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0000166367

Arthur P. Allsworth (Deceased) (001573)
1001 North Central Avenue, Suite 701
Phoenix, AZ 85004-1948

Mark Steiner - Respondents' Defense
7877 E. Hanover Way
Scottsdale, AZ 856255
Marksteiner6@gmail.com

Respondents' self-defense
due to the passing of Counsel

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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 submit Exceptions to the Recommendation of the Administrative Law Judge dated August 24, 2015. The Exceptions are identified and supported by the following Circumstances, Details and Facts.

EXCEPTIONS

Respondents want to make it known that they have tried to cooperate with the Securities Division working on behalf of the Arizona Corporation Commission to answer and resolve any questions and concerns the Division had regarding Out of the Blue Processors, LLC. Respondents also want to make it known that they believe that have not engaged in any wrongdoing, and that the Commission should side with them.

It was the belief of the Respondents at the beginning of the investigation that the Division was working to ensure that Out of the Blue Processors, LLC (OBP) was operating within the laws and regulations set forth.

It became apparent that the Division had an agenda separate from the law and regulations, and was determined to achieve its objective regardless of the facts and circumstances of the case, to the significant detriment of the Respondents.

It is important that Respondents be given the opportunity to introduce Exceptions to the recommendation made by the Administrative Law Judge to the Commission. 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' exceptions identified below:

1. 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. Furthermore 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.

The Administrative Law Judge (ALJ) misrepresents timing of certain events and fails to address certain events critical to the pending outcome.

A) He presents in his summary that the investigation turned up a myriad of alleged facts as if the investigation was conducted properly and within the bounds of the law, but he fails to mention that they were obtained illegally and without cause; and therefore, there should have been no investigation based on the individual protections provided under the US Constitution.

The ALJ notes on page 10, line 1 that the Division received an email tipping them off to an investment. This is FALSE. The Hearing produced evidence that there was NO SUCH EMAIL. The Respondents' asked for the alleged email—it was not produced. Neither was it admitted as an exhibit by the prosecution. It did not exist, as ultimately testified by Ms. Weiss.

B) The ALJ failed to mention that Mrs. Weiss committed perjury in an effort to avoid the truth regarding this material fact of this email or any other evidence necessary to initiate this or any investigation. The questioning (cross examining) of Ms. Weiss regarding these facts took five pages of transcript for her to finally admit that no such email existed, and that there

was no evidence available to substantiate the need for an investigation. That was after she fabricated a second source of initiating evidence (information from an attorney), which she ultimately acknowledged was also false. This is detailed in the Respondents' post hearing brief, beginning on page 36, with annotations to exhibits, etc.

C) The ALJ also failed to properly address the Respondents' evidence during the Hearing that Ms. Weiss committed a felony in her investigative practices. This was also supported by documentation provided by the Respondents in the Supreme Court case ruling of MAPP vs. OHIO. Upon objection from the Prosecution and its desire to review the case, ALJ prohibited Respondents from further developing its support of that particular allegation, indicating that he would review the case law and apply it to his decision if relevant. However, in his opinion to the Commission, he only states that the Respondents failed to adequately develop that defense, and that the Supreme Court ruling included an "intent to cause loss" and that Ms. Weiss was incapable of causing loss. It is the Respondents' contention that the Division's and Ms. Weiss' did, and intended to cause loss. Without truly adequate investigative practices, without proper understanding of the business itself or its relationships to its clients, and without adequate proof of anything other than a fabricated reason for cause, the Division imposed a Cease and Desist Temporary Restraining Order. Furthermore, upon the Respondents' first meeting with

the Division, the Division suggested a settlement discussion – prior to any discussion about the case itself. This could only cause “loss”. The division’s willingness to proceed with their investigation under questionable procedural practices, and blatant disregard for emerging facts, along with its unrewarding efforts to find witnesses or real evidence to support its early assumptions, the Division pursued its agenda, interfering, disrupting and destroying the Respondents’ business activity, to a substantial and significant loss. The only reasonable, logical and ethical conclusion is that the Division caused loss, which is what the Supreme Courts ruling was trying to protect against. The only way the ALJ could dismiss this allegation is to pretend there was no intent for loss. This is contradictory to his statements at the Hearing and an inaccurate representation of the facts.

2. 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.

The Respondents maintain that they committed no wrong doings and that the Division abused its investigative power to serve its own purposes. The

