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BEFORE THE ARIZONA CORPORAT

IN THE MATTER OF:	)	
	)	DOCKET NO.
CATHARON SOFTWARE CORPORATION,	)	S-20905A-14-0061
a Delaware corporation,	)	
	)	PREHEARING
BETSY A. FEINBERG and	)	CONFERENCE
MICHAEL A. FEINBERG,	)	
husband and wife,	)	
	)	
Respondents.	)	

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 2 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, commencing at 9:30 a.m. on the 10th day of  
6 April, 2014.

7

8 BEFORE: MARK PRENY, Administrative Law Judge

9

10 APPEARANCES:

11 For the Arizona Corporation Commission Securities  
12 Division:

13 Mr. James D. Burgess  
14 Enforcement Attorney, Securities Division  
15 1300 West Washington Street, Third Floor  
16 Phoenix, Arizona 85007  
17 (602) 542-0171

18 For the Respondents:

19 HEURLIN SHERLOCK  
20 By Mr. Bruce R. Heurlin  
21 1636 N. Swan Road, Suite 200  
22 Tucson, Arizona 85712  
23 (520) 319-1200

24

25

26 GARY W. HILL, RMR, CRR  
27 Certified Reporter  
28 Certificate No. 50812

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1 ALJ PRENY: Let's go on the record. Good  
2 morning, everyone. Welcome to the Arizona Corporation  
3 Commission. This is the time set for a prehearing  
4 conference in the matter of Catharon Software  
5 Corporation and Betsy A. Feinberg and Michael A.  
6 Feinberg. This is Docket No. S-20905A-14-0061. My name  
7 is Mark Preny. I'll be presiding over this matter  
8 today.

9 Take appearances, beginning with the Division.  
10 MR. BURGESS: Good morning, Your Honor. James  
11 Burgess for the Securities Division of the Arizona  
12 Corporation Commission.

13 ALJ PRENY: Thank you.

14 MR. HEURLIN: Good morning, Your Honor. Bruce  
15 Heurlin on behalf of the Feinbergs who are present.

16 ALJ PRENY: Thank you. We're scheduled for  
17 prehearing, and I guess my question to the Division is,  
18 where do things stand? Have you had an opportunity to  
19 speak with Respondents' counsel? Are we going to be  
20 setting for a hearing today, or what do you think the  
21 status of the case is right now?

22 MR. BURGESS: Your Honor, the Division would  
23 like to get a hearing set in this matter today. I have  
24 not spoken specifically with Mr. Heurlin about the  
25 timing of the hearing. Because this is on a TC&D,

1 didn't know whether he wanted a hearing in 20 days or in  
2 60 days. I think he maybe gets the first shot. If he  
3 wants a prompt hearing, we can accommodate that subject  
4 to the availability of Your Honor and the hearing rooms.  
5 But we would like to set a hearing today.

6           There is still additional investigation to be  
7 done. There are a large number of investors, over 300,  
8 we believe, at issue in this case. So I think it's  
9 going to be a substantial hearing, and there is still  
10 quite a bit of investigation to be done.

11           ALJ PRENY: Counsel, what do you have to say?

12           MR. HEURLIN: We would, of course, like to set  
13 a hearing today, and we do not demand the prompt hearing  
14 that we're entitled to, but rather we would like to set  
15 a hearing at a reasonable time that's convenient with  
16 all the parties and the Court.

17           ALJ PRENY: About how far out are you  
18 considering at this point? I guess that question goes  
19 to both sides. It sounds like there's still a good  
20 amount of work to be done, and obviously a reasonable  
21 time before the hearing, I would like to see the parties  
22 exchange witness and exhibit lists. It sounds like  
23 there's going to be a substantial amount of potential  
24 witnesses here.

25           So can you give me a better time frame,

1 anybody?

2 MR. HEURLIN: Well, I think Mr. Burgess could  
3 start off first, and estimating the time that the  
4 Securities Division would want to continue its  
5 investigation and prepare for hearing and then he could  
6 make a statement. Then I'll respond to that as to  
7 whether it's okay, not okay, too long, too short.

8 ALJ PRENY: Fair enough. Mr. Burgess.

9 MR. BURGESS: Thank you. We think we'll be  
10 ready to go by October. I think that will be ample  
11 time. There may be an issue with -- there may be an  
12 action to be filed in the Superior Court in the interim  
13 on an issue that Mr. Heurlin and I are already in  
14 correspondence about. That hasn't been filed. It may  
15 be filed; it may not be filed. But I think that even  
16 with that, the issues should still be resolved by mid  
17 summer, and we would be ready to go any time in October.

