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**BEFORE THE ARIZONA CORPORATI**

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COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF:

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

ER FINANCIAL & ADVISORY SERVICES, LLC,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA WANZEK,  
husband and wife.

Respondents.

DOCKET NO. S-20906A-14-0063  
Arizona Corporation Commission

**DOCKETED**

MAR 18 2015

DOCKETED BY 

**TENTH**  
**PROCEDURAL ORDER**  
**(Sets Oral Argument)**

**BY THE COMMISSION:**

On February 27, 2014, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action ("Notice") against Concordia Financing Company, Ltd, a/k/a Concordia Finance ("Concordia"), ER Financial & Advisory Services, LLC ("ER"), Lance Michael Bersch, and David John Wanzek and Linda Wanzek, 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 investment contracts and promissory notes within or from Arizona.

The spouse of David John Wanzek, Linda Wanzek ("Respondent Spouse"), is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

The Respondents were duly served with copies of the Notice.

1 On March 6, 2014, Respondents ER, Lance Michael Bersch and David John Wanzek filed a  
2 Request for Hearing. On March 14, 2014, Respondent Linda Wanzek filed a Request for Hearing.

3 On March 17, 2014, by Procedural Order, a pre-hearing conference was scheduled for April  
4 10, 2014.

5 On March 26, 2014, Respondent Concordia filed a Request for Hearing.

6 On March 27, 2014, by Procedural Order, the pre-hearing conference scheduled for April 10,  
7 2014, was affirmed, with notice issued to Respondent Concordia.

8 On April 4, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
9 Wanzek (collectively the "ER Respondents") filed a Motion to Dismiss and Answer ("Motion").

10 On April 9, 2014, Respondent Concordia filed an Answer.

11 On April 10, 2014, at the pre-hearing conference, the parties appeared through counsel and  
12 requested oral argument regarding the Motion to Dismiss. The parties further proposed a schedule  
13 for filing motions prior to oral argument.

14 On April 15, 2014, by Procedural Order, oral argument and a status conference were  
15 scheduled to commence on May 21, 2014. It was further ordered that Respondent Concordia shall  
16 file any Motion to Dismiss by April 25, 2014, the Division shall file its Response to the Motions to  
17 Dismiss by May 9, 2014, and the Respondents shall file any Reply by May 16, 2014.

18 On April 25, 2014, Respondent Concordia filed its Joinder to Motion to Dismiss of  
19 Respondents ER Financial & Advisory Services, LLC, Lance Michael Bersh, David John Wanzek  
20 and Linda Wanzek.

21 On May 5, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
22 Wanzek filed Acknowledgments of Possible Conflicts.

23 On May 9, 2014, the Division filed its Response to Motion to Dismiss by All Respondents  
24 ("Response").

25 On May 16, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda  
26 Wanzek filed their Reply in Support of Motion to Dismiss ("Reply").

27 On May 21, 2014, oral argument and a status conference were held. The parties appeared  
28 through counsel and oral argument was presented. The Motion was taken under advisement and a

1 schedule was proposed for the parties to submit supplemental citations.

2 On May 22, 2014, the Division filed its Supplemental Citation of Authorities.

3 On May 29, 2014, Respondents Concordia, ER, Lance Michael Bersch, David John Wanzek,  
4 and Linda Wanzek filed their Joint Supplemental Citation of Authorities.

5 On August 13, 2014, by Procedural Order, it was found that the Respondents had not  
6 established dismissal to be appropriate and that it was necessary and proper to proceed with the  
7 Respondents' request for a hearing. Accordingly, a prehearing conference was scheduled on  
8 September 2, 2014.

9 On September 2, 2014, a pre-hearing conference was held. The parties appeared through  
10 counsel. The scheduling of a hearing was discussed. Counsel for the ER Respondents stated they  
11 would be filing a special action regarding the motion to dismiss. Counsel for the ER Respondents  
12 requested that part of the hearing be held in the Lake Havasu area to accommodate witnesses for the  
13 ER Respondents. This request was denied. After much discussion, a commencement date for the  
14 hearing was agreed to by the parties.

15 On September 2, 2014, by Procedural Order, a hearing was scheduled to commence on May  
16 11, 2015.

17 On January 5, 2015, the Division filed a Motion to Quash Discovery Demands by the ER  
18 Respondents. The Division asserted that on November 24, 2014, the Division was served by the ER  
19 Respondents with a "First Request for Production of Documents," a "First Set of Non-Uniform  
20 Interrogatories," a "First Set of Requests for Admissions," a "Notice of 30(b)(6) Deposition," and a  
21 "Notice of Deposition of Gary R. Clapper." The Division contended that the discovery demands by  
22 the ER Respondents should be quashed because: discovery in this proceeding is governed by the  
23 Administrative Procedure Act and the Commission's Rules, not the Arizona Rules of Civil  
24 Procedure; the ER Respondents have not demonstrated a reasonable need for the information they  
25 demand; the discovery demands include information and documents that are privileged and/or made  
26 confidential by statute; and the discovery demands are unreasonably overbroad, unduly burdensome  
27 and oppressive.

