky filed a request for hearing.

23 On January 31, 2013, by Procedural Order, Respondent Nicole Kordosky’s name was added
24 to the service list and she was apprised of the status conference scheduled for March 20, 2013.

25 On March 20, 2013, at the status conference, the Division appeared through counsel,
26

27 ¹ On February 6, 2013, the Commission issued Decision Nos. 73666 and 73667 against Pangaea and TC Mexico,
28 respectively, as Default Orders finding them in violation of the Act. On May 8, 2013, the Commission issued Decision
No. 73867, a Default Order, against Respondent Polanchek finding him in violation of the Act. On October 25, 2013, the
Commission issued Decision No. 71447, a Consent Order, against the Buckley Respondents finding him in violation of
the Act, and holding the Buckylys’ marital community liable.

1 Respondents Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler appeared
2 through counsel, Respondent C&D appeared through counsel, and Respondents Brian Buckley and
3 Nicole Kordosky appeared on their own behalf. Mrs. Buckley did not appear. The Division's
4 counsel indicated that while discussions to resolve the issues raised by the Notice were ongoing, a
5 hearing should be scheduled in the fall to avoid scheduling conflicts in a lengthy proceeding because
6 there would be approximately 12 Division witnesses and voluminous exhibits. Additionally, one of
7 the attorneys who represents the Respondents indicated that he would call a like number of witnesses.

8 On March 21, 2013, by Procedural Order, a hearing was scheduled to commence on October
9 7, 2013 and last over a number of weeks.

10 On April 4, 2013, the Division filed a Motion to Continue ("Motion") the hearing due to the
11 unavailability of a key witness during the scheduled hearing. The Division requested that the
12 proceeding be continued to October 21, 2013, and that the remaining dates of the hearing also be
13 rescheduled. The Division further indicated that counsel for the Respondents who were represented
14 as well as the pro per Respondents in the proceeding had been contacted concerning the Division's
15 Motion and that they had no objections to the Motion.

16 On April 24, 2013, by Procedural Order, the Division's Motion was granted and the hearing
17 was continued to October 21, 2013.

18 On September 11, 2013, the Division filed a Motion to Allow Telephonic testimony of
19 approximately six witnesses who mostly reside out of state. There were no objections to this motion.

20 On September 20, 2013, the Division filed a Stipulation to Partially Continue the Hearing
21 Dates because counsel for the majority of the Respondents recently informed the Division that he had
22 a conflict with a criminal matter in which he is counsel of record and that proceeding had been set for
23 an eight to ten week trial which was to commence on November 5, 2013. The Division further stated
24 that the judge in that proceeding has refused to continue the criminal trial in deference to the
25 Commission's proceeding. Additionally, the Division stated that the parties had agreed to proceed
26 with the first two weeks of hearing scheduled in October 2013 and to continue the remaining three
27 weeks scheduled in November 2013 to February or March 2014 with the majority of the Respondents
28 represented by the affected counsel presenting their case in chief at that time.

1 On October 4, 2013, by Procedural Order, telephonic testimony was authorized to be utilized
2 in the proceeding. Additionally, a portion of the proceeding was continued as agreed by the parties to
3 February, 2014.

4 On October 21, 2013, a full public hearing was convened before a duly authorized
5 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division, Tri-
6 Core, TC Business, ERC Compactors, ERC Investments, Jason Mogler and C&D appeared with
7 counsel. Ms. Kordosky appeared on her own behalf. The hearing also proceeded as scheduled on
8 October 22, 2013, with the presentation of evidence by the Division.

9 On October 23, 2013, at the beginning of the proceeding, Mr. Bobby Thrasher,
10 counsel for Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler stated that
11 an issue had arisen with respect to his continued representation of ERC Compactors and ERC
12 Investments ("ERC Entities"). Counsel related that the ERC Entities which he was representing were
13 in fact sold by Respondent Mogler in March 2013 to a non-party to the proceeding, Mr. Guy Quinn.
14 As evidence of this sale, Mr. Thrasher provided a copy of the Purchase Contract. However, it did not
15 appear to be either complete or the final agreement with pages numbered consecutively. Counsel
16 stated further that although he had initially represented the ERC Entities, he believed that a clear
17 conflict of interests existed, and that he could no longer represent these companies without prejudice
18 to them and their new owner. Mr. Thrasher further indicated that he wished to file a Motion to
19 Withdraw as counsel for the ERC Entities, and he also requested that the balance of the proceeding
20 be continued and resume in the February proceeding, as previously ordered.

