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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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

AZ CORPORATION
DOCKET CONTROL

2015 JUL 28 PM 4:30

In the matter of:

Docket No. S-20906A-14-0063

CONCORDIA FINANCING COMPANY, LTD,
a/k/a "CONCORDIA FINANCE,"

**NOTICE OF COURT OF APPEALS
ORDER STAYING PROCEEDINGS
IN THIS DOCKET**

ER FINANCIAL & ADVISORY SERVICES,
LLC,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

Respondents ER Financial and Advisory Services, LLC¹, Lance Michael Bersch, David John Wanzek, and Linda Wanzek (collectively, the "ER Respondents") provide notice that the Court of Appeals, Division One issued the attached order staying proceedings in this docket.

Arizona Corporation Commission

DOCKETED

JUL 28 2015

DOCKETED BY

¹ To the extent it still exists and is capable of being named a respondent in this matter.

SNELL & WILMER

LLP
ONE ARIZONA CENTER
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PHOENIX, ARIZONA 85004-2202

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RESPECTFULLY SUBMITTED this 28th day of July 2015.

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Timothy J. Sabo
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1 Original + 13 copies of the foregoing
2 filed this 28th day of July 2015, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed
8 this 28th day of July 2015, to:

9 Mark H. Preny, Esq.
10 Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

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IN THE
Court of Appeals
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 7/28/2015
RUTH A. WILLINGHAM,
CLERK
BY: RB

LANCE MICHAEL BERSCH; DAVID JOHN) Court of Appeals
WANZEK and LAND WANZEK, husband) Division One
and wife,) No. 1 CA-CV 15-0340
)
Plaintiffs/Appellants,) Maricopa County
) Superior Court
v.) No. LC2014-000415-001
)
THE STATE OF ARIZONA; THE)
ARIZONA CORPORATION COMMISSION,) DEPARTMENT M
an agency of the State of)
Arizona; MATTHEW J. NEUBERT, in)
his official capacity as)
Director of the Securities)
Division of the Arizona)
Corporation Commission; MARK)
PRENY, in his official capacity)
as Administrative law Judge of)
the Arizona Corporation)
Commission)
)
Defendants/Appellees.)
)

ORDER GRANTING STAY OF ADMINISTRATIVE HEARING PENDING APPEAL

Judges Patricia A. Orozco, Kent E. Cattani, and Patricia K. Norris have considered the Motion to Stay Administrative Hearing Pending Appeal, the response, and reply.

Appellee Arizona Corporation Commission initiated an administrative proceeding against appellants alleging they violated Arizona's Securities Act. Appellants moved to dismiss the charges on the grounds that the action was barred by the statute of limitations and it would violate due process to proceed with stale claims. The administrative law judge denied the motion and appellants filed a complaint for special action in the superior court. Appellants filed this appeal from the superior court's denial of their complaint for special action. They ask this court to stay the underlying administrative proceeding pending resolution of the appeal.

To obtain a stay pending appeal, a party must show: (1) a strong likelihood of success on the merits; (2) irreparable harm if the stay is not granted; (3) that the harm to the requesting party outweighs the harm to the party opposing the stay; and (4) that public policy favors the granting of the stay. *Smith v. Arizona Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410, ¶¶ 9-10, 132 P.3d 1187, 1190 (2006); see also ARCAP 7(c) (stating appellate court may "enter any order appropriate to preserve the status quo" or to "preserve the effectiveness of the decision that the appellate court will enter."). These elements are weighed on a sliding scale, where "the greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be." *Id.* at 407, 411, ¶ 10, 132 P.3d at 1191.

Appellants assert these criteria are met because their appeal concerns a question of law regarding whether the underlying claims are barred by a statute of limitations or the doctrine of due process and they would be irreparably harmed by allowing the administrative action to proceed before those legal issues are finally resolved in this appeal. Appellee argues appellants are not likely to succeed on appeal and could only suffer monetary, not irreparable, harm if the administrative action goes forward. The parties also dispute whether appellee will suffer harm if the stay is granted and whether public policy favors the granting of a stay.

In the exercise of the court's discretion,

IT IS ORDERED granting the motion and ordering a stay of Docket No. S-20906A-14-0063 before the Arizona Corporation Commission.

_____/s/_____
Patricia A. Orozco, Presiding Judge

To:
Paul J Roshka Jr
Timothy J Sabo
James D Burgess
Charles A Grube
Charles A Grube
Hon J Richard Gama
Michael K Jeanes