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BEFORE THE ARIZONA CORPORATION
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COMMISSIONERS

BOB STUMP - Chairman
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2014 OCT 16 A 8:58

Arizona Corporation Commission

DOCKETED

OCT 16 2014

CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-20905A-14-0061

CATHARON SOFTWARE CORPORATION, a
Delaware corporation,

BETSY A. FEINBERG and MICHAEL A.
FEINBERG, husband and wife.

Respondents.

ORIGINAL

SIXTH
PROCEDURAL ORDER
(Continues Hearing)

BY THE COMMISSION:

On February 26, 2014, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("T.O. and Notice") against Catharon Software Corporation ("Catharon"), and Betsy A. Feinberg and Michael A. Feinberg, husband and wife (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 common stock.

The Respondents were duly served with copies of the T.O. and Notice.

On March 14, 2014, Respondents filed an Answer to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and Request for Hearing.

On March 17, 2014, by Procedural Order, a pre-hearing conference was scheduled for April 10, 2014.

On April 10, 2014, at the pre-hearing conference, the Division and Respondents appeared through counsel. Counsel for the Division requested that a hearing be scheduled for at least two weeks beginning in October 2014. Counsel for the Division further requested leave to file an Amended Notice of Opportunity for Hearing, if necessary. Respondents had no objections to these requests.

1 On April 14, 2014, at the request of the parties, a telephonic status conference was held and
2 the parties appeared through counsel. Counsel for the Respondents requested that the hearing be
3 scheduled in November 2014. Counsel for the Division did not object to this request. Counsel for
4 the Respondents agreed to file an acknowledgement regarding potential conflicts of interest.

5 On April 15, 2014, a Procedural Order was issued scheduling a hearing to commence on
6 November 3, 2014. The parties were further ordered to set aside subsequent days for additional days
7 of hearing, if necessary. The Respondents were ordered to file an acknowledgement regarding
8 potential conflicts of interest by May 14, 2014. The Division was ordered to file any amendments to
9 the T.O. and Notice by June 2, 2014.

10 On April 28, 2014, the Respondents filed their Acknowledgment and Waiver of Potential
11 Conflicts of Interests.

12 On June 2, 2014, the Division filed an Amended Temporary Order to Cease and Desist and
13 Notice of Opportunity for Hearing.

14 On June 19, 2014, counsel, on behalf of Respondent Catharon, filed a Stipulation to
15 Admission of Records. Pursuant to the stipulation, counsel for Catharon agreed that "the records
16 delivered to the Securities Division of the Arizona Corporation Commission pursuant to the three (3)
17 Subpoenas Duces Tecum dated January 3, 2014 (collectively the "Records") may be entered and
18 admitted into evidence at any proceeding in [this] matter without any evidentiary foundation."
19 Counsel for Catharon further waived any objection to the admission of the "Records" in this matter.

20 On June 20, 2014, the Division filed a Motion for Status Conference Regarding Subpoena
21 Enforcement Action. In its motion, the Division asserted that it had filed a subpoena enforcement
22 action in Maricopa County Superior Court. The Division stated that on June 19, 2014, "Judge
23 Cunanan ordered the parties to have a conference with the Administrative Law Judge to see if the
24 parties can agree to resolve the issue in the subpoena enforcement action pending before Judge
25 Cunanan." The Division noted that "Judge Cunanan acknowledged that he, and not the
26 Administrative Law Judge, has the jurisdiction to decide and resolve the subpoena enforcement
27 action" and that he scheduled a hearing for August 1, 2014, should the parties be unable to resolve
28 the matter before the Administrative Law Judge. The Division stated that "Judge Cunanan directed

1 the parties to appear before the Administrative Law Judge during the weeks of June 23-27 or June 30-
2 July 3, 2014.” The Division further expressed that it considered Catharon’s June 19, 2014 stipulation
3 to be “unsatisfactory and unacceptable”.

4 On June 23, 2014, by Procedural Order, a status conference was scheduled to commence on
5 June 30, 2014.

6 On June 24, 2014, the Respondents filed a Response to Securities Division’s Motion for
7 Status Conference Regarding Subpoena Enforcement Action and an Answer to Amended Temporary
8 Order to Cease and Desist and Notice of Opportunity for Hearing and Request for Hearing.
9 Regarding the status conference, the Respondents requested to appear telephonically and further
10 requested that the hearing be opened at the status conference. The Respondents also included another
11 form of the Stipulation to Admission of Records.