21 Counsel for the Division indicated that she had been unaware of this conflict previously, and
22 had only been apprised of this situation shortly before the hearing on October 23, 2013, and had been
23 surprised by these requests.

24 After a recess, the parties agreed that the proceeding should be continued to February and that
25 a Motion to Withdraw and a Motion for a Procedural Conference be filed as discussed at the hearing.

26 On October 25, 2013, the Division filed a Motion for a Procedural Conference and indicated
27 that copies of the following documents were e-mailed to Mr. Quinn: the Notice; documents related to
28 the representation of the ERC Entities filed by Mr. Thrasher; and a copy of the Sixth Procedural

1 Order which scheduled the matter for further hearing on February 3, 2014.

2 The Division further requested that certain time deadlines be established with respect to the
3 future representation of the ERC Entities and requested that other procedural matters be addressed at
4 the Procedural Conference.

5 On November 1, 2013, Mr. Bobby Thrasher filed a Motion to Withdraw as Counsel of Record
6 for the ERC entities due to the change in ownership and for other reasons disclosed on the record at
7 the October 23, 2013 hearing. No objections have been filed to this motion.

8 Under the circumstances, the Motion to Withdraw by Mr. Bobby Thrasher should be granted
9 to avoid a conflict in this proceeding. However, a copy of the complete and final Purchase Contract
10 should be filed to permit a permanent withdrawal.

11 The Division's Motion for a Procedural Conference is reasonable and should be granted as is
12 its request that a deadline be established for the ERC Entities to resolve their representation issue and
13 to enter an appearance in this matter if they are going to participate further in the proceeding and
14 contest the Notice. The other procedural matters raised by the Division can be more fully addressed at
15 the Procedural Conference.

16 IT IS THEREFORE ORDERED that Mr. Bobby Thrasher's Motion to Withdraw as counsel
17 for ERC Compactors, LLC and ERC Investments, LLC is hereby granted conditionally and upon a
18 complete and final Purchase Contract for the ERC Entities being filed in this proceeding the
19 permanent withdrawal shall be granted.

20 IT IS FURTHER ORDERED that either the lawful representative or counsel for ERC
21 Compactors, LLC and ERC Investments, LLC shall, if further contesting the Notice in this
22 proceeding, enter an appearance in the docket by **December 6, 2013**.

23 IT IS FURTHER ORDERED that a Procedural Conference shall be held on **December 12,**
24 **2013, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Hearing Room No.
25 2, Phoenix, Arizona.

26 IT IS FURTHER ORDERED that the proceeding shall be continued to **February 3, 2014, at**
27 **10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,
28 Phoenix, Arizona.

1 IT IS FURTHER ORDERED that the parties shall reserve **February 4, 5, 6, 10, 11, 12, 13,**
2 **18, 19, and 20, 2014**, for additional days of hearing if necessary.

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

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

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

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

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

20 DATED this 19~~th~~ day of November, 2013.

21
22
23 

24 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

25 Copies of the foregoing mailed/delivered
26 this 19~~th~~ day of November, 2013 to:

27 Dale B. Rycraft, Jr.
28 THE RYCRAFT LAW FIRM PLLC
2929 North Power Road, Suite 101
Mesa, AZ 85215
Attorney for C&D Construction Services, Inc.

1 Bobby O. Thrasher, Jr.
2 THRASHER JEMSEK
3 530 East McDowell Road, Suite 107-495
4 Phoenix, AZ 85004
5 Attorneys for Tir-Core Companies,
6 LLC, Tri-Core Business Development, LLC,
7 and Jason Todd Mogler

8 ERC of Chicago, LLC
9 Attn: Guy Quinn
10 625-D Railroad Street
11 Montgomery, IL 60538

12 Nicole Kordosky
13 8880 East Chaparral Road, Suite 270
14 Scottsdale, AZ 85250

15 Matt Neubert, Director
16 Securities Division
17 ARIZONA CORPORATION COMMISSION
18 1300 West Washington Street
19 Phoenix, AZ 85007

20 ARIZONA REPORTING SERVICE, INC.
21 2200 North Central Avenue, Suite 502
22 Phoenix, AZ 85004-1481

23 By: Rebecca Unquera
24 Rebecca Unquera
25 Assistant to Marc E. Stern
26
27
28