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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission 2015 JAN 14 PM 3 31

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In the Matter of:

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

DENTAL SUPPORT FRANCHISE, LLC, an ARIZONA LIMITED LIABILITY COMPANY

Docket No. S-20897A-13-0391
**RESPONDENTS'
MOTION TO CONTINUE HEARING**

Respondents.

_____ /

COMES NOW RESPONDENTS, Kent Maerki and Norma Jean Coffin

Norma Jean Maerki, aka Norma Jean Maule, husband and wife, Dental Support Franchise, LLC, an Arizona Limited Liability Company, (Hereinafter "Respondents") by and through their counsel of record, Marie Mirch and move this court to continue the hearing in this matter that is currently set to commence on February 9, 2015 and to continue on February 10,11,12,17,18,19,20,23,24, and 25, 2015. This motion is based the following memorandum of points and authorities, exhibits affidavits and pleadings on file herein.

Good cause exists to grant this motion for two reasons:

First and foremost, Mr. Maerki's cardiologist, Dr. Wolfson, re-evaluated Mr. Maerki on January 7, 2015. His affidavit is submitted with the motion. In sum, in paragraphs 5 and six of the affidavit Dr. Wolfson opines:

5. I re-evaluated Mr. Maerki on January 7, 2015. He is currently in atrial fibrillation. This irregular heart rhythm can lead to fast and slow heart rates, both of which can lead to life-threatening consequences. He has a loud murmur which will be evaluated by an echocardiogram. He is unsteady on his feet and suffers from balance issues.

6. It is my medical opinion is that Mr. Maerki's participation or appearance in any legal matter could have a very serious negative impact on his health. Therefore, I have advised Mr. Maerki that he is not to participate in any stressful events, in particular any legal proceedings, which by their very nature create anxiety and high blood pressure, which are precursors to further strokes.

See Affidavit of Dr. Jack Wolfson

Second, Respondents' local counsel, Mark Chester is not available on the dates set for the hearing. He will be trial in the United States District Court Southern District of California in the matter of *Securities and Exchange Commissions v. ABS Manager, LLC and George Charles Cody Price*, case number 13cv319-GPC (BGS). Further, attorney Ryan Houser, who assisted Mr. Chester as local counsel, left the firm.

There is no prejudice to further continuance of the hearing in this matter. Respondents ceased operation of DSPF.

This request is not made for any improper or dilatory purpose, but to protect Respondents' interests in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

I

FACTS

1. PROCEDURAL HISTORY¹

On November 18, 2013, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against 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. 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 January 17, 2014, by Procedural Order, a hearing was scheduled to commence on June 2, 2014, with additional days of hearing scheduled during the following weeks. Respondent, Kent Maerki, on May 9, 2014, filed a Motion for a Continuance due to several conflicts he had with the June hearing dates. On May 21, 2014, Mr. Maerki offered a letter from Marie Mirch in support of his motion to continue. In the letter, Mrs. Mirch stated that she would be representing Mr. Maerki, but had to obtain pro hac vice status. Further, Mrs. Mirch was not available for the June hearing dates. Finally, there was an issue as to whether there was a criminal investigation pending against Mr. Maerki.

The June Hearing dates were vacated. The hearing was the set to commence on September 29, 2014 and continue the weeks thereafter.

On September 22, 2014, Respondents filed an Emergency Application to Continue

¹ Respondent presents the procedural history as recited by the Administrative Law Judge in the Fourth Procedural Order

Hearing because Respondent, Mr. Maerki, had suffered a stroke on August 27, 2014 and was hospitalized for two days. The motion was fully briefed and argued at the procedural conference on September 26, 2014.

On September 26, 2014, by Procedural Order, it was found that good cause was established to continue the proceeding, and a procedural conference was scheduled on November 13, 2014, to determine the rescheduling of the hearing. Mr. Maerki was ordered to provide the Division with the necessary medical releases so that appropriate physicians could be contacted to discuss the Respondent's medical condition and his ability to participate in a three to four week long legal proceeding.

