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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2015 MAY -6 P 12:52

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

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO. S-20906A-14-0063

In the matter of:

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

ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

SECURITIES DIVISION'S MOTION
TO TAKE OFFICIAL NOTICE OF
THE SUPERIOR COURT'S MINUTE
ENTRY DENYING MOTION TO
STAY ADMINISTRATIVE CASE
PENDING APPEAL

Pursuant to R14-3-109(T), Rules of Practice and Procedure Before the Corporation Commission, the Securities Division respectfully requests that the Presiding Officer take official notice of: (i) the Minute Entry filed on May 6, 2015, in *Lance Michael Bersch et al. v. State of Arizona et al.*, Maricopa County Superior Court Case No. LC2014-000415-001, a true and correct copy of which is attached as Exhibit 1; and (ii) the fact that, with respect to the Motion To Stay Administrative Hearing Pending Appeal, the Court found that Lance Michael Bersch, David John Wanzek and Linda Wanzek failed to demonstrate: (1) a likelihood of success on the merits; (2) that they will be irreparably harmed if a stay is not granted; (3) that a stay will not injure the State of Arizona and the Arizona Corporation Commission; and (4) that a stay furthers the public interest.

Arizona Corporation Commission

DOCKETED

MAY 06 2015

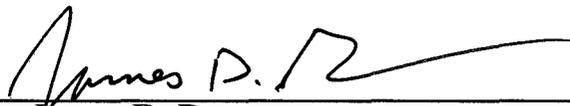
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R14-3-109(T) provides in relevant part: "The presiding officer may take official notice of the following matters: ... (4) Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference.... (5) Such other matters as may be judicially noticed by the Courts of the state of Arizona." The attached Minute Entry constitutes an official document within the meaning of R14-3-109(T)(4), and what the Court found is the proper subject of judicial notice pursuant to Rule 201, Arizona Rules of Evidence.

RESPECTFULLY SUBMITTED this 6th day of May, 2015.

ARIZONA CORPORATION
COMMISSION

By 
James D. Burgess
Attorney for the Securities Division
Arizona Corporation Commission

1 ORIGINAL and 8 copies of the foregoing
2 Response to Motion to Continue Hearing
3 filed this 6th day of May, 2015, with:

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

8 COPY of the foregoing hand-delivered
9 this 6th day of May, 2015, to:

10 The Honorable Mark H. Preney
11 Administrative Law Judge
12 Arizona Corporation Commission
13 1200 W. Washington St.
14 Phoenix, AZ 85007

15 COPIES of the foregoing sent via
16 U.S. Mail and email this 6th day of May, 2015, to:

17 Paul J. Roshka, Jr.
18 Craig Waugh
19 POLSINELLI
20 One East Washington Suite 1200
21 Phoenix, AZ 85004
22 Attorneys for ER Financial & Advisory Services, LLC,
23 Lance Michael Bersch, David John Wanzek, and Linda Wanzek

24 Timothy J. Sabo
25 SNELL & WILMER
26 400 E. Van Buren St. #1900
Phoenix, AZ 85004
Attorneys for ER Financial & Advisory Services, LLC,
Lance Michael Bersch, David John Wanzek, and Linda Wanzek

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BASKIN RICHARDS, PLC
2901 N. Central Avenue, Suite 1150
Phoenix, Arizona 85012
Attorneys for Concordia Financing Company, Ltd.

Karen Houli

Exhibit 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000415-001 DT

05/04/2015

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
T. DeRaddo
Deputy

LANCE MICHAEL BERSCH
DAVID JOHN WANZEK
LINDA WANZEK

TIMOTHY J SABO

v.

THE STATE OF ARIZONA (001)
THE ARIZONA CORPORATION
COMMISSION (001)
MATTHEW J NEUBERT (001)
MARK PRENY (001)

JAMES D BURGESS
CHARLES A GRUBE

REMAND DESK-LCA-CCC

MINUTE ENTRY

East Court Building – Courtroom 714

9:05 a.m. This is the time set for an Order to Show Cause Hearing on Plaintiffs' *Application for Order to Show Cause Regarding Motion to Stay Administrative Hearing Pending Appeal*, filed April 24, 2015. Timothy J. Sabo appears on behalf of Plaintiffs. James D. Burgess appears on behalf of Defendants, the State of Arizona, The Arizona Corporation Commission, and Matthew J. Newbert Director of the Securities Division of the Arizona Corporation Commission, who is also present in the courtroom.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral Arguments are presented by the parties.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000415-001 DT

05/04/2015

Plaintiffs request the Court to enter a stay of the pending Administrative Hearing before the Corporation Commission set to begin on May 11, 2015. They assert that under the Arizona Rules of Civil Appellate Procedure, the Court has broad authority to grant their motion in order to preserve the *status quo*, until a ruling is made by the Court of Appeals. Additional time would allow them to brief their motion(s) before the Court of Appeals regarding their statute of limitations defense.

Defendants assert that Plaintiffs have failed to comply with the requirements of Rule 62.

A stay is an extraordinary remedy; and Plaintiff must satisfy stringent standards to justify a stay of the pending appeal. Under the circumstances of this case, Plaintiff has failed to satisfy the standards established in Ariz. R. Civ. P. rule 62(c). Specifically, this Court finds that Plaintiffs have failed to demonstrate (1) a likelihood of success on the merits; (2) that it will be irreparably harmed if a stay is not granted; (3) that a stay will not injure the opposing party; and that (4) the stay furthers the public interest.

For the reasons stated on the record,

IT IS ORDERED denying Plaintiffs' request for a stay of the Administrative Hearing.

IT IS FURTHER ORDERED granting Plaintiffs a temporary stay of 30 days, or until **June 3, 2015**, to apply to the Court of Appeals for a stay of the Administrative Hearing.

9:27 a.m. Matter concludes.

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.