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BEFORE THE ARIZONA CORPORATION COMMISSION

2015 FEB -3 A 9: 24

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

In the matter of:
KENT MAERKI and NORMA JEAN COFFIN
aka NORMA JEAN MAERKI, aka NORMA
JEAN MAULE, husband and wife,
DENTAL SUPPORT PLUS FRANCHISE, LLC,
an Arizona limited liability company
Respondents.

DOCKET NO. S-20897A-13-0391

SECURITIES' DIVISION RESPONSE
TO RESPONDENTS' SUPPLEMENT
TO MOTION TO CONTINUE
HEARING

Arizona Corporation Commission

DOCKETED

FEB 03 2015

DOCKETED BY

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The Securities Division received Respondents' Supplement to Motion to Continue Hearing ("Supplement") on January 29, 2015. In addition to addressing the court's concerns, Respondents counsel added additional reasons to grant a continuance in this matter. The Securities Division incorporates its original objections in its Response to Respondents' Motion to Continue and further objects to any further continuance for the reasons outlined below.

A. KENT MAERKI'S HEALTH ISSUES

Respondent Maerki has had long-term health issues as reflected in the medical records provided by Respondents' Emergency Application to Continue to Hearing and Motion for Order to Shorten Time and Affidavit of Marie Mirch in Support of Respondents' Emergency Application ("Emergency Application") to Continue to Hearing and Motion for Order to Shorten Time filed on or about September 22, 2014. These long term health issues have not interfered with Respondent Maerki's ability to start new companies, raise fund from investors, travel and defend other lawsuits.

Respondent Maerki received a continuance of the June hearing due to an undisclosed schedule conflict of his own making and stating that he retained counsel. The June hearing was set

1 in January of 2014. Respondent Maerki had ample time to disclose his conflict and retain counsel
2 but waited until the last minute to obtain a continuance. The next hearing date was scheduled to
3 begin in September of 2014. Respondent Maerki suffered a stroke and requested a continuance of
4 at least eight weeks. Respondents have had six months.

5 Now, Respondents request a continuance due to Respondent Maerki's heart problems.
6 According to the Securities Division's conversation with Dr. Wolfson and a review of the
7 documentation attached to the Emergency Application, Respondent Maerki has had long standing
8 heart issues. ALJ Stern specifically asked when Respondent Maerki would be ready to proceed
9 with the scheduled hearing. Dr. Wolfson's January 30, 2015, states Respondent Maerki "should not
10 participate in this hearing." When the Securities Division specifically asked when Respondent
11 Maerki would be healthy enough to participate in the administrative proceeding, Dr. Wolfson stated
12 "never."

13 Respondent Maerki should not be granted immunity due to his health issues. Respondent
14 Maerki retained counsel of his own choosing. Retained counsel is able to adequately protect
15 Respondent Maerki's rights at hearing. Respondent Maerki does not need to be present at the
16 hearing to have his rights protected; he has counsel.

17 **B. LOCAL COUNSEL DOES NOT NEED TO BE PRESENT**

18 Local counsel failed to disclose a pre-existing conflict. Their mistake should not support
19 Respondents' request to continue. Respondents' counsel indicates that she needs the assistance of
20 local counsel to help at the scheduled hearing but has not explained exactly what assistance is
21 necessary.

22 Local counsel is not required to be present along with the *Pro Hac Vice* attorney. In Mr.
23 Chester's Motion to Associate Counsel *Pro Hac Vice*, he agreed to serve as local counsel in this
24 matter and accepted the responsibilities detailed in Rule 38(a)(2), *Ariz.R.Sup.Ct.* In the Seventh
25 Procedural Order, ALJ Stern granted the Motion to Associate Counsel. There is no specific
26 requirement that Mr. Chester was "required to personally appear and participate in pretrial

1 conferences, hearings, trials, or other proceedings conducted before the . . . administrative agency.”