12 On June 26, 2014, a telephonic procedural conference was held to address the Respondents’
13 request for telephonic appearance at the June 30, 2014 status conference. The parties appeared
14 through counsel. Without objection from the Division, the Respondents were permitted to attend the
15 June 30, 2014 status conference telephonically. However, counsel for the Respondents stated they
16 might appear in person.

17 On June 30, 2014, a status conference was held. At the status conference, the Division and
18 the Respondents were represented by counsel. The parties were afforded an opportunity to
19 summarize the events leading up to the Division’s subpoena enforcement action in Maricopa County
20 Superior Court and the proceedings therein. The Respondents moved to admit 13,256 pages of
21 documents that had been provided to the Division in response to the Division’s subpoenas. The
22 merits of opening the hearing for admission of documents at this time were discussed on the record.
23 Even if the documents were admitted, the Division stated its intention to proceed with the subpoena
24 enforcement action. The Division expressed concerns over the completeness of the Respondents’
25 production pursuant to the subpoena. Supporting these concerns, the Division disclosed to the
26 Respondents an independently obtained patent assignment that the Division believed should have
27 been disclosed pursuant to the subpoena. After discussion of the issue, the Division objected to
28 opening the hearing and to admitting documents at this time. The Administrative Law Judge denied

1 Respondents' motions to open the hearing and to admit the documents. The parties were encouraged
2 to further discuss the possibility of resolving the question of admission of documents in the hearing
3 through a mutually acceptable stipulation.

4 On July 3, 2014, by Procedural Order, the hearing remained scheduled to commence on
5 November 3, 2014.

6 On October 6, 2014, the Division filed a Securities Division's List of Witnesses and
7 Documentary Evidence. Additionally, the Division filed a Securities Division's Motion to Allow
8 Telephonic Testimony. Also, the Respondents filed a Witness List and an Exhibit List.

9 On October 6, 2014, by Procedural Order, a telephonic procedural conference was scheduled
10 for October 15, 2014, to discuss rescheduling the hearing then scheduled to begin on November 3,
11 2014, due to unavailability of the hearing room.

12 On October 7, 2014, the Respondents filed a Response to Securities Division's Motion to
13 Allow Telephonic Testimony and Respondents' Motion to Allow Telephonic Testimony. The
14 Respondents stated they had no objection to the Division's motion and further requested leave to
15 present telephonic testimony for the same reasons stated by the Division.

16 On October 14, 2014, Respondents filed a Stipulation for Substitution of Counsel.

17 On October 15, 2014, a telephonic procedural conference was held to discuss options for
18 rescheduling the hearing. The parties agreed to a new hearing date beginning February 2, 2015.

19 IT IS THEREFORE ORDERED that the hearing currently scheduled to commence on
20 November 3, 2014 is vacated.

21 IT IS FURTHER ORDERED that the **hearing shall commence on February 2, 2015, at**
22 **10:00 a.m., at the Commission's Offices, 1200 West Washington Street, Hearing Room No. 1,**
23 **Phoenix, Arizona.**

24 IT IS FURTHER ORDERED that **the parties shall also set aside February 3-6, 9-13, and**
25 **17- 20, 2015, for additional days of hearing,** if necessary.

26 IT IS FURTHER ORDERED that **the Respondents shall provide an amended and/or**
27 **supplemental Witness List and copies of their Exhibits to the Division by December 19, 2014,**
28 with courtesy copies provided to the presiding Administrative Law Judge. Any amended or

1 supplemental Witness List and copies of additional Exhibits for the Division shall be provided to the
2 Respondents by **December 19, 2014**, with courtesy copies provided to the presiding Administrative
3 Law Judge.

4 IT IS FURTHER ORDERED that the Division's Motion to Allow Telephonic Testimony and
5 the Respondents' Motion to Allow Telephonic Testimony are both hereby granted.

6 IT IS FURTHER ORDERED that **an acknowledgement regarding potential conflicts of**
7 **interest shall be filed by the Respondents by October 22, 2014.**

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

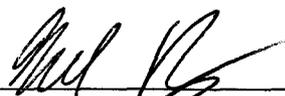
10 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
11 Communications) is in effect and shall remain in effect until the Commission's Decision in this
12 matter is final and non-appealable.

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

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

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

25 DATED this 16th day of October, 2014.

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MARK PRENEY
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 16th day of October, 2014, to:

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4 Robert J. Metli
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