

EXCEPTION



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DATE: SEPTEMBER 1, 2015

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DOCKET NO.: S-20837A-12-0061

2015 SEP -1 P 4: 26

TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

Enclosed please find the exceptions to the recommendation of Administrative Law Judge Mark Preny. The exceptions being filed include a request for a Continuance so Respondents can adequately support the exceptions identified via documentation, testimony, and further evidence from the Hearing dated April 28 – May 1, 2014.

Addressed to Commissioners:

- Susan Bitter Smith – Chairman
- Bob Stump
- Bob Burns
- Doug Little
- Doug Forese

Securities Division:
Matt Neubert - Director

Arizona Corporation Commission
DOCKETED
SEP 01 2015

DOCKETED BY 

ORIGINAL


Mark Steiner
Respondents' Representative

Arthur P. Allsworth (Deceased) (001573)
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Phoenix, AZ 85004-1948

Mark Steiner - Respondents' Defense
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Respondents' self-defense
due to the passing of Counsel

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:)	Docket No. S-20837A-12-0061
)	
OUT OF THE BLUE PROCESSORS, LLC, an)	
Arizona limited liability company, d/b/a)	Respondents' Request For
Out of the Blue Processors II, LLC:)	Continuance To File
)	Exceptions to The
)	Recommendation of the
)	Administrative Law Judge
and)	
)	Dated: August 24, 2015
)	
MARK STEINER and SHELLY STEINER)	Assigned to Administrative Law
husband and wife)	Judge Mark Preny
)	
Respondents.)	
_____)	

The Respondents OUT OF THE BLUE PROCESSORS, LLC, and MARK and SHELLY STEINER submits their Request for a Continuance to file Exceptions to the Recommendation of the Administrative Law Judge dated August 24, 2015. This request for a continuance is supported by the following Circumstances, Details and Facts.

CIRCUMSTANCES REQUIRING A CONTINUANCE

Respondents want to make it known that they intend to cooperate with the Commission to ensure a fair and equitable solution for all parties involved. With this intent in mind, it is important that Respondents be given the opportunity to introduce Exceptions to the recommendation made by the Administrative Law Judge to the Commission, and to be able to provide documentable support for those Exceptions from the exhibits, testimony and findings introduced in the Hearing dated April 28 - May 1, 2014. Respondents believe that once the exceptions are considered and included in the recommendation to the Commission, a fair and equitable solution for all parties can be determined.

Respondents are requesting a continuance so as to properly present the exceptions identified below:

1. The time allotted between the delivery of Administrative Law Judge Mark Preny's recommendation dated August 24, 2015, (delivered by USPS on August 26, 2015) and the date of September 2, 2015, identified as the time with which to file exceptions to those recommendations, is an insufficient amount of time to prepare adequate explanations and proper documentation support for those exceptions. In addition, those dates included a weekend, further limiting the number of workdays to prepare.
2. Respondents are currently without Counsel, due to his death. It is reasonable for the Respondents to conclude that the recommendation to the Commission

could have been in favor of the Respondents. With that possibility, and from the Respondents perspective, a probability, it was not prudent for the Respondents to retain new Counsel and spend significant resources to bring counsel "up to speed" to learn that the recommendation to the Commission was favorable to the Respondents. Furthermore, it would not have been prudent to retain new counsel without knowledge and direction from the Commission if the recommendation was not in favor of the Respondents, meaning that while the recommendation could have been unfavorable to the Respondents, the solution for remedy could have been acceptable to the Respondents. To retain counsel after the Briefs were filed, without any knowledge as to the potential recommendation, would have been somewhat arbitrary and expensive. Therefore, with the recommendation in hand, Respondents needs adequate time to seek new counsel and to properly address and define each of the exceptions stated herein.

3. Respondents contend that a number of the statements of fact presented in the recommendation opinion and order were misrepresented, taken out of context, misapplied and dismissed which led to a conclusion that is detrimental to Respondents
4. Respondents contend that a number of material facts, statements and testimony, even some that could be considered egregious were omitted. Respondents believe that consideration of these omitted facts, statements,

and testimony could and should lead to a different outcome, favorable to the Respondents.

5. Respondents contend that Federal and State Constitutional rights, other laws, and procedures were violated during the investigation and were identified in the Hearing, and that the recommendation overlooked, dismissed or only casually considered those violations, ultimately rendering a recommendation detrimental to Respondents. Some of these violations, which could have criminal implications for the Division, were not addressed in the recommendation to the Commission.
6. Respondents contend that a double standard was applied when using certain rationale to support the Division's position, while the same or similar rationale was used to deny Respondents' position.
7. Respondents contend that there were certain and several times during the Hearing where the Respondents produced potential evidence believed to be sufficient to have the case dismissed. On some or all of those occasions, the division immediately objected to the testimony and/or evidence. Upon the objections, the Law Judge stated that he would consider the motion for dismissal at the end of the Hearing, and in doing so, did not allow the Respondents to continue the development of their position and evidences for dismissal. In more than one of these instances, the Administrative Law Judge stated in his recommendation that these defenses were under developed and did not sufficiently prove the Respondents' position. Respondents believe

that had they had the opportunity to adequately develop those positions, a different outcome could have been rendered.

8. Respondents contend that certain conclusions were based on far reaching assumptions drawn from certain testimony and exhibits. It is the Respondents' contention that other less far reaching conclusions could be drawn from the same testimonies and exhibits, if more of the testimony and exhibits were fairly considered.
9. A portion of the supporting rationale for the recommendation was based on exhibits, while admitted, were not presented by the Division for discussion or questioning, nor was there testimony to determine the relevance of the exhibit to the case. Consequently there was no chance for the Respondents to address, dispute, or put in context, those exhibits. As a result, inaccurate and wrong conclusions were drawn, negatively impacting the Respondents.

Respondents recognize that each of the exceptions stated herein are not supported with testimony and/or exhibits at this time. However, it is virtually impossible to properly address the exceptions with such a short window of allotted time to respond. The Respondents request that the Commission does not use this circumstance as a reason to deny the request for continuance, but rather recognize that need for more time to adequately prepare an explanation, with supporting evidence, for exceptions.

The Administrative Law Judge was afforded approximately nine months to adequately prepare its recommendation. The Respondents request a similar amount of time to

seek and retain counsel and to present their exceptions with supporting exhibits,
documentation and explanations.