18 ALJ PRENY: Does that sound like a reasonable  
19 time frame?

20 MR. HEURLIN: It does. I right now am pending  
21 the setting of a long trial in federal court, and I have  
22 a pretrial conference, a final pretrial conference on  
23 May 16, and it's going to go like about a month in  
24 federal court. And I won't know that obviously until  
25 May 16, and that could be a wrinkle in the whole thing.

1 I don't know how you would like to handle that. Of  
2 course, it's not that far away. It could present a  
3 problem or no problem. As far as October is concerned,  
4 yes, that would be fine depending on that.

5 ALJ PRENY: Okay.

6 MR. HEURLIN: I would suggest that we go ahead  
7 and set a hearing for whatever days it is; and if  
8 there's a problem that comes up, then I'll have to  
9 notify you.

10 ALJ PRENY: Can someone give me an idea, for  
11 the Division, how many days do you think it will take to  
12 put on your case?

13 MR. BURGESS: To put on our case, I was  
14 estimating 20 days, 20 hearing days total; but I think  
15 to put on our case, probably 14 days.

16 ALJ PRENY: Does 20 days total sound like a  
17 reasonable number from the Respondents' side?

18 MR. HEURLIN: I would like to know if  
19 Mr. Burgess means 14 days including cross.

20 MR. BURGESS: Yes.

21 MR. HEURLIN: I think that typically these  
22 things get scheduled for more time than necessary.  
23 That's been my experience for many years here, and so I  
24 would suggest we just schedule it for 14 days.

25 ALJ PRENY: Okay. Sounds like we'll need to

1 block off a substantial period on the calendar, so I  
2 will briefly go off the record. I will check the  
3 calendar for the availability of the hearing rooms, try  
4 to block something off. I would like to, I know  
5 sometimes these cases can tend to be broken up over a  
6 period of time. I kind of like to schedule things as  
7 together as possible. I think that might be best.

8 So let's briefly go off the record. I'll  
9 check the calendar. If you gentlemen could check your  
10 calendars, make sure there's nothing pending in October  
11 for either of you. Then we'll go back on the record and  
12 try to get a little more definite date. We'll be off  
13 for approximately a ten-minute recess.

14 (Recessed from 9:38 a.m. to 9:44 a.m.)

15 ALJ PRENY: We're back on the record. I have  
16 had an opportunity to view the Hearing Division's  
17 calendar, and at this point I'm inclined to schedule  
18 October 20 as the first day for the hearing; and we can  
19 run continuously from there, at least see how things go  
20 that first week and schedule availability. Does  
21 October 20 work for the parties?

22 MR. BURGESS: Yes, Your Honor.

23 ALJ PRENY: Gentlemen, you don't need to  
24 stand. It's actually better for picking up in the  
25 microphone if you don't.

1 For the Respondents, would October 20 be a  
2 good start date?

3 MR. HEURLIN: Yes.

4 ALJ PRENY: All right, then. Any other issues  
5 for the Division?

6 MR. BURGESS: Yes, a few, Your Honor. First,  
7 with respect to the hearing, it would be helpful to know  
8 how much time Your Honor anticipates actually spending  
9 in hearing each day. You know, the Division's  
10 experience has been that different judges have different  
11 length of hearing days for a variety of reasons. So,  
12 you know, 14 days, if we're doing six-and-a-half or  
13 seven-hour days may well be adequate; but if it's going  
14 to be a more abbreviated hearing day, additional time  
15 may be warranted.

16 ALJ PRENY: I'm anticipating that we would  
17 begin on the first day at 10:00 a.m. Subsequent days  
18 beginning at 9:00 a.m., and I think we could run till  
19 about 5:00, maybe a little more, little less, depending  
20 on where a good stopping point would be on any given  
21 day.

22 MR. BURGESS: Okay.

23 ALJ PRENY: Based on a schedule like that, is  
24 that in line with 14 days as you see it?

25 MR. BURGESS: I think so, yes, Your Honor.

1 Those sound like very full days, so that's helpful.

2 ALJ PRENY: And additional issues?

3 MR. BURGESS: Yes. Mr. Heurlin in announcing  
4 his representation on the record today stated that he  
5 represents Michael Feinberg and Betsy Feinberg. I  
6 didn't hear him say but I understand him to represent as  
7 well Catharon Software Corporation; and in connection  
8 with that joint representation, if he still does  
9 represent Catharon, we would ask that Mr. Heurlin's  
10 clients each file an acknowledgment of possible  
11 conflicts of interest and waiver of same. Mr. and Mrs.  
12 Feinberg are named here as individual respondents and  
13 not, you know, not one of them as the spouse of the  
14 other, but actual respondents in the case. And so  
15 there's a potential conflict in that joint  
16 representation, and as well with respect to each Mr. and  
17 Mrs. Feinberg vis-a-vis Catharon Software Corporation.

