

ORIGINAL



0000152962

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

2014 APR 22 P 1:53

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

APR 22 2014

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

<p>In the matter of:</p> <p>OUT OF THE BLUE PROCESSORS, LLC, an Arizona limited liability company, d/b/a Out of the Blue Processors II, LLC,</p> <p>MARK STEINER (CRD# 1834102) and SHELLY STEINER, husband and wife,</p> <p style="text-align: center;">Respondents.</p>	<p>) DOCKET NO. S-20837A-12-0061</p> <p>) SECURITIES DIVISION'S RESPONSE</p> <p>) TO RESPONDENT'S [sic] MOTION TO</p> <p>) VACATE EVIDENTIARY HEARING</p> <p>) SCHEDULED TO BEGIN ON APRIL 28,</p> <p>) 2014</p> <p>)</p> <p>) (Assigned to Hon. Marc E. Stern)</p>
---	--

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") requests the Court deny the relief sought in *Respondent's* [sic] *Motion to Vacate Evidentiary Hearing Scheduled to Begin on April 28, 2014*, filed on April 18, 2014 ("Motion to Vacate"), and respectfully shows the Court as follows:

The Division opposes Respondents' attempt to delay the hearing for many months because time is of the essence. At the hearing, the Division intends to show that Respondents have disregarded the temporary order enjoining them from violating the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act")¹ and are violating the order and the act by continuing to illegally market and sell the securities. To put an end to these ongoing violations, the hearing should not be delayed, but proceed as scheduled.

The Division opposes Respondents' attempt to delay the hearing so that Respondents may have more time to conduct business that the Division alleges has been funded illegally. The Division contends and *Respondents admit* that from about 2008, Respondents have been offering

¹ See *Temporary Order to Cease and Desist and Notice of Opportunity for Hearing*, docketed on February 22, 2012 (the "Cease and Desist Order"). The Division requests the Court take judicial notice of the pleadings on file herein.

1 or selling securities in the form of investment contracts within or from Arizona.² The Division
2 contends and *Respondents admit* that these securities are not registered with the Commission.³
3 The Division also contends and *Respondents also admit* that Respondents marketed the subject
4 securities while they were not registered with the Commission as a dealer or salesman.⁴
5 Additionally, the Respondents have failed to demonstrate compliance with any applicable
6 exemption from the registration requirements of the Securities Act pursuant to A.R.S. § 44-2033.
7 Moreover, the Division contends and intends to show at hearing that Respondents fraudulently
8 misrepresented to potential investors how investor principal would be used to induce investment
9 and then improperly diverted investor monies for personal benefit. The business Respondents
10 want more time to conduct is funded by investor dollars the Division contends Respondents
11 obtained in violation of the registration and fraud statutes of the Securities Act. Respondents
12 should not be permitted additional time to misuse these funds.

13 The Division also opposes Respondents' attempt to delay the hearing so that
14 Respondents may have additional time to close transactions with third parties because whether
15 such business is successful is not dispositive in this matter. Respondents argue that, if given
16 time, their business activities will result in a profit for investors. Respondents' ability to close
17 business transactions, however, is not at issue in the registration and fraud claims asserted by the
18 Division. That is, even if Respondents ultimately close the transactions they claim are nearing
19 completion, a point which the Division does not concede, the Division still contends Respondents
20 violated the Securities Act.

21 The Division opposes Respondents' attempt to delay the hearing because Respondents'
22 ongoing violations should be addressed as soon as possible, Respondents should not be permitted
23

24 ² Paragraph 43 of Respondents' *Answer to Amended Notice of Opportunity for Hearing Regarding Proposed Order to*
25 *Cease and Desist, Order for Restitution, Order for Administrative Penalties, Order of Revocation and Order for Other*
26 *Affirmative Action*, filed on October 10, 2013 ("Answer to Amended Notice"); see paragraph 43 of the Division's
Amended Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution,
Order for Administrative Penalties, Order of Revocation and Order for Other Affirmative Action, filed on September 6,

³ Answer to Amended Notice, ¶¶ 42, 44; Amended Notice, ¶¶ 42, 44.

⁴ Answer to Amended Notice, ¶¶ 41, 46; Amended Notice, ¶¶ 41, 46.

1 additional time to misuse investor principal, and there is no benefit to be gained herein by
2 permitting Respondents additional time to do business. Accordingly, the Division requests the
3 Court deny the *Respondent's Motion to Vacate Evidentiary Hearing Scheduled to Begin on April*
4 *28, 2014.*

5 RESPECTFULLY SUBMITTED April 22, 2014.

6 ARIZONA CORPORATION COMMISSION

7
8 By: Stephen J. Womack
9 Stephen J. Womack, Esq.
10 Securities Division
11 1300 W. Jefferson St., Third Floor
12 Phoenix, AZ 85007

13 ORIGINAL AND 8 COPIES of the foregoing filed April 22, 2014, with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 W. Washington St.
17 Phoenix, AZ 85007

18 COPY of the foregoing hand-delivered April 22, 2014, to:

19 Hon. Marc E. Stern
20 Administrative Law Judge
21 Arizona Corporation Commission/Hearing Division
22 1200 W. Washington St.
23 Phoenix, AZ 85007

24 COPY of the foregoing mailed April 22, 2014, to:

25 Arthur P. Allsworth
26 7501 North 16th Street Suite 200
Phoenix AZ 85020-4677

Attorney for Respondents

By: Karen Houle