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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

JUL 10 2014

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AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO. S-20897A-13-0391

In the matter of:

KENT MAERKI and NORMA JEAN COFFIN aka
NORMA JEAN MAERKI, aka NORMA JEAN
MAULE, husband and wife,

DENTAL SUPPORT PLUS FRANCHISE, LLC, an
Arizona limited liability company,

Respondents.

ORIGINAL

SIXTH
PROCEDURAL ORDER
(Schedules Hearing)

BY THE COMMISSION:

On November 18, 2013, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Kent Maerki and Norma Jean Coffin aka Norma Jean Maerki, aka Norma Jean Maule, husband and wife, and Dental Support Plus Franchise, LLC ("Dental Support") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts.

Respondents were duly served with a copy of the Notice.

On December 10, 2013, Respondents filed requests for hearing in response to the Notice in this matter pursuant to A.R.S §44-1972 and A.A.C. R14-4-306.

On December 11, 2013, by Procedural Order, a pre-hearing conference was scheduled on December 23, 2013.

On December 19, 2013, Respondent, Kent Maerki, filed a Motion for a Continuance stating that he would be unavailable due to previously scheduled business travel arrangements.

The Division indicated that it did not object to a brief continuance.

On December 20, 2013, by Procedural Order, a continuance to January 16, 2014 was granted.

1 On January 16, 2014, at the pre-hearing conference, the Division appeared through counsel
2 and Respondents appeared on their own behalf. Counsel for the Division requested that a hearing be
3 scheduled and estimated that the proceeding would require approximately two weeks of hearing to
4 complete. Respondents did not object to this request, but indicated they may retain an out of state
5 attorney who will comply with Arizona law to appear *pro hac vice*.

6 On January 17, 2014, by Procedural Order, a hearing was scheduled to commence on June 2,
7 2014, with additional days of hearing scheduled during the following weeks.

8 On May 9, 2014, the Division filed a Motion to Allow Telephonic Testimony stating five of
9 its prospective witnesses would be unduly burdened if they were required to appear in Phoenix for
10 the proceeding. There were no objections to the Division's request.

11 Respondent, Kent Maerki, on May 9, 2014, filed a Motion for a Continuance due to several
12 conflicts that had arisen for him with the presently scheduled proceeding. The conflicts in two of
13 three instances involved court proceedings in separate venues, the United States Bankruptcy Court
14 for the District of Arizona on June 4, 2014 and the Maricopa County Superior Court on June 12,
15 2014.¹ The third conflict is purportedly based on a November 2013 invoice and involves an
16 "unmovable business trip" which was to begin on June 2, 2014, but Mr. Maerki failed to raise this
17 issue when the Commission's proceeding was scheduled in January.

18 On May 12, 2014, the Division filed its response to Respondent Maerki's request for a
19 continuance of the proceeding. With respect to the June 4, 2014, proceeding in the United States
20 Bankruptcy Court, the Division stated that Mr. Maerki's request for a continuance did not specify
21 how this matter conflicted with this proceeding since the Petition in the bankruptcy proceeding lists
22 Janus Spectrum, LLC as the debtor and named an unknown third party as the president or managing
23 director of Janus Spectrum, LLC. The Division further noted that the Superior Court proceeding on
24 June 12, 2014 was only scheduled for a status conference limited to 30 minutes and was to begin at
25 9:45 a.m. so that the Commission's proceeding on that date could be scheduled to begin in the early
26 afternoon on that date. Lastly, the Division argued that the copy of the invoice was dated May 6,
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¹ According to Mr. Maerki's Motion, these proceedings were scheduled only recently during the first week in May.

1 2014, and did not bear any reference to a business meeting that would conflict with the Commission's
2 proceeding that had been scheduled to commence on June 2, 2014.

3 On May 15, 2014, by Procedural Order, good cause for a continuance of the proceeding was
4 not found, but Mr. Maerki was afforded an opportunity to explain the merits of his motion further at a
5 procedural conference scheduled on May 22, 2014. The Division's request to authorize telephonic
6 testimony was also approved.

7 On May 22, 2014, at the procedural conference, the Division appeared with counsel and Mr.
8 Maerki appeared on his own behalf. Mrs. Maerki did not appear and an appearance was not entered
9 on behalf of Dental Support. At the outset, a brief discussion took place concerning Mr. Maerki's
10 request for a continuance followed by Mr. Maerki's revelation that he had retained counsel, the Mirch
11 Law Firm, LLP, from San Diego, California. Mr. Maerki provided a copy of a letter that was
12 addressed to the presiding Administrative Law Judge from Attorney Marie Mirch which confirmed
13 the firm's retention by the Respondents. Attorney Marie Mirch's letter indicated she was in the
14 process of applying for *pro hac vice* status in Arizona and that a motion to associate counsel *pro hac*
15 *vice* would be filed in the near future by local counsel. Additionally, Attorney Mirch indicated that
16 she was unavailable for any hearing in June at the Commission due to other previously scheduled
17 proceedings in California. A further discussion took place concerning a continuance and it was
18 determined that the proceeding should be continued and a status conference should be scheduled in
19 its place on July 9, 2014.

20 On May 27, 2014, by Procedural Order, the hearing scheduled to commence on June 2, 2014,
21 was continued, and a status conference was scheduled on July 9, 2014. The Division was further
22 granted authorization to utilize telephonic testimony during the presentation of its evidence.

23 On July 9, 2014, at the status conference, the Division appeared with counsel. Respondents
24 were present with local counsel.² The Division requested that a hearing be scheduled and estimated
25 that the proceeding would require approximately three weeks of hearing. After discussions with
26 counsel, it was agreed that the matter be scheduled to commence in late September and continue into
27

28 ² Attorney Mirch joined in the proceeding telephonically from California and indicated that her application to appear *pro hac vice* was pending with the State Bar of Arizona.

1 October, 2014. It was also noted that the Division was planning to utilize approximately 13
2 witnesses and that the Respondents would possibly utilize six witnesses.

3 Accordingly, a hearing should be scheduled as agreed between the parties.

4 IT IS THEREFORE ORDERED that a **hearing shall be held on September 29, 2014, at**
5 **10:00 a.m.** at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1,
6 Phoenix, Arizona.

7 IT IS FURTHER ORDERED that the parties shall set aside September 30, October 1, 2, 6, 7,
8 8, 9, 20, 21, 22, and 23, 2014, for additional days of hearing, if necessary.

9 IT IS FURTHER ORDERED that the Division is hereby authorized to utilize telephonic
10 testimony during the proceeding.

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

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

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

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

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

4 DATED this 10th day of July, 2014.

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6 
7 MARCE. STERN
ADMINISTRATIVE LAW JUDGE

8
9 Copies of the foregoing mailed/delivered
this 10 day of July, 2014 to:

10 Mark D. Chester
11 CHESTER & SHEIN, P.C.
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17 COASH & COASH, INC.
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19
20 
21 By: _____
22 Tammy Velarde
Assistant to Marc E. Stern