Respondents argued that the Division did not have sufficient basis to initiate its investigations, let alone issue a T.O., notwithstanding the points made in the previous point #1. The Division alleges that Respondent Mark Steiner solicited Ms. Weiss or Margo Mallamo, when in fact she solicited him. SHE initiated the communication through email (under false identification), she initiated the 44 minute recorded phone call, in which she volunteered her financial strength, she asked repeatedly for “securities related” information, but was continually denied until, after several requests by Mr. Steiner, she agreed to a face-to-face meeting. Ms. Weiss was persistent in investing prior to the meeting, saying she needed to wire the money. At this point, a satisfactory and lengthy conversation had taken place according to Ms. Weiss (Ms. Mallamo). She was determined to make the investment. She asked for wire instructions. This put Mr. Steiner in a precarious situation – if he accepted money without documentation, there may have been a violation. At her request, he provided the executed documentation in order to receive the investment. It is hard to draw the conclusion that Mr. Steiner initiated or solicited anything other than a meeting. Notwithstanding, it is the belief of the Respondents, supported by strong and thorough documentation that Respondent was operating properly under the Federal Securities laws, of which evidence of Federal Statute compliance was provided to the Division prior to the Hearing, and that Ms. Weiss was committing a felony (as stated previously in MAPP vs. OHIO Supreme Court ruling). However, as has been

customary by the Division, facts supported by statutes and case law can be broadly interpreted in spite of known intent so as to be manipulated for the benefit of the Division.

3. 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.

A) The ALJ noted in his Opinion that Respondents failed to make a satisfactory defense regarding expense management according to language and rules of the Operating Agreement, stating that all of the investors' signature pages were not presented in the Hearing or as evidence. (Copies of the Operating Agreement were admitted as evidence, and multiple testimonies were taken as to the understanding and intent of the Operating Agreement). The ALJ stated that with no signature pages, it could not be determined which of the investors relied on the information contained within the Operating Agreement for investment understanding (page 47 of Opinion). It was never clear to Respondents that the Division was specifically seeking 'signatory pages' of the Operating Agreement since the Respondents were never asked to provide them specifically. However, Respondents did provide a copy of the Operating Agreement in full. It was the understanding of the Respondents that the Division only wanted the Operating Agreement for its review of content. For the ALJ to draw this conclusion, he had to

dismiss or disregard the numerous testimonies by investors and testimony by Respondent. Furthermore the ALJ had to make significant assumptions to the contrary because there was no un-refuted testimony substantiating his position and theory.

- B) The ALJ used a double standard in the use of exhibits to further the Division's position when he referred the Operating Agreement to discuss record keeping practices. Record keeping practices will be addressed in the next "Exception". However, it needs to be noted that the ALJ cannot dismiss Respondents' references to the Operating Agreement citing that it could not be determined if investors relied on the information contained therein, and then in turn use it for Division's support, stating that investors relied on the information.
4. 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.

Many of these circumstances have been mentioned previously in this Exceptions document, but there are others.

- A) No evidence provided by the Division to even have cause to begin investigation (previously addressed)
- B) Perjury actions of Ms. Weiss (previously addressed)
- C) Felony actions of Ms. Weiss (previously addressed)
- D) Testimony of Mr. Gonzales as forensic auditor regarding Out of the Blue Processors expenses: Respondents contend that the Securities Division has jurisdiction of companies offering/selling securities, in this case OBP. OBP was properly engaged in that practice per the Federal statutes. Respondents contend and objected to an unauthorized audit of a non-securities company, Lunsford Consulting, LLC. A properly conducted forensic audit would determine the financial rules and procedures of operation for the company being audited, then determine if they were being properly adhered to. In the case of OBP, the Operating Agreement clearly states that revenues come from a single source (of which none had been received). It also indicates that no expenses would be incurred by OBP, of which no were noted. It further indicated that all investment monies would go to the operating expenses of Lunsford Consulting, LLC. This is a simple audit. No revenues minus no expenses equals no

distributions to members. However, again not satisfied with facts, the Division chose to extend its unwarranted reach outside its purview of "securities" companies. Lunsford Consulting, LLC is an independent company with separate managers, which never solicited securities and never took on any investors. Accordingly. The Division per the clear rules of OBP, had no reason or authorization to investigate Lunsford Consulting. This was brought up on the Hearing, but to no avail, and was summarily dismissed in the ALJ's Opinion to the Commission. OBP, per its rules provided operating expense money to Lunsford in return for a portion of Lunsford Revenue. Lunsford Consulting had operating expenses, but they were not attributed to OBP, nor did OBP have any jurisdiction over the management of the Lunsford expenses. This is easily understood when reviewing corporate documentation. However, the ALJ allowed the testimony of the forensic auditor, Mr. Gonzales to speculate on matters unrelated to OBP. The extraordinary and unreasonable speculation for the use of proceeds, of which could not be substantiated because they were speculative lies with no evidence to support, have been inserted in the ALJ's opinion and have a detrimental impact on that opinion. Mr. Gonzales as a hired employee of the Division, either deliberately or ineptly made efforts to blur the lines between separate companies so as to assert his and the Division's claim of fraud. ALJ has relied on this inappropriate

and perhaps unlawful testimony in his Opinion to the Commission, to the detriment of the Respondents.