28 On January 26, 2015, by Procedural Order, the Division's Motion to Quash Discovery

1 Demands was granted. In light of the ER Respondents' efforts to obtain discovery, the parties'  
2 exchange of witness lists and copies of exhibits was accelerated.

3 Later that day, the ER Respondents filed a Response to the Division's Motion to Quash. The  
4 ER Respondents contended that: the Commission's Rules allow for broad discovery; discovery is not  
5 barred by either the Administrative Procedure Act or statutory confidentiality; the ER Respondents  
6 have a reasonable need for, and a constitutional right to, discovery; the requested documents are not  
7 privileged or work product; and the discovery is not burdensome. The ER Respondents also  
8 requested oral argument on the matter.

9 On January 27, 2015, by Procedural Order, oral argument was scheduled to be held on  
10 February 11, 2015. Later that day, the Division filed a Notice of Intent to File Reply in Support of  
11 Motion to Quash Discovery Demands by the ER Respondents.

12 On February 3, 2015, the Division filed its Reply in Support of Motion to Quash Discovery  
13 Demands by the ER Respondents. The Division argued that: the ER Respondents have not properly  
14 sought discovery as provided under the Administrative Procedure Act and the Commission's rules;  
15 the Arizona Rules of Civil Procedure do not apply to discovery in this proceeding; prior procedural  
16 orders and Commission decisions cited by the ER Respondents can be distinguished or otherwise fail  
17 to support ordering the discovery sought; the ER Respondents have not demonstrated a reasonable  
18 need for the discovery sought; many of the documents sought are protected work product; and the  
19 discovery sought is confidential under A.R.S. § 44-2042(A).

20 On February 5, 2015, the Division filed a Notice of Errata Regarding its Reply in Support of  
21 Motion to Quash Discovery Demands by the ER Respondents.

22 On February 10, 2015, ER Respondents filed a Motion to Compel seeking discovery from  
23 Respondent Concordia and requesting oral argument. The ER Respondents contend that the  
24 Commission's rules allow broad discovery; their requests for production of documents are specific  
25 and not overbroad or burdensome; Concordia is the custodian of its own records; and a subpoena is  
26 not required as Concordia is a party to this proceeding. The ER Respondents further attached an  
27 affidavit from Respondent David John Wanzek responding to Concordia's communicated demand for  
28 a sworn statement as to the ER Respondents' claims that they returned files to Concordia and that Mr.

1 Bersch and Mr. Wanzek were privy to attorney-client communications between Concordia and its  
2 counsel.

3 On that same day, counsel for ER Respondents filed a Notice of Change of Law Firm and  
4 Notice of Association with Counsel.

5 On February 11, 2015, oral argument was held. The parties appeared through counsel. The  
6 Division and the ER Respondents presented oral argument in favor of their respective positions on  
7 the ER Respondents' requests for discovery. In light of the approaching commencement date of the  
8 hearing, the presiding Administrative Law Judge ruled from the bench, finding that while the  
9 Administrative Procedure Act applies, fairness dictates that in this case the Division more promptly  
10 provide the Respondents with certain documents in its possession. Though the prior order quashing  
11 the ER Respondents' discovery requests was affirmed, the Division was directed to disclose to the  
12 Respondents, by February 26, 2015, the contracts it intends to submit as evidence of the 446 alleged  
13 investments. The Division contended that it may not have contracts for all 446 of the alleged  
14 investments and that the time required for redaction of this many documents might make it difficult  
15 to meet the disclosure deadline. The Administrative Law Judge directed the Division to prioritize  
16 those contracts involving the ER Respondents and permitted the Division to disclose by March 12,  
17 2015, any contracts which, after a good faith effort, are not ready by February 26, 2015.  
18 Additionally, the Division was directed to disclose the transcript from the examination under oath of  
19 Respondent Lance Michael Bersch, and the exhibits used therein, by February 26, 2015. The  
20 documents ordered to be disclosed by February 26, 2015, are all documents Division counsel stated  
21 he planned to use at hearing and, therefore, would have been subject to disclosure by the March 12,  
22 2015 scheduled exchange of exhibits and witness lists.

