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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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AZ CORP COMMISSION
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ORIGINAL

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.

Arizona Corporation Commission
DOCKETED

JAN 16 2014

DOCKETED BY

EIGHTH
PROCEDURAL ORDER
(Denies Application for the Issuance of Subpoena)

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; Casimer Polanchek; 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
26 ¹ On February 6, 2013, the Commission issued Decision Nos. 73666 and 73667 against Pangaea and TC Mexico,
27 respectively, as Default Orders finding them in violation of the Act. On May 8, 2013, the Commission issued Decision
28 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 Buckleys’ marital community liable. On January 7, 2014, the Commission issued Decision No.
74251, a Consent Order, against Respondent Kordosky.

1 On March 20, 2013, at the status conference, the Division appeared through counsel,
2 Respondents Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler appeared
3 through counsel, Respondent C&D appeared through counsel, and Respondents Brian Buckley and
4 Nicole Kordosky appeared on their own behalf. Mrs. Buckley did not appear. The Division's
5 counsel indicated that while discussions to resolve the issues raised by the Notice were ongoing, a
6 hearing should be scheduled in the fall to avoid scheduling conflicts in a lengthy proceeding because
7 there would be approximately 12 Division witnesses and voluminous exhibits. Additionally, one of
8 the attorneys who represents the Respondents indicated that he would call a like number of witnesses.

9 On March 21, 2013, by Procedural Order, a hearing was scheduled to commence on October
10 7, 2013 and last over a number of weeks.

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

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

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

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

1 represented by the affected counsel presenting their case in chief at that time.

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

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

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

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

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

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

1 the representation of the ERC Entities filed by Mr. Thrasher; and a copy of the Sixth Procedural
2 Order which scheduled the matter for further hearing on February 3, 2014.

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

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

9 On November 19, 2013, by Procedural Order, the Motion to Withdraw by Mr. Bobby
10 Thrasher was granted conditioned upon a copy of the complete and final Purchase Contract being
11 filed. Additionally, a lawful representative or counsel for the ERC Entities was ordered to enter an
12 appearance in this matter if they were going to participate further in the proceeding and contest the
13 Notice.

14 On December 6, 2013, an Arizona attorney filed a letter on behalf of the ERC Entities and
15 stated that no appearance would be entered on behalf for the ERC Entities and that the current
16 manager of these Respondents "was not in control of the entities during the relevant time frame."
17 Further, the attorney went on to state that a resolution of the matter was being sought with the
18 Commission.

19 On December 12, 2013, at the procedural conference, the Division and Tri-Core, TC Business
20 and Mr. Mogler were represented by counsel. No appearance was made on behalf of C&D or any
21 remaining Respondents. The Purchase Contract for the ERC Entities was further discussed, and
22 counsel for Tri-Core, TC Business and Mr. Mogler indicated that he would be seeking discovery with
23 respect to the Division investigator's notes, logs and reports beyond the documentary material
24 disclosed by the Division with the exchange of Exhibits and Witness Lists as ordered previously. Mr.
25 Thrasher agreed that he would pursue the material he required by filing for a subpoena by December
26 17, 2013, and the Division's counsel agreed to file a response by January 6, 2014.

27 On December 17, 2014, counsel for Tri-Core, TC Business and Mr. Mogler filed what was
28 captioned "Application for Issuance of Subpoena for Documents to Arizona Corporation Securities

1 Division” (“Application”). Therein counsel requested “an unredacted copy of the investigative file.”
2 The only documents excluded from the Application were those documents previously provided to the
3 Respondents in the Division’s List of Exhibits and Witnesses pursuant to stipulation on August 26,
4 2013.²

5 On December 31, 2013, the Division filed its Response in Opposition (“Response”) to the
6 Application by Tri-Core, TC Business and Mr. Mogler. The Division stated that on October 31, 2013,
7 it had advised Respondents’ counsel the procedures necessary to obtain discovery from the Division,
8 and that Respondents’ counsel had delayed until December 17, 2013, to file their request in this
9 proceeding.

10 The Division stated that the action herein is governed by the Commission’s Rules A.A.C.
11 R14-3-101, et seq. and the Administrative Procedures Act, A.R.S. § 41-1001, et seq. (“APA”). The
12 Division argued that the Respondents had been provided with thousands of documents along with its
13 list of witnesses prior to the commencement of the hearing and that Respondents’ Application neither
14 complied with the Commission’s Rules nor the APA. The Division stated that Respondents failed to
15 meet their burden to show “reasonable need” before a subpoena will issue for the production of
16 documents. The Division detailed how Respondents had produced more than 30,000 documents to
17 the Division and the majority of them were admitted into evidence through the Division’s
18 investigator. These documents contained no surprises and Respondents had the opportunity to
19 conduct their own investigation prior to the start of the hearing. The Division further stated that no
20 specific prejudice was set forth in the Application and that Respondent’s “due process” rights were
21 not being violated. Additionally, the Division argued that it is not required to provide privileged or
22 confidential documents, and cited a plethora of cases in support of its position that Respondents had
23 either not shown a substantial need or that they could not obtain the information elsewhere. Lastly,
24 the Division cited A.R.S. §44-2042, the Commission’s confidentiality statute, arguing that all
25 information or documents acquired by the Division during its investigation are confidential unless the
26 presiding judge authorizes their disclosure. In conclusion, the Division argued that the Application is
27 overbroad, unduly burdensome, untimely and that it constitutes a “stall tactic” after considering the
28

² In the exchange, the Division provided Respondents with in excess of 250 Exhibits.

1 timeline in the proceeding.

2 Respondents Tri-Core, TC Business and Mr. Mogler have not filed a reply to the Response.

3 After weighing the merits of Respondents' Application and the Division's well-reasoned
4 Response, the Application should not be granted. The Application was not timely, the Respondents
5 did not show a reasonable or substantial need for the documents, nor did the Respondents
6 demonstrate why the confidentiality of the documents should not be maintained pursuant to A.R.S. §
7 44-2042.

8 IT IS THEREFORE ORDERED that the Application of Tri-core, TC Business and Mr.
9 Mogler is hereby denied.

10 IT IS FURTHER ORDERED that Mr. Bobby Thrasher shall file a complete and final
11 Purchase Contract for the ERC Entities as previously ordered.

12 IT IS FURTHER ORDERED that the proceeding shall be continued to **February 3, 2014, at**
13 **10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,
14 Phoenix, Arizona, as previously ordered.

15 IT IS FURTHER ORDERED that the parties shall reserve **February 4, 5, 6, 10, 11, 12, 13,**
16 **18, 19, and 20, 2014**, for additional days of hearing if necessary.

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

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

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

25 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
28 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is

1 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
2 Administrative Law Judge or the Commission.

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

6 DATED this 16th day of January, 2014.

7
8 
9 MARC E. STERN
10 ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered
12 this 16th day of January, 2014 to:

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