

ORIGINAL

OPEN MEETING ITEM

11/17-18/15



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



JODI JERICH
EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Susan Bitter Smith, Chairman
Bob Stump
Bob Burns
Doug Little
Tom Forese

Arizona Corporation Commission
DOCKET CONTROL
NOV 18 2015

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKET CONTROL
[Signature]

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: 10/26/2015

RE: Deer Park Development Corporation, *et al.*, Docket No. S-20926A-15-0116

CC: Jodi Jerich, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order") against Robert D. Bjerken.

The Order against Bjerken is a consent order. (As to the other respondents in this matter, the Securities Division is filing simultaneously with this Order a proposed default judgment against the entity and a proposed consent order with the O'Malleys.)

The Order finds that from approximately January 2009 to September 2013, Deer Park Development Corporation ("DPDC") violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling unregistered stock to 40 persons. When it began selling stock, DPDC was a start-up company looking to get in the business of buying residential properties, rehabbing them, and then selling them for a profit. Respondent Bjerken sold stock to 39 of the 40 stock purchasers. Bjerken was the financial planner for many of these persons; they relied on Bjerken's recommendation of the DPDC investment. DPDC and Bjerken failed to disclose that Bjerken, who was DPDC's CFO and principal salesman, had three prior Commission orders against him. They also failed to disclose that a DPDC director/officer had filed for bankruptcy in 2002. These failures to disclose constitute violations of A.R.S. § 44-1991.

The Order requires Bjerken to permanently cease and desist from violating the Securities Act, to pay a \$125,000 administrative penalty, and to pay restitution of \$837,630 to the investors.

The Securities Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Ryan J. Millecam

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:) DOCKET NO. S-20926A-15-0116
Deer Park Development Corporation,) DECISION NO. _____
Marty O'Malley and Julie Unruh O'Malley, husband and wife,) ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME
Robert D. Bjerken,) BY: RESPONDENT ROBERT D. BJERKEN
Respondents.)

Respondent Robert D. Bjerken ("Bjerken" or "Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission ("Commission"); admits the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

**I.
FINDINGS OF FACT**

1. Deer Park Development Corporation ("DPDC") is a Nevada corporation organized under the laws of the state of Nevada in November 2005. DPDC has not been registered by the Commission as a securities salesman or dealer.

2. Bjerken has been at all relevant times an unmarried man and resident of the state of Arizona. Bjerken has not been registered by the Commission as a securities salesman or dealer.

1 3. During the relevant timeframe, i.e. throughout the years 2009–2013, Bjerken was
2 the CFO of DPDC. Bjerken was also DPDC’s accountant.

3 4. Marty O’Malley (“O’Malley”), has been at all relevant times a married man and
4 resident of the state of Nevada. O’Malley has not been registered by the Commission as a securities
5 salesman or dealer.

6 5. At all relevant times, O’Malley was President and a Director of DPDC.

7 6. O’Malley and Respondent Spouse (defined below) also owned at least 30,000,000
8 shares of DPDC stock.

9 7. DPDC discusses O’Malley’s stock ownership and the authority related to such stock
10 in a “Confidential Private Placement Memorandum” (the “PPM”) which O’Malley caused to be
11 prepared and distributed to several DPDC investors.

12 8. The PPM states that, prior to the DPDC stock offering that is the subject of this case,
13 O’Malley owned 31,000,000 of the then-outstanding 37,500,000 DPDC shares. The stock offering
14 would result in 50,000,000 total outstanding shares. As the PPM makes clear, before and after the
15 stock offering, DPDC’s key officers, including O’Malley, would have control over the election of
16 directors and officers and over the company’s major decisions.

17 9. Julie Unruh O’Malley (“Respondent Spouse”) was at all relevant times the spouse of
18 Respondent O’Malley. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely
19 for purposes of determining the liability of the marital community.

20 DPDC’s real-property business and the stock offering

21 10. In late 2008, DPDC was a start-up company attempting to get in the business of
22 buying and reselling residential property.

23 11. According to DPDC’s PPM, DPDC’s principals—including CEO Marty
24 O’Malley—have extensive real estate experience including “front row seats” to previous real estate
25 market cycles. Based on this experience, DPDC would acquire discounted or distressed single-
26 family residences in Phoenix and Las Vegas and resale them for a profit.

1 12. To finance this business, DPDC intended to sell 200 "units" of stock. Each unit
2 contained 62,500 shares and was to be sold for \$25,000 for a total aggregate offering of
3 \$5,000,000.

4 13. From approximately January 2009 until approximately November 2013,
5 Respondents offered and sold DPDC stock to at least 40 investors within or from Arizona. Several
6 of the investors made multiple purchases.

7 14. In exchange for their investments, the DPDC investors received stock certificates
8 signed by "Marty O'Malley" as President of DPDC.

9 15. At least 33 of the 40 DPDC stock investors also received a document titled
10 "Subscription for Shares" for one or all of their stock purchases. O'Malley, as President of DPDC,
11 signed Subscriptions given to at least 17 investors including seven Subscriptions that he co-signed
12 with Bjerken; Bjerken, as CFO of DPDC, signed Subscriptions given to at least 24 investors
13 including seven Subscriptions that he co-signed with O'Malley.

