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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS,

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DOCKET NO. S-2087A-13-0391

2013 DEC 21 P 4:34

Petitioners,

v.

NOTICE OF OPPORTUNITY
FOR HEARING, ETC.

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

KENT MAERKI, et ux., et al.,

Respondents.

RESPONDENT(S) KENT MAERKI, ET UX., ET AL, ANSWER AND AFFIRMATIVE DEFENSES TO THE NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND ORDER FOR OTHER AFFIRMATIVE ACTION

TO THE COMMISSIONERS:

The Respondents request a hearing.

Answer

Respondents, Kent Maerki, et ux., et al., hereby respond to each corresponding paragraphs in the above mentioned Notice as follows:

1. The Respondent(s) Deny
2. Non-Disclosure Agreement / Lack of Information
3. Admit prior to Ceasing Business in the State of Arizona
4. Non-Disclosure Agreement / Lack of Information
5. The Respondent(s) Deny
6. The Respondent(s) Affirm
7. The Respondent(s) Deny
8. The Respondent(s) Deny
9. The Respondent(s) Deny

Arizona Corporation Commission
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10. The Respondent(s) Deny
11. The Respondent(s) Deny
12. The Respondent(s) Deny
13. The Respondent(s) Deny (couldn't find exact verbiage)
14. Lack of Sufficient Knowledge
15. The Respondent(s) Affirm
16. The Respondent(s) Deny
17. Lack of Sufficient Knowledge
18. The Respondent(s) Deny
19. The Respondent(s) Deny
20. Lack of Sufficient Knowledge
21. The Respondent(s) Deny
22. The Respondent(s) Deny
23. The Respondent(s) Deny
24. The Respondent(s) Deny
25. The Respondent(s) Deny
26. The Respondent(s) Deny
27. Lack of Sufficient Knowledge
28. Lack of Sufficient Knowledge
29. Lack of Sufficient Knowledge
30. Lack of Sufficient Knowledge
31. Lack of Sufficient Knowledge
32. Lack of Sufficient Knowledge

33. The Respondent(s) Deny
34. The Respondent(s) Deny
35. Lack of Sufficient Knowledge
36. Lack of Sufficient Knowledge
37. Lack of Sufficient Knowledge
38. Lack of Sufficient Knowledge
39. The Respondent(s) Deny
40. The Respondent(s) Deny
41. Lack of Sufficient Knowledge
42. The Respondent(s) Deny
43. Lack of Sufficient Knowledge
44. Does It? If so Affirm
45. Lack of Sufficient Knowledge
46. The Respondent(s) Deny
47. Lack of Sufficient Knowledge
48. Ask Nanette

Respondents, Kent Maerki, et ux., et al., hereby respond to each incorrectly re-numbered corresponding paragraph in the above mentioned Notice as follows:

38. The Respondent(s) Deny
39. The Respondent(s) Affirm
40. The Respondent(s) Deny
41. The Respondent(s) Deny
42. The Respondent(s) Deny

43. The Respondent(s) Deny in whole

44. The Respondent(s) Deny

45. The Respondent(s) Deny

Affirmative Defenses

Jurisdiction

1. Respondent Dental Support Plus Franchise, LLC (“Dental Support”) has on its own accord, on [need date] date converted from a limited liability company to a private member association, known as Systematic Healthcare Membership Association, (herein after "SHMA") through a licensed attorney's establishment and review of the complete association business and provided a positive endorsement of same.
2. SHMA is a 1st and 14th Private Membership Association and only associate with private members in the private domain with a managing trustee of the 1st and 14th Private Membership Association. Members sign a private contract to join the private membership association. Thus, SHMA has taken over any and all business of Dental Support.
3. The private association has a declaration of purpose that all members must follow, outside the public domain. All private contract members in SHMA are not operating in the public domain, but associating in the private domain within a constitutionally protected legally cognizable 1st and 14th Amendment Private Membership Association. As defined by the United States Supreme Court under the liberty clause of the 5th and 14th Amendments of the United States Constitution, freedom of association is also a liberty interest that this Honorable Court must protect.