23 On February 13, 2015, by Procedural Order, the Division was directed to disclose documents  
24 to the Respondents as set forth at by the Administrative Law Judge at oral argument on February 11,  
25 2015.

26 On February 17, 2015, the ER Respondents filed an Application for Administrative Subpoena  
27 requesting a subpoena for the deposition of anticipated Division witness Gary R. Clapper. The ER  
28 Respondents also filed an Application for Administrative Subpoena requesting a subpoena for the

1 deposition of an Expert Accounting Witness to be designated by the Securities Division.

2 On March 6, 2015, the ER Respondents filed a Notice of Filing Affidavits of Service.

3 On March 9, 2015, by Procedural Order, a telephonic status conference was scheduled to  
4 convene on March 16, 2015. The purpose of the status conference was to address whether the ER  
5 Respondents continued to seek the production of further documents from Respondent Concordia in  
6 light of the upcoming deadline for disclosure of exhibits and witness lists.

7 On March 11, 2015, Respondent Concordia filed its Motion to Extend Time to Exchange List  
8 of Witnesses and Exhibits. Respondent Concordia requested an extension of the deadline to  
9 exchange its List of Witnesses and Exhibits to March 20, 2015, based upon counsel for Concordia's  
10 upcoming depositions and injunction hearings in matters unrelated to this case. In the motion,  
11 counsel for Concordia noted that counsel for the ER Respondents had been contacted and would not  
12 agree to an extension.

13 On March 12, 2015, the ER Respondents filed a Response in Opposition to Motion to Extend  
14 Time to Exchange List of Witnesses and Exhibits. The ER Respondents opposed the motion for the  
15 stated reasons that the hearing is imminent and the information is necessary for their defense.

16 Later on March 12, 2015, Respondent Concordia filed its List of Witnesses and Exhibits. The  
17 ER Respondents also filed a Notice of Service of List of Witnesses and Exhibits.

18 On March 16, 2015, a telephonic status conference was held. The parties appeared through  
19 counsel. The ER Respondents clarified which documents they continued to seek from Concordia.  
20 Counsel for Concordia indicated the Respondents may be able to resolve the issue among themselves  
21 within a couple weeks as Concordia needed time to prepare financial statements and ready board  
22 minutes for disclosure. The Respondents agreed to work toward resolving the discovery issues raised  
23 in the ER Respondents' Motion to Compel pending another status conference, and they further agreed  
24 to include the Division in the discovery process.

25 It was further determined at the status conference that Concordia's Motion to Extend Time to  
26 Exchange List of Witnesses and Exhibits had been rendered moot by Concordia's filing of a List of  
27 Witnesses and Exhibits, though Concordia may supplement its exhibits and witness lists based upon  
28 ongoing discovery. Also discussed was the Division's intent to amend the Notice of Opportunity to

1 include Linda Wanzek as a participant, as opposed to being joined solely for determining the liability  
2 of the marital community. The Division agreed to file a motion to amend the Notice of Opportunity.  
3 The Division also stated its intent to file a motion to quash the scheduled depositions of Gary Clapper  
4 and an expert accounting witness. A schedule was determined for motion practice and oral argument  
5 on the motion to quash.

6 **IT IS THEREFORE ORDERED that oral argument on the Division's motion to quash**  
7 **shall be held on April 2, 2015, at 10:00 a.m., at the Commission's offices, 1200 West**  
8 **Washington Street, Hearing Room No. 1, Phoenix, Arizona.** A status conference regarding  
9 discovery issues and the ER Respondents' Motion to Compel shall also be held at this time.

10 **IT IS FURTHER ORDERED that the Division shall file its motion to quash by March 20,**  
11 **2015. The ER Respondents shall file their response by March 27, 2015. The Division may file a**  
12 **reply no later than April 1, 2015.**

13 **IT IS FURTHER ORDERED that the Respondents shall continue to attempt to resolve**  
14 **outstanding discovery issues arising from the ER Respondents' Motion to Compel.**

15 **IT IS FURTHER ORDERED that a hearing shall remain scheduled to commence on May**  
16 **11, 2015, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing**  
17 **Room No. 1, Phoenix, Arizona.**

18 **IT IS FURTHER ORDERED that the parties shall also set aside May 13-15, and 18-22,**  
19 **2015, for additional days of hearing, if necessary.**

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

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

26 **IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance**  
27 **with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the**  
28 **Rules of the Arizona Supreme Court). Representation before the Commission includes appearances**

1 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
2 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
3 Administrative Law Judge or the Commission.

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

7 DATED this 18<sup>TH</sup> day of March, 2015.

8  
9   
10 MARK PRENY  
11 ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered  
13 this 18<sup>TH</sup> day of March, 2015, to:

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