



BEFORE THE ARIZONA CORPORATION COMMISSION

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AUG 13 2015

AZ CORP COMMISSION  
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DOCKET NO. S-20926A-15-0116

In the matter of:

DEER PARK DEVELOPMENT CORPORATION,

MARTY O'MALLEY and JULIE UNRUH  
O'MALLEY, husband and wife,

ROBERT D. BJERKEN,

Respondents.

**FIFTH**  
**PROCEDURAL ORDER**  
**(Grants Motion to Withdraw)**

BY THE COMMISSION:

On April 8, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice") against Deer Park Development Corporation, Marty O'Malley and Julie Unruh O'Malley, husband and wife (the "O'Malleys"), and Robert D. Bjerken (collectively "Respondents"), in which the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of stock.

The spouse of Marty O'Malley, Julie Unruh O'Malley ("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.

On April 23, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Request for Hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

On April 24, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Notice of Bankruptcy Filing. The Notice, filed through the O'Malleys' Special Litigation Counsel in Nevada, stated that the O'Malleys filed a Chapter 11 Bankruptcy Petition with the United States District

1 Bankruptcy Court, District of Nevada, on January 30, 2014, which was converted to a case under  
2 Chapter 7 on August 5, 2014. The Notice advised that 11 U.S.C. § 362(a)(1) prohibits  
3 commencement of judicial, administrative or other proceedings against the debtors.

4 On May 13, 2015, by Procedural Order, a pre-hearing conference was scheduled for June 3,  
5 2015.

6 On May 18, 2015, counsel filed a Notice of Appearance on Behalf of Respondents Marty  
7 O'Malley and Julie Unruh O'Malley. Counsel for the O'Malleys also filed a Response to Notice of  
8 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order  
9 for Administrative Penalties and Order for Other Affirmative Action.

10 On June 3, 2013, a pre-hearing conference was held. The Division and the O'Malleys  
11 appeared through counsel. Counsel for the O'Malleys stated that his clients' bankruptcy matter is  
12 ongoing. Counsel for the Division stated the Division's position is that the bankruptcy has no effect  
13 upon these proceedings. The parties agreed to a hearing schedule.

14 On June 3, 2015, by Procedural Order, a hearing was scheduled to commence on November 2,  
15 2015.

16 On June 16, 2015, Respondent Bjerken untimely filed an Answer. The Answer was  
17 apparently sent by email on May 12, 2015, and received by the Division on May 20, 2015, as  
18 indicated by date stamp. Mr. Bjerken indicates that the Answer was filed late as a result of a hospital  
19 stay.

20 On June 19, 2015, Respondent Bjerken untimely filed a second Answer, again stating the  
21 filing was late due to a hospital stay.

22 On June 25, 2015, by Procedural Order, a procedural conference was scheduled to commence  
23 on July 9, 2015, to determine whether good cause exists for the late filing of the Answers from  
24 Respondent Bjerken and whether the Answers should also be considered a request for hearing.

25 On July 1, 2015, the Division filed its Response to Pleadings filed by Respondent Robert D.  
26 Bjerken.

27 On July 9, 2015, a procedural conference was held. The Division appeared through counsel.  
28 The O'Malleys appeared telephonically through counsel. Respondent Bjerken appeared pro per.

1 Respondent Bjerken attributed his late filing to his medical conditions and hospitalization. Mr.  
2 Bjerken stated his desire to participate in a hearing in this matter. Good cause was found to accept  
3 Mr. Bjerken's filings as a timely request for hearing. Mr. Bjerken did not object to the previously  
4 scheduled dates for the hearing and disclosure. The Division asserted that the Answers filed by Mr.  
5 Bjerken do not comply with A.A.C. R14-4-305 as neither Answer contains a response to all of the  
6 allegations made in the Notice. Mr. Bjerken was granted additional time to file an amended answer  
7 that complies with A.A.C. R14-4-305.

8         Also on July 9, 2015, by Procedural Order, the hearing scheduled to commence on November  
9 2, 2015, was affirmed. Mr. Bjerken was ordered to file an amended answer to the Notice by July 21,  
10 2015.

11         On July 24, 2015, the Division filed a Status Report Regarding Letter by Respondent Robert  
12 D. Bjerken Dated July 19, 2015 and Received by Division Counsel on July 23, 2015. Counsel for the  
13 Division reported having received a July 19, 2015 letter from Mr. Bjerken stating that he will not be  
14 filing an amended answer. The Division filed Mr. Bjerken's letter as an attachment.

15         On July 29, 2015, the O'Malleys' counsel, Chad A. Hester, filed an Expedited Ex Parte  
16 Motion to Withdraw as Counsel for Defendants Marty O'Malley and Julie Unruh O'Malley. Citing  
17 ER 1.16(b) of the Arizona Rules of Professional Conduct, Mr. Hester contends good cause exists for  
18 the permissive withdrawal of his representation of the O'Malleys, arising from the O'Malleys' failure  
19 to fulfill an obligation to counsel. Mr. Hester asserts that the O'Malleys have been notified of the  
20 reason for withdrawal and that they have been advised of all upcoming dates and deadlines in this  
21 matter. Mr. Hester has provided the Commission with the last known mailing address and telephone  
22 number of the O'Malleys.

23         IT IS THEREFORE ORDERED that the Expedited Ex Parte Motion to Withdraw as Counsel  
24 filed by attorney Chad A. Hester is hereby granted, good cause having been established for Mr.  
25 Hester's withdrawal as counsel for the O'Malleys.

26         IT IS FURTHER ORDERED that **the hearing remains scheduled to commence on**  
27 **November 2, 2015, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street,  
28 Hearing Room No. 1, Phoenix, Arizona.

1 IT IS FURTHER ORDERED that **the parties shall also set aside November 3-6, 2015, for**  
2 **additional days of hearing**, if necessary.

3 IT IS FURTHER ORDERED that **the Division and Respondents shall exchange copies of**  
4 **their Witness Lists and copies of the Exhibits by September 3, 2015**, with courtesy copies  
5 provided to the presiding Administrative Law Judge.

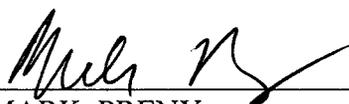
6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
7 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
8 matter is final and non-appealable.

9 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
10 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

20 DATED this 13<sup>TH</sup> day of August, 2015.

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23 \_\_\_\_\_  
MARK PRENY  
ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed/delivered  
25 this 13<sup>TH</sup> day of August, 2015, to:

26 Chad A. Hester  
27 WALLIN HESTER, PLC  
1760 E. Pecos Road, Suite 332  
28 Gilbert, AZ 85295

...

1 Robert D. Bjerken  
2 P.O. Box 2921  
3 Scottsdale, AZ 85252

4 Marty O'Malley  
5 Julie Unruh O'Malley  
6 1113 Cypress Ridge Lane  
7 Las Vegas, NV 89144

8 Matthew Neubert, Director  
9 Securities Division  
10 ARIZONA CORPORATION COMMISSION  
11 1300 West Washington Street  
12 Phoenix, AZ 85007

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15 By: Rebecca Unquera  
16 Rebecca Unquera  
17 Assistant to Mark Preny  
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