On November 13, 2014, at the procedural conference, Mr. Maerki's present state of health was discussed, and it was disclosed that Mr. Maerki was to see his physicians in December, and if a problem developed with the hearing scheduled thereafter, the issue would be addressed upon the filing of the appropriate documentation.

In an Order dated December 10, 2014, the Administrative Law Judge scheduled the hearing to commence on February 9 and to continue February 10, 11, 12, 17, 18, 19, 20, 23, 24, 25, and 26, 2015.

B. CURRENT STATE OF AFFAIRS

1. Status of Mr. Maerki's Health:

Mr. Maerki was re-evaluated by his cardiologist, Jack Wolfson, M.D., who submits an affidavit in support of this motion. In sum, in paragraphs 5 and six of the affidavit, Dr. Wolfson opines:

5. I re-evaluated Mr. Maerki on January 7, 2015. He is currently in atrial fibrillation. This irregular heart rhythm can lead to fast and slow heart rates, both of which can lead to

life-threatening consequences. He has a loud murmur which will be evaluated by an echocardiogram. He is unsteady on his feet and suffers from balance issues.

6. It is my medical opinion is that Mr. Maerki's participation or appearance in any legal matter could have a very serious negative impact on his health. Therefore, I have advised Mr. Maerki that he is not to participate in any stressful events, in particular any legal proceedings, which by their very nature create anxiety and high blood pressure, which are precursors to further strokes.

See Affidavit of Dr. Jack Wolfson

Mr. Maerki's continued health problems prevent him from meaningful participation in a four week hearing.

2. Local Counsel is not available for the Current Hearing Dates.

Mr. Maerki's health is compelling grounds to further continue this hearing. However, putting the issue of Mr. Maerki's health aside, unfortunately, the dates set for the hearing in the present case dates conflict with local counsel Mark Chester's obligation to appear at a federal trial to be heard in the United States District Court Southern District of California, *Securities and Exchange Commissions v. ABS Manager, LLC and George Charles Cody Price*, case number 13cv319-GPC (BGS). Attached as Exhibit 1 to this motion is a copy of a scheduling order in that case. The District Court set a specific schedule for events from early January, 2015 to February 6, 2015. Further, the District Court set the trial for February 17, 2015 for a trial to last approximately fifteen days. *Exhibit 1.*

Included with this motion is the Declaration of Mark Chester that he is lead counsel for the Defendants in case number 13cv319-GPC (BGS). The case is scheduled for a three week trial commencing February 17, 2015. The week prior to trial (February 9-16), Mr. Chester will be preparing for trial.

3. Efforts to Meet and Confer with Division Counsel

On January 5, 2015, Respondents' pro hac vice counsel, Marie Mirch, sent an email to

Division counsel Wendy Coy to advise her of the conflict and to meet and confer regarding continuing the hearing. *Exhibit 2*. Ms. Coy responded that the Division would not agree to any continuance, despite documentation of this irreconcilable conflict. *Exhibit 3*. Therefore, Respondents are forced to bring this motion.

C. GOOD CAUSE EXISTS TO CONTINUE THE HEARING

1. Mr. Maerki has a right to meaningfully participate in the hearing.

The Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Relief names Kent Maerki as a Respondent and seeks to hold him jointly and severally liable under A.R.S. §44-1999 to the same extent as Respondent Dental Support Plus Franchise, LLC. For violations of the Securities Act. Respondents deny the Commissions allegations.

Due process affords Mr. Maerki the right to meaningfully participate in the hearing. Unfortunately, at this time Mr. Maerki's physician says that Mr. Maerki cannot participate or appearance in any legal matter without risking a very serious negative impact on his health. Sr. Wolfson advised Mr. Maerki that "he is not to participate in any stressful events, in particular any legal proceedings, which by their very nature create anxiety and high blood pressure, which are precursors to further strokes".