4. The private domain is referred to as a “sanctuary from unjustified interference by the State” in Pierce v. Society of Sisters, 268 U.S. 510 at 534-535. And as a “constitutional shelter” in Roberts v. United States, 82 L.Ed.2d 462 at 472. And again as a “shield” in Roberts v. United States, supra at 474.
5. In addition, the U.S. Supreme Court in Thomas v. Collins, 323 U.S. 516 at 531, specifically refers to the “Domains set apart...for free assembly.” The First Amendment right to association creates a “preserve” in Baird v. Arizona, 401 U.S. 1.
6. “Any attempt by the police power of the State to enjoin association activities must be justified by a clear and present danger involving substantive evil.” Gitlow v. New York, 69 L.ed 1138; Thomas v. Collins, supra; N.A.A.C.P. v. Button, 9 L.ed 2d 405.
7. The Arizona Corporation Commission (ACC) has failed to establish the existence of any case law refuting stare decisis of the copious U.S. Supreme Court decisions drawing a clear distinction between the private and public domains and holding that the private domain is a constitutional shelter, a shield, a preserve, a sanctuary, and a domain set apart from unjustified interference by the ACC. The ACC has additionally failed to bring forth any case law refuting that the activities of a First and Fourteenth Amendment private membership association may extend into all areas of human interest, including financial and business activities. The ACC has failed to refute by any controlling case law that it has no police power whatsoever to regulate any association’s activities (including interstate commerce), absent a clear and present danger involving substantive evil.
8. Pursuant to the Applicant’s subpoena request of membership records, documents and other member records are beyond the States’ power of discovery. In Gibson v. Florida

Investigations Committee, 372 U.S. 539, the petitioner's refusal to produce his organization's membership lists was based on the ground that to bring the lists to the hearing and to utilize them as the basis of his testimony would interfere with the free exercise of the Fourteenth Amendment associational rights of members and prospective members of the N.A.A.C.P., as was said in N.A.A.C.P. v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163, 'It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.' 357 U.S., at 460, 78 S.Ct., at 1171. And it is equally clear that the guarantee encompasses protection of privacy of association in organizations such as that of which the petitioner is president; indeed, in both the Bates v. Little Rock, 361 U.S. 516 and N.A.A.C.P. v. State of Alabama, supra, cases this Court held, N.A.A.C.P. membership lists of the very type here in question to be beyond the States' power of discovery in the circumstances there presented.

9. Inviolability of privacy in-group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.' "So it is here." Gibson v. Florida Investigations Committee, supra.
10. "In NAACP v. Alabama, ex rel. Patterson, 357 U.S. 449, 461, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488, we said, 'In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action.' Most recently, in Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 297, 81 S.Ct. 1333, 1336, 6 L.Ed.2d 301, we reaffirmed this principle, regulatory

measures no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.’ “...bad faith and harassing prosecutions also encompass those prosecutions that are intended to retaliate for or discourage the exercise of constitutional rights.” PHE, Inc. v. U.S. Dept. of Justice, 743 F.Supp. 15.

11. In addition, the state cannot foreclose the exercise of a constitutional right by mere labels. NAACP v. Button, 371 U.S. 415 at 421; Brotherhood of R. Trainman v. Virginia, 377 U.S. 1. The ACC here is attempting to dismiss Respondent’s argument by mere labels, or substance over form.

12. The Applicant’s motion for setting a hearing date or order to comply enforcing a Subpoena of a 1st and 14th Private Membership Association must be dismissed on the following grounds as follows:

1.) The ACC only has jurisdiction and authority in the public domain for the exercise of the police power and is available only for the purpose of promoting the general welfare, the interest of the public as distinguished from those of individuals or persons. Binford v. Boyd, 174 P. 56; People v. Painless Parker, Inc., 85 Colo. 304, 275 P. 928; Price v. State, 168 Wis. 603, 171 N. W. 77; Noble v. State, 44 Ohio App. 10, 184 N. E. 258; Rust v. State Board of Dental Examiners, 256 N.W. 919.

2.) SHMA, a private membership association under the 1st, 5th, and 14th Amendment of the United States Constitution, is setup and operates in the private domain only and has only private members.

