



0000156114

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

SEP 26 2014

2014 SEP 26 P 12:39

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

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,

NINTH
PROCEDURAL ORDER
(Continues Hearing

Respondents.

and
Schedules Procedural Conference)

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,
27

28 _____
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 would be scheduled to commence in late September and
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 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 was important that Mr. Maerki maintained 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 appeared that Respondent Maerki did not plan to attend the proceeding the week of
23 September 29th 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 On September 24, 2014, by Procedural Order, Respondents were directed to reply to the
27 Division's response which had been filed in this proceeding before a ruling would be made. Due to
28 the short time available, a telephonic procedural conference was scheduled on September 26, 2014, to

1 address the issues raised by the Emergency Application.

2 On September 24th and 25th, 2014, the Division filed two supplemental responses in
3 opposition to the Emergency Application.

4 On September 26, 2014, the Respondents filed an additional pleading purporting to be an
5 affidavit in support of the Emergency Application. However, the document was not notarized.

6 Subsequently, on September 26, 2014, at the procedural conference, the Division and the
7 Respondents appeared telephonically to argue the issues raised by the filing of the Emergency
8 Application.

9 Under the circumstances, good cause was established to continue the proceeding, but this
10 matter will go forward following a procedural conference to determine the rescheduling of the
11 hearing to avoid conflicts with the schedules of counsel and to allow for further medical evaluation of
12 Respondent Maerki. Additionally, Respondent Maerki should provide the Division with the
13 necessary medical releases so that the appropriate physicians can be contacted to discuss the
14 Respondent's medical condition and his ability to participate in a three to four week long legal
15 proceeding.

16 IT IS THEREFORE ORDERED that the **hearing** in this matter **scheduled to commence on**
17 **September 29, 2014, is hereby continued.**

18 IT IS FURTHER ORDERED that a **procedural conference shall be held on November 13,**
19 **2014, at 10:00 a.m.,** in Hearing Room No. 1, at the offices of the Commission, 1200 West
20 Washington Street, Phoenix, Arizona,

21 IT IS FURTHER ORDERED that Respondent Maerki shall immediately provide the Division
22 with the necessary medical releases so that the Division can secure any appropriate medical records
23 and converse with his physicians.

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

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

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

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

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

13 DATED this 26TH day of September, 2014

14 
15 MARC E. STERN
16 ADMINISTRATIVE LAW JUDGE

17
18 Copies of the foregoing mailed/delivered
and e-mailed this 26th day of September, 2014 to:

19 Mark D. Chester
20 Ryan Houser
CHESTER & SHEIN, P.C.
21 8777 N. Gainey Center Drive
Suite 191
22 Scottsdale, AZ 85258
mchester@cslawyers.com
rhouser@cslawyers.com
23 Attorneys for Respondents

24 Marie Mirch
MIRCH LAW FIRM LLP
25 750 B Street Sute 2500
San Diego, CA 92101
26 marie@mirchlaw.com
27 Attorney for Respondents

Matt Neubert, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1300 West Washington Street
Phoenix, AZ 85007
wcoy@azcc.gov

COASH & COASH, INC.
Court Reporting, Video and
Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

By: Rebecca Unquera
Rebecca Unquera
Assistant to Marc E. Stern