



0000156070

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

SEP 24 2014

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

2014 SEP 24 PM 1 47

DOCKETED BY [Signature]

In the matter of:

DOCKET NO. S-20897A-13-0391

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

ORIGINAL

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

**EIGHTH**  
**PROCEDURAL ORDER**  
**(Schedules Telephonic**  
**Procedural Conference)**

Respondents.

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.<sup>1</sup> 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,  
27

28 \_\_\_\_\_  
<sup>1</sup> 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.<sup>2</sup> 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 would be scheduled to commence in late September and  
27

28 <sup>2</sup> 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 continue into October, 2014. It was also noted that the Division was planning to utilize  
2 approximately 13 witnesses and that the Respondents would possibly utilize six witnesses.

3 On July 10, 2014, by Procedural Order, a hearing was scheduled to commence on September  
4 9, 2014.

5 On July 30, 2014, Respondents filed a Motion to Associate Counsel *Pro Hac Vice* pursuant to  
6 Arizona Law and the Rules of the Arizona Supreme Court.

7 On August 1, 2014, the Division filed a response stating that it had no objections to the  
8 Motion to Associate Counsel *Pro Hac Vice* filed by Respondents.

9 On August 5, 2014, by Procedural Order, Respondents' Motion to Associate Counsel *Pro Hac*  
10 *Vice* was granted.

11 On September 22, 2014, Respondents filed an Emergency Application to Continue Hearing  
12 ("Emergency Application") because Respondent, Kent Maerki, had suffered a stroke on August 27,  
13 2014, and was hospitalized for two days. Respondent Maerki's counsel requested a continuance of at  
14 least eight weeks to permit him time to recover from his stroke. Attached to the Emergency  
15 Application as Exhibit 1 was a note from Mr. Maerki's cardiologist who recommended a delay in any  
16 legal proceedings for at least eight weeks because it is important that Mr. Maerki maintains a low  
17 stress level, after which he should then be reevaluated by his physician.

18 On September 23, 2014, the Division filed a response to the Emergency Application and  
19 argued that it should be denied. In support of its response counsel for the Division argued that the  
20 medical evidence in support of the Emergency Application was not entirely clear and even after eight  
21 weeks whether Mr. Maerki would be able to participate in the proceeding. Additionally, the Division  
22 stated that it appears that Respondent Maerki did not plan to attend the proceeding the week of  
23 September 29<sup>th</sup> because its investigator had learned that Respondent Maerki had a reservation at a  
24 hotel in Las Vegas, Nevada beginning on September 30, 2014, to attend the third week of a three part  
25 seminar that he had been participating in earlier in the year.

26 Under the circumstances, Respondents should reply to the Division's response which has been  
27 filed in this proceeding before a ruling will be made. Due to the short time available, a telephonic  
28 procedural conference should be scheduled to address the issues raised by the Emergency

1 Application.

2 IT IS THEREFORE ORDERED that a **telephonic procedural conference shall be held on**  
3 **September 26, 2014, at 10:00 a.m.**

4 IT IS FURTHER ORDERED that **on the date of and at least five minutes before the time**  
5 **set for the procedural conference, Respondents and/or Respondents' counsel shall call 1 (800)**  
6 **689-9374, passcode 415962#, from a landline telephone, to participate telephonically in the**  
7 **procedural conference. The Division shall appear telephonically in the same manner.**

8 IT IS FURTHER ORDERED that a **hearing shall be held on September 29, 2014, at 10:00**  
9 **a.m.** at the Commission's offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,  
10 Arizona, unless otherwise ordered.

11 IT IS FURTHER ORDERED that the parties shall set aside September 30, October 1, 2, 6, 7,  
12 8, 9, 20, 21, 22, and 23, 2014, for additional days of hearing, if necessary.

13 IT IS FURTHER ORDERED that the Division is hereby authorized to utilize telephonic  
14 testimony during the proceeding, as previously ordered.

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

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

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

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

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 24<sup>th</sup> day of September, 2014.

5  
6   
7 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

8  
9 Copies of the foregoing mailed/delivered  
this 24<sup>th</sup> day of September, 2014 to:

10 Mark D. Chester  
11 CHESTER & SHEIN, P.C.  
12 8777 N. Gainey Center Drive  
13 Suite 191  
Scottsdale, AZ 85258  
Attorneys for Respondents

14 Marie Mirch  
15 MIRCH LAW FIRM LLP  
16 750 B Street Sute 2500  
San Diego, CA 92101  
Attorney for Respondents

17 Matt Neubert, Director  
18 Securities Division  
ARIZONA CORPORATION COMMISSION  
19 1300 West Washington Street  
Phoenix, AZ 85007

20 COASH & COASH, INC.  
21 Court Reporting, Video and Videoconferencing  
1802 North 7<sup>th</sup> Street  
Phoenix, AZ 85006

22  
23 By: Rebecca Unquera  
24 Rebecca Unquera  
Assistant to Marc E. Stern