3.) The ACC has no jurisdiction or authority in the private domain. See Chisholm v. Georgia, 2 U.S. 419 at 463, Buckner v. Finley, 27 U.S. 586, 590, Phillips v. Payne, 92

U.S. 130, Chisholm, supra at 479, Const. Lim., Cooley (1908), Chap. III, p. 56, Foreign Sovereignty Immunities Act Mond, 336 U.S. 525, 539, 69 S.Ct. 657, 665, 93 L.Ed. 865 (1949); Dennis v. Higgins, 498 U.S. 439, 111 S.Ct. 865 U.S. Neb., 1991. Unless, there is a clear and present danger of substantive evil involved in the operation or activities of the private membership association, the SEC cannot even investigate or subpoena a private membership association. Gibson v. Florida Investigation Committee, 372 U.S. 539; NAACP. v. Alabama; 357 U.S. 449.

- 4.) The purpose of the ACC to investigate possible violations of Security laws does not rise to the threshold of a clear and present danger of substantive evil.
- 5.) The books, records and membership lists are absolutely immune from court ordered discovery or enforcement of subpoena, due to having inviolability or an absolute right of privacy. Gibson v. Florida Investigation Committee, supra; NAACP. v. Alabama, supra.

A government agency, the ACC in this case, must scrupulously observe rules or procedures, which it has established, and when it fails to do so, its action cannot stand and courts will strike it down. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681; United States v. Heffner, 420 F.2d 809. The failure of the Commission and the Department of Justice to follow their own established procedures was held a violation of due process. United States v. Heffner, supra.

13. Any records or information the private association surrenders will be under protest and duress unless the Applicant answers the questions below and makes them available to the Respondent in writing prior to the hearing and or order to comply.

1. Please provide the name of the anonymous complaint or whom created the investigation.
2. Please provide the complaint to determine relevance and materiality.
3. Please provide a Pre-Administrative Hearing concerning the decision to investigate.
4. Please provide answers to the Privacy Act questions which must be automatically answered in advance pursuant to Title 5 U.S.C. §552a.
5. Please provide the Rules of Interpretation and Construction of the ACC statutes.
6. Please provide your Oath of Office and the ACC Board of Commissioners.
7. Please provide the Safeguards under Title 26 U.S.C. Section 7521.

If not, then –

- 1.) Respondent objects under the Due Process Clause of the 5th Amendment to the U.S. Constitution that the information is not relevant or material.
 - 2.) Respondent objects under the 1st, 5th and 14th Amendments to the U.S. Constitution.
14. The Securities Act of State and Federal laws were designed to protect the public, Kahan v. Rosenstiel, 424 F.2d 161. Using the exclusionary rule of interpretation of statute which states that, “the mention of a thing is to automatic exclusion of all else” applies to the Securities Acts. Since the Securities Acts refer to “public”, it is to the exclusion of “private” domain as if this exception was written in the statute of securities laws. The SEC only has jurisdiction to protect the public.

Ripeness

15. Dental Support voluntarily ceased business operations in the State of Arizona.
16. Thereafter, Dental Support merged into Systemic Healthcare Membership Association (“SHMA”).

Relief Requested

THEREFORE, IT IS Prayed that the Respondent's Answer be accepted with such other and further relief as the Court may deem reasonable and just under the circumstances.

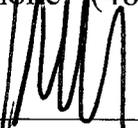
The Respondent also requests that Findings of Fact and Conclusions of Law be included with any and all rulings on the above ruling or requests.

Respectfully submitted this 27 day of December, 2013.

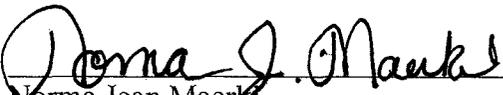
**Systematic Healthcare Membership Association,
formerly known as, Dental Support Plus Franchise, L.L.C., Pro se**



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VERIFICATION

IT IS HEREBY Certified that the facts in the foregoing pleadings are true and correct under penalties of perjury to the best of my knowledge and belief.



CERTIFICATE OF SERVICE

IT IS HEREBY Certified that a copy of the foregoing Respondent's Answer was mailed to those listed on the 27 day of December, 2013.



Gary Clapper
Senior Special Investigator
Arizona Corporation Commission
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