14 16. Each Subscription included the number of shares being purchased, the price of the
15 shares, and the signature of the subscriber.

16 17. At least 31 of the DPDC investors had the following representation in a Subscription
17 that they received from DPDC: "The subscriber has read, understands and accepts of the Private
18 Placement Memorandum of Deer Park Development Corporation."

19 18. The DPDC stock offering was not registered as a security with the Commission.

20 19. The 40 investors paid a total purchase price of approximately \$842,630 for their
21 DPDC stock.

22 20. Bjerken offered and sold DPDC stock to 39 of the 40 investors.

23 21. Bjerken acted as an accountant for and had longstanding relationships with most of
24 the persons to whom he sold DPDC stock. Several investors relied on Bjerken's favorable opinion
25 of the DPDC investment when deciding to invest.

26

1 22. The 39 investors to whom Bjerken offered DPDC stock paid a total of
2 approximately \$837,630 for their DPDC stock.

3 23. Multiple DPDC investors deposited their funds into a bank account in Arizona for
4 which Bjerken was a signatory. After investor funds were deposited into this account, Bjerken
5 would forward the funds to an account controlled by O'Malley.

6 24. O'Malley offered and sold stock to 17 of the 40 investors; these 17 investors
7 received Subscriptions signed by O'Malley. These 17 investors consist of one investor who dealt
8 exclusively with O'Malley and 16 investors to whom O'Malley and Bjerken jointly offered and
9 sold stock.

10 25. The 17 investors to whom O'Malley offered and sold DPDC stock paid a total of
11 \$303,800 for their DPDC stock; this includes \$5,000 from the investor to whom O'Malley solely
12 sold DPDC stock.

13 26. At all relevant times, O'Malley has been a signatory of DPDC's bank accounts, and
14 other bank accounts in which investor funds were deposited.

15 Failure to disclose previous Commission orders and other actions

16 27. Respondents failed to disclose to investors previous actions involving Securities Act
17 violations.

18 28. In 1991, 1996, and 2003, the Commission entered orders against Bjerken for
19 violations of the Securities Act (the "Commission Action(s)").

20 29. On June 6, 1991, the Commission found that Bjerken sold unregistered securities
21 without being licensed to sell securities, and that Bjerken violated A.R.S. § 44-1991. Among other
22 things, the factual findings show that Bjerken overstated the potential return on the investment and
23 failed to disclose the risks. The Commission ordered Bjerken to pay jointly and severally restitution
24 of \$67,500 and a \$7,000 penalty.

25 30. On December 18, 1996, the Commission found that Bjerken sold unregistered stock
26 in a company called "Go Unified, Inc." Bjerken was not licensed to sell securities. The

1 Commission also held that Bjerken violated A.R.S. § 44-1991 for multiple omissions and
2 misrepresentations. Among other things, Bjerken failed to disclose the 1991 Commission order; he
3 claimed that the company issuing stock had \$8,000,000 in assets when financial statements showed
4 that it had approximately \$200,000; he claimed that the company had an 8.5 to 1 “price-earnings”
5 ration when in fact the company had no earnings or established market price (the company was a
6 barely-functioning startup); and Bjerken represented that he was selling a “desperate shareholder’s”
7 stock, when in fact he sold his own and the company’s stock. This order required Bjerken to pay
8 \$119,000 in restitution, \$42,000 in penalties, and an additional \$5,000 penalty for violating the
9 Commission’s 1991 order.

10 31. In the 2003 order, the Commission found that Bjerken, while not licensed with the
11 Commission, fraudulently offered and sold securities in the form of promissory notes. The
12 Commission also found that Bjerken violated the antifraud provisions of the Securities Act by
13 failing to disclose the 1991 and 1996 Commission orders to investors. This order required Bjerken
14 to pay \$8,234,144 in restitution and a \$10,000 penalty.

15 32. O’Malley was named as a respondent in the Commission’s 1996 action involving
16 the Go Unified stock offering.

17 33. Additionally, one investor sued O’Malley for his role in the Go Unified stock
18 offering. Bjerken was also named as a defendant in the complaint. The investor obtained an
19 arbitration award against O’Malley and Go United for \$14,400.

20 34. A second lawsuit against O’Malley involved O’Malley and Go United selling a
21 \$50,000 promissory note. This lawsuit resulting in a judgment against O’Malley of \$2,130 and
22 \$62,609.27 (\$50,000 of this was principal).

23 35. Respondents failed to disclose to investors the 1991, 1996 and 2003 orders and the
24 civil litigation, arbitration award and judgment against O’Malley. These orders and Commission
25 Actions are also not disclosed in the PPM.

26

1 Failure to disclose O'Malley's 2002 bankruptcy

2 36. In its PPM, DPDC touted O'Malley's significant business and financial experience
3 and expertise. This included stating that O'Malley graduated with a degree in business, oversaw the
4 expansion of a real-estate company into eight different states, built his own real-estate investment
5 company, and acquired a communications company in 1996. The PPM further describes O'Malley:
6 "Having spent his entire business career in real estate in one form or another, he understands the
7 ups and downs of the market and how to make them profitable depending on the cycle."