Mr. Maerki continues to follow his doctors' orders regarding his situation and participation in rehabilitation. At this time, however, his recovery is not yet sufficient to go forward with this hearing.

2. Local counsel has joint responsibility and must participate in the hearing

The Procedural Order requires "[A]ll parties must comply with Rules 31 and 38 of the Rules of the Arizona Supreme Court and A.R.S. §40-243. Rules 31 and 38 provide that local

and pro hac vice accept joint responsibility to the client, opposing parties and counsel and the court or administrative agency in which the matter is pending. Further, "Local counsel may also be required to appear and participate in pretrial conferences, hearings, trials and other proceedings where the tribunal in question deems such appearance and participation appropriate". Rule 38(a) (2).

This Administrative Law Judge has ordered that "representation before the Commission include appearances at all hearings and procedural conferences..." Further, the Respondents and their pro hac vice counsel, Ms. Mirch, are relying on the assistance and expertise of local counsel, Mark Chester, with respect to adjudication of this dispute. The parties have identified at least 32 witnesses, which does not include custodian of records, or rebuttal witnesses. The Security Division preliminary exhibit list identify at least 61 exhibits, while Respondents have identified 23. The hearing is expected to last several weeks. The resources of both counsel are necessary to prepare and present a defense to the charges against the Respondents/

Respondent and their counsel have no control over the U.S. District Court's docket in the *Securities and Exchange Commissions v. ABS Manager, LLC and George Charles Cody Price*. Respondents should not be denied the right to Mr. Chester's expertise, nor should Ms. Mirch be denied Mr. Chester's assistance at the hearing.

D. There is no prejudice to the Division

The Court should recognize that Dental Support Plus Franchise voluntarily and permanently ceased operations in July, 2014. Therefore, there is no prejudice to the Division in its efforts to obtain a cease and desist order. Mr. Maerki's interests and rights in this matter far outweigh any potential prejudice to the Division.

///

D. CONCLUSION

The Procedural Order further provides “[T]hat the Presiding Administrative Law Judge may rescind, alter amend or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing”. Respondents respectfully request that the current hearing dates be vacated and the matter continued to the next date available to the Commission, Counsel, the Parties, and witnesses.

Based on the foregoing, Respondents respectfully request that the hearing set for February 9, 10, 11, 12, 17, 18, 19, 20, 23, 24, 25, and 26, 2015 be continued to dates when all interested parties, counsel and the Commission are available.

Respectfully submitted this 9 day of January, 2015.

By Marie Mirch

Marie Mirch
750 B Street #2500
San Diego, CA 92101
(619) 501-6220
Pro Hac Vice Counsel
Associated with Local Counsel
Mark Chester

CERTIFICATE OF SERVICE

I certify that I am an employee of Mirch Law Firm, LLP over the age of EIGHTEEN (18) and that on this date I personally mailed a true and correct copy of the foregoing

Motion to Continue Hearing

by placing the original true copies thereof enclosed in sealed envelopes addressed as follows:

Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

The Honorable Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 Washington St.
Phoenix, AZ 85007

Wendy Coy
Senior Counsel
Arizona Corporation Commission
Securities Division
1300 W. Washington, 3rd Floor
Phoenix, Arizona 85007

VIA OVERNIGHT DELIVERY

BY MAIL

I deposited such envelope in the mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE TRANSMISSION: I sent the foregoing document via Facsimile transmission to counsel as follows:

VIA EMAIL: I transmitted a copy via email to as follows

Mark Chester
mchester@cslawyers.com.
Co-counsel for Kent Maerki

STATE: I declare under penalty of perjury under the laws of the States of California and Arizona that the above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at direction the service was made.

DATED this 9th Day of January, 2015


Marie Mirch

DECLARATION OF MARK D. CHESTER, ESQ.

MARK D. CHESTER, ESQ., declares as follows:

1. I am over the age of eighteen (18) years, have personal knowledge of the facts stated herein and am competent to testify as to the same.