18 So we would ask that the Respondents -- and  
19 Respondents in other cases have done it in the past --  
20 simply to file an acknowledgment in the record that, you  
21 know, facts may develop that cause Mr. Heurlin to have  
22 to take a position or to have a conflict -- and I can  
23 provide the language that's been done in the past. I'm  
24 willing to work with Mr. Heurlin on that. Stating that  
25 each client acknowledges that they're aware of potential

1 conflicts, that they waive the potential conflicts and  
2 they still wish to proceed with Mr. Heurlin and his firm  
3 representing them all jointly, just so that we have a  
4 clean record so that we don't get all the way through a  
5 hearing and, you know, on appeal have an issue come up  
6 that we could have addressed at the outset. I think  
7 that's only fair.

8 ALJ PRENY: Mr. Heurlin, have you addressed  
9 the issue of potential conflict with your clients?

10 MR. HEURLIN: That's a matter of  
11 attorney-client privilege, as is everything that  
12 Mr. Burgess just said. He can send me a proposed form,  
13 and I'll consider whether I want to make that public or  
14 not.

15 As far as my announcement of who I represent,  
16 as soon as I said that, I realized I didn't say  
17 Catharon, also, and I do represent Catharon.

18 ALJ PRENY: You do, correct?

19 MR. HEURLIN: Correct.

20 ALJ PRENY: Okay. Did that address the  
21 Division's concerns for the moment?

22 MR. BURGESS: For the moment, and I will work  
23 with Mr. Heurlin. It's not unprecedented. It's  
24 happened actually in a case that he was involved with  
25 but later withdrew from, but it was addressed with

1 subsequent counsel, and they did file such an  
2 acknowledgment and waiver.

3 Mr. Heurlin and I discussed while we were  
4 adjourned exchanging lists of witnesses and exhibits 30  
5 days in advance of the October 20th hearing date, and  
6 there's a possibility that the Division may seek to  
7 amend the notice. If we do, you know, I'll do so as  
8 promptly as possible. If Mr. Heurlin wants to set a  
9 date on that or if Your Honor wants to set a date on  
10 that, we're happy to do that.

11 And then the last issue is, we would be  
12 hopeful -- I mean part of the purpose of this hearing is  
13 to attempt to simplify the issues. In that regard, we  
14 would ask Mr. Heurlin to consider withdrawing certain  
15 affirmative defenses that are inapplicable as a matter  
16 of law to this proceeding, and those specifically are  
17 the statute of limitations bar that his clients raised  
18 in their answer and also the allegation or the  
19 affirmative defense that the notice violates Rule 9(B)  
20 of the Arizona Rules of Civil Procedure which is  
21 inapplicable to these proceedings.

22 ALJ PRENY: Mr. Heurlin, do you wish to  
23 comment?

24 MR. HEURLIN: I'll consider anything that the  
25 Securities Division wants to consider. And as far as an

1 amended notice, obviously, there are time limits on that  
2 for the Respondents to answer that. So I think that it  
3 would be probably best to set a date for filing any  
4 amended notice so that the answer could be filed timely  
5 well in advance of the hearing.

6 ALJ PRENY: I would consider that would be  
7 reasonable. And from my understanding, the Division  
8 will be concluding its investigation sometime in the  
9 summer.

10 MR. BURGESS: We'll be able to file the -- if  
11 we're to file an amended notice, we can file it well  
12 before the conclusion of the investigation. Probably do  
13 so within 30 to 45 days.

14 ALJ PRENY: All right. So today being April  
15 10, would June -- I guess June 1 is Sunday. June 2,  
16 would June 2 be adequate time for the Division?

17 MR. BURGESS: Yes, Your Honor.

18 ALJ PRENY: Mr. Heurlin, is that acceptable?

19 MR. HEURLIN: Yes.

20 ALJ PRENY: So we'll schedule June 2 as a  
21 deadline by which the Division will file an amended  
22 notice if it intends to do so.

23 Any other issues from the Division?

24 MR. BURGESS: No, Your Honor.

25 ALJ PRENY: Mr. Heurlin?

1 MR. HEURLIN: No.

2 ALJ PRENY: All right. We'll be picking this  
3 up on October 20. There being no further matters to  
4 address at this time, a procedural order will be issued,  
5 and we are adjourned for today. Thank you.

6 MR. HEURLIN: Thank you.

7 (The proceedings concluded at 9:53 a.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) ss.

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I, GARY W. HILL, Certified Reporter No. 50812 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 11th day of April, 2014.

  
\_\_\_\_\_  
GARY W. HILL, RMR, CRR  
Certified Reporter  
Certificate No. 50812