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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 16 2015

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-20905A-14-0061

CATHARON SOFTWARE CORPORATION, a  
Delaware corporation,

ORIGINAL

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

SEVENTH  
PROCEDURAL ORDER  
(Grants Motion)

Respondents.

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 On October 16, 2014, by Procedural Order, a hearing was scheduled to commence on  
20 February 2, 2015.

21 On January 15, 2015, the parties filed a Joint Motion to Continue Hearing. The stated reason  
22 for continuance was that the Respondents agreed to enter a proposed Consent Order to Cease and  
23 Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Proposed  
24 Consent Order"). The parties assert that the Proposed Consent Order will be presented to the  
25 Commission for consideration at the Open Meeting scheduled for February 3 and 4, 2015.

26 IT IS THEREFORE ORDERED that **the hearing currently scheduled to commence on**  
27 **February 2, 2014, is vacated.**

28 ...

1 IT IS FURTHER ORDERED that the hearing be continued indefinitely pending  
2 Commission approval or rejection of the Proposed Consent Order.

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

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

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

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

18 DATED this 16<sup>TH</sup> day of January, 2015

19  
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21 \_\_\_\_\_  
22 MARK PRENEY  
23 ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed/delivered  
23 this 16<sup>th</sup> day of January, 2015, to:

24 John F. Munger  
25 Robert J. Metli  
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28 ...

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By:   
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Assistant to Mark Preny