2. I am an attorney at Chester & Shein, P.C., and one of the attorneys representing Defendants in the Arizona Corporation Commission matter of Kent Maerki, *et al.*, Docket No. S-20897A-13-0391. Based on such capacity, I am authorized to make this Declaration, which I submit in support of *Respondents' Motion to Continue Hearing*.

3. I am lead trial counsel for Defendants in U.S. District Court, Southern District of California Case No. 13 CV 0319 GPC. That case is scheduled for a 3-week trial before Judge Curiel commencing February 17, 2015. One week prior to that trial (February 9-16), I will be preparing for trial and meeting with my client and several witnesses in preparation of that trial, and will be in San Diego by February 15th.

4. The hearing in this matter is currently scheduled for 12 days to begin on February 9, 2015. I will be preparing for trial during the first 4 days, and in California during the remaining 8 hearing days.

5. Due to this conflict, I will be unable to participate in the hearing in this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

1/8/15
Dated _____


Mark D. Chester, Esq.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman

GARY PEARCE

BRENDA BURNS

SUSAN BITTER SMITH

In the Matter of:

KENT MAERKI and NORMA JEAN COFFIN

Docket No. S-20897A-13-0391

NORMA JEAN MAERKI, aka NORMA JEAN MAULE,

husband and wife,

DENTAL SUPPORT FRANCHISE, LLC,

an ARIZONA LIMITED LIABILITY COMPANY

Respondents.

_____ /
State of Arizona)

) ss.

County of Maricopa)

I, Jack Wolfson, hereby declare:

1. I am a doctor licensed to practice medicine in the State of Arizona. I am over the age of eighteen and am competent to testify regarding all the allegations contained herein. If called upon to testify, I have personal knowledge of the following facts and would testify as follows:

2. I am board certified in cardiovascular disease by the American Board of Internal Medicine (ABIM). The ABIM is the certification board of all cardiologists. I am also a member of the American College of Cardiology.

3. Mr. Kent Maerki is a patient of mine. I understand that he is scheduled to be in a three to four week legal hearing beginning next month. In light of his multiple medical problems, Mr. Maerki should not participate in this hearing. I make this Affidavit in support of his request to continue the hearing.

4. Mr. Maerki has multiple medical problems, including but not limited to cardiovascular disease, hypertension, coronary artery disease, bypass surgery, mitral valve replacement, atrial fibrillation, a recent stroke and a history of recurring strokes. Further, he is on a number of medications for his conditions, and he has a very strict diet and diet schedule he must follow. He is still in rehabilitation at Scottsdale Healthcare relative to his August 17, 2014 acute stroke as mandated by his Neurologist, Seth Kaufman, MD.

5. I re-evaluated Mr. Maerki on January 7, 2015. He is currently in atrial fibrillation. This irregular heart rhythm can lead to fast and slow heart rates, both of which can lead to life-threatening consequences. He has a loud murmur which will be evaluated by an echocardiogram. He is unsteady on his feet and suffers from balance issues.

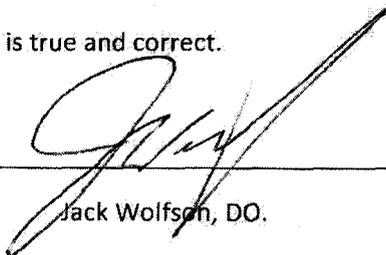
6. It is my medical opinion is that Mr. Maerki's participation or appearance in any legal matter could have a very serious negative impact on his health. Therefore, I have advised Mr. Maerki that he is not to participate in any stressful events, in particular any legal proceedings, which by their very nature create anxiety and high blood pressure, which are precursors to further strokes.

7. Mr. Maerki may engage in simple life tasks that do not subject him to stress, but that has no bearing on the risk that is imposed on Mr. Maerki's health if he is put in to a stressful situation such as legal proceedings.

I swear under penalty of perjury that the foregoing is true and correct.

Executed this 9 day of January, 2015.

BY



Jack Wolfson, DO.

Signed and Sworn before me a notary public

this 9 day of January, 2015.