E) Bribery practices by the Division were also discovered during witness Sue Painter's testimony at the Hearing. Of course the Division immediately objected to the accusation. Ms. Painter testified that the Division had become overly persistent, bullying and even somewhat threatening in trying to obtain more and more information from her. Finally, at the recommendation of her son and others, she chose to terminate her communication with the Division. She further testified that one of the Division investigators came to her house, stood in her foyer and offered her a partial refund of her investment. The Division immediately objected, stating she must be confused with another case. Ms. Painter offered an email exchange she had with her to evidence that fact. The ALJ declined to take it, but stated that he would consider this fact in his Opinion ruling. The ALJ failed to mention this egregious action in any significant detail or even casual reference, let alone use it appropriately in his Opinion Recommendation. Furthermore, the Respondents have in their possession an affidavit and supporting documentation from the witness Rebecca Flowers' Financial Advisor stating similar practices. The affidavit and the email evidence states that Ms. Flowers needs a copy of the investment check to provide to the Division before the Hearing date, otherwise she will not be able to get her money back. While the ALJ

indicated that all of the Division's questionable actions would be considered in the Opinion, few of them are mentioned, and those that are, are dismissed on some weak basis.

5. 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.

A) Despite the fact that the ALJ references qualified documentation supporting the Respondents' position regarding the rules for non-disclosure of Lunsford Consulting expenditures, including the Private Placement Agreement for Lunsford Consulting and the Operating Agreement of OBP which clearly and thoroughly cites the relationship between the two entities, the ALJ references an exhibit S-31 to dismiss the Respondents' position. The ALJ states that certain investors relied on this information. The Division did not identify where they obtained that document, nor did it identify any particular investors who may have had that document or relied on that document, nor did it produce any testimony from any witness stating that assumption. There is no evidence from any witness that they even saw that document, let alone relied on it. Citing the ALJ's earlier rationale that because no signature representing the receipt, understanding or reliance on the

document was provided, it could not be assumed that it had any material importance to the investor. Citing the ALJ's own rationale, his efforts to incorporate this information into his Opinion is irresponsible at best.

6. Respondents contend that Shelly Steiner, a named Respondent, should be removed as a named party. It is indisputable, via testimony and evidence that she had no involvement in any of the activities of Out of the Blue Processors, LLC, or any other activity pursued by the Division relating to this matter, and was in no way responsible for any actions related to this case. The Division has acknowledged from the beginning of this procedure that Shelly Steiner was included as a named Respondent solely because the State of Arizona is a 'community property' state. Maintaining her involvement when the Division knows and has acknowledged her lack of participation is further evidence of its malicious intent. By definition of 'community property' all assets and liabilities of married parties inherently belong to each other; and therefore, removing her as a named party does not limit the Division's ability to include her assets and earnings in any collection efforts if the Commission's ruling favors the Division. To continue to include her as a named party, acknowledging that there was no wrong doing by her only impugns her and impedes her ability to find meaningful employment. Such action is not in the preveue or authority of the Division and should be considered an overreach of authority. It is simply malicious.

7. It is the Respondents' contention that the Respondents' did not get a fair and unbiased Hearing. The Respondents' contend that the ALJ assisted the Division to achieve the Division's objective to succeed in its allegations against the Respondents. The Respondents' contend that had an unbiased mediator or judge hear this case, a different outcome would have resulted. In fact, the overlooking of so many missteps by the Division, and the general latitude afforded the Division in its investigation was incredible. Conversely, the Respondents were given minimal or no latitude in its presentation and interpretation of the law and their compliance to those laws. Instead, selective portions of the law were applied and selective portions were overlooked to achieve the desired outcome. In fact, the only two investor witnesses supplied by the Division became investors well after all of the allegations were in place. One of those investors (Mr. Coley) testified against the Division's insinuations, to its frustration (see the transcript). The other, Ms. Flowers testified that she was misinformed, yet upon cross exam, she acknowledged that she only met with Mr. Steiner in the presence of her investment advisor and/or her father, both of which adequately understand investment risks and rewards (see transcripts). Additionally, Respondents have damning evidence against her and the Division substantiating bribery. The division acknowledged that it made several attempts to contact more investors as witnesses, but failed due to the satisfaction of the investors with the investment. Furthermore, the Division dismissed the fact that six

investors submitted letters of satisfaction to the Division. And finally, it should be noted that this investigation was started with no complaints filed by any witness at any time. In spite of the glaring evidence to the contrary, the Division was relentless in its efforts to find some modicum of impropriety.

To this end, all of the Respondents request a formal appeal outside the purview of the Division or any of its affiliates.

Respondents recognize that each of the exceptions stated herein are not accompanied by testimony and/or exhibits. However, all of the documentation supporting these exceptions and their respective explanations are included in the Respondents' post hearing brief and Hearing transcripts, with the exception of the Affidavit supporting the Division's attempt to and Ms. Flowers' willingness to participate in bribery accusations, of which documentation can be provided immediately.

It is the Respondents' hope that the Arizona Corporation Commission will review this Exception to the ALJ's Opinion recommendation, along with the Post Hearing Brief and all transcripts of the Hearing.

It is the belief of the Respondents that it is not the ACC's directive to engage in such marginal ethical practices and that it would not want the Division's practices to be a negative reflection on the Commission. The Respondent look to, and rely on the Commission review of this case for equity and justice.

Respondents Representative

M. J. G. J.