2 *Id.*

3 **C. COUNSEL’S FAMILY HEALTH ISSUES**

4 On top of Respondent Maerki’s multiple health issues and schedule conflict by local
5 counsel, Respondents’ counsel’s claims her mother is “very ill.” The Securities Division is very
6 sympathetic to counsel’s family issues and understands the necessity of caring for elderly parents.
7 However, Respondents’ counsel fails to indicate whether her mother is suffering a temporary
8 illness such as the flu, a chronic illness or a terminal illness. No time frame or length of anticipated
9 delay is provided. In fact, the unnotarized affidavit provided by Ms. Mirch indicates that she “will
10 stay as long as necessary.” The unnotarized affidavit of Ms. Mirch provides no specific information
11 that would allow the ALJ to make an informed decision about how to proceed with this matter.
12 Without more information the Securities Division is unable to support a continuance.

13 **D. THE SECURITIES DIVISION IS PREJUDICED BY THE CONTINUED DELAYS**

14 On December 10, 2013, the Respondents requested a hearing. Three hearing dates have
15 been set allowing the Respondents to present evidence and yet the Respondents find every excuse
16 not to participate in the hearing. The Securities Division was and is prepared to go forward with
17 this matter. The witnesses have been prepared to go forward each and every time.

18 The Securities Division has a duty to protect the public from fraudulent or deceptive
19 practices in the offer or sale of securities and the prosecution of persons engaged in fraudulent or
20 deceptive practices in the offer or sale of securities.¹ In order to fulfill its mandates, the Securities
21 Division must be able to proceed in an efficient manner for the protection of the public.

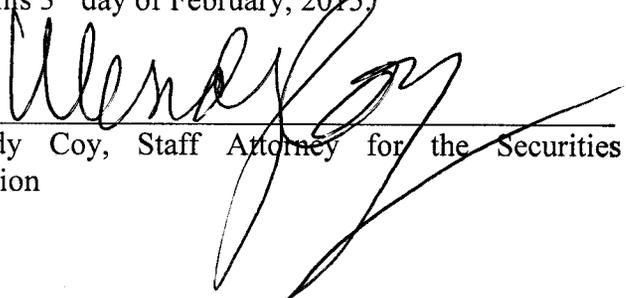
22 **E. CONCLUSION**

23 The Respondents have had multiple continuances. This matter should move forward. This
24 the second time the Respondents failed to disclose a known conflict and the third request for a
25 continuance. Respondents requested a hearing. Respondent Maerki’s rights are protected by

26 _____
¹ Laws 1951, Ch. 18, §20.

1 counsel. There is no reason not to go forward with the hearing. The Respondents' Motion to
2 Continue should be denied.

3 RESPECTFULLY SUBMITTED this 3rd day of February, 2015)

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6 Wendy Coy, Staff Attorney for the Securities
7 Division
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1 SERVICE LIST FOR: KENT MAERKI and NORMA JEAN COFFIN aka NORMA JEAN
2 MAERKI, aka NORMA JEAN MAULE, husband and wife, DENTAL SUPPORT PLUS
3 FRANCHISE, LLC

4 ORIGINAL and 8 copies of the foregoing
5 filed this 3rd day of February, 2015, with:

6 Docket Control
7 Arizona Corporation Commission
8 1200 W. Washington St.
9 Phoenix, AZ 85007

10 COPY of the foregoing hand-delivered
11 this 3rd day of February, 2015, to:

12 The Honorable Marc E. Stern
13 Administrative Law Judge
14 Arizona Corporation Commission
15 1200 W. Washington St.
16 Phoenix, AZ 85007

17 COPY of the foregoing mailed
18 this 3rd day of February, 2015, to:

19 Mark D. Chester
20 8777 N. Gainey Center Drive, Suite 191
21 Scottsdale, Arizona 85258-2106
22 Attorneys for Respondents

23 Marie Mirch, Esq.
24 Mirch Law Firm LLP
25 750 B Street #2500
26 San Diego, California 92101
Attorney *Pro Hac Vice*