8 37. DPDC failed, however, to disclose facts that would make these representations not
9 misleading. In 2002, O'Malley filed for Chapter 11 Bankruptcy in Arizona. On 2/10/03, O'Malley
10 converted his bankruptcy to a Chapter 7. On 2/3/2004, the bankruptcy was discharged.

11 38. The PPM was given to at least two investors prior to their purchase of DPDC stock;
12 these two investors provided copies of their PPMs to the Division. Additionally, at least 33
13 investors represented in their Subscriptions that they had read and accepted the PPM. The PPM did
14 not disclose O'Malley's 2002 bankruptcy.

15 Failure to disclose 2011 DPDC audit results

16 39. DPDC had an independent audit conducted that showed a net loss for 2010 with an
17 accumulated deficit of \$1,235,322.

18 The date of the independent audit for DPDC was July 15, 2011. The results of the
19 independent audit, specifically the net loss and accumulated deficit, were not disclosed to at least
20 three of the 20 investors who invested after that date.

21 **II.**

22 **CONCLUSIONS OF LAW**

23 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
24 Arizona Constitution and the Securities Act.

25 2. Respondent offered or sold securities within or from Arizona, within the meaning of
26 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent shall, pay
2 restitution to the Commission in the principal amount of \$837,630 as a result of the conduct set
3 forth in the Findings of Fact and Conclusions of Law. This restitution obligation is joint and several
4 with the restitution ordered against the other respondents in this docket number, DPDC and
5 O'Malley. Payment is due in full on the date of this Order. Payment shall be made to the "State of
6 Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal
7 amount outstanding shall accrue interest at a rate of 4.25% from the date of this Order until paid in
8 full.

9 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
10 records of the Commission. Any restitution funds that the Commission cannot disburse because an
11 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
12 investor because the investor is deceased and the Commission cannot reasonably identify and
13 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
14 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
15 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
16 shall be transferred to the general fund of the state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay an
18 administrative penalty in the amount of \$125,000 as a result of the conduct set forth in the Findings
19 of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be
20 made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

21 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
22 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
23 shall be applied to the penalty obligation.

24 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
25 Respondent does not comply with this Order, any outstanding balance may be deemed in default
26 and shall be immediately due and payable.

1 IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the
2 Commission may bring further legal proceedings against Respondent, including application to the
3 superior court for an order of contempt.

4 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this
5 Order shall be deemed binding against any respondent under this Docket Number who has not
6 consented to the entry of this Order.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(RJM)

CONSENT TO ENTRY OF ORDER

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1. Respondent, an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. Respondent acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and Respondent knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Order") constitutes a valid final order of the Commission.

2. Respondent knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent understands and acknowledges that he has a right to seek counsel regarding this Order, and that he has had the opportunity to seek counsel prior to signing this Order. Respondent acknowledges and agrees that, despite the foregoing, he freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this Order.

5. Respondent admits the Findings of Fact and Conclusions of Law contained in this Order. Respondent agrees that he shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission is a party.

6. Respondent further agrees that he shall not deny or contest the Findings of Fact and Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)"). Respondent further agrees that in any such proceedings, the Findings of Fact and Conclusions of

1 Law contained in this Order may be taken as true and correct and that this Order shall collaterally
2 estop him from re-litigating with the Commission or any other state agency, in any forum, the
3 accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In the event
4 Respondent pursues bankruptcy protection in the future, he further agrees that in such bankruptcy
5 proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

6 A. The obligations incurred as a result of this Order are a result of the conduct set forth
7 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of
8 Arizona state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

9 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
10 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
11 Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine,
12 penalty, citation, restitution payment, disgorgement payment, attorney fee, cost or other
13 payment owed by Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

14 7. By consenting to the entry of this Order, Respondent agrees not to take any action or
15 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
16 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
17 basis.

18 8. While this Order settles this administrative matter between Respondent and the
19 Commission, Respondent understands that this Order does not preclude the Commission from
20 instituting other administrative or civil proceedings based on violations that are not addressed by
21 this Order.

22 9. Respondent understands that this Order does not preclude the Commission from
23 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
24 that may be related to the matters addressed by this Order.

1 10. Respondent understands that this Order does not preclude any other agency or
2 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
3 proceedings that may be related to matters addressed by this Order.

4 11. Respondent agrees that he will not apply to the state of Arizona for registration as a
5 securities dealer or salesman or for licensure as an investment adviser or investment adviser
6 representative at any time in the future.

7 12. Respondent agrees that he will not exercise any control over any entity that offers or
8 sells securities or provides investment advisory services within or from Arizona at any time in the
9 future.

10 13. Respondent agrees that he will continue to cooperate with the Securities Division
11 including, but not limited to, providing complete and accurate testimony at any hearing in this
12 matter and cooperating with the state of Arizona in any related investigation or any other matters
13 arising from the activities described in this Order.

14 14. Respondent consents to the entry of this Order and agrees to be fully bound by its
15 terms and conditions.

16 15. Respondent acknowledges and understands that if he fails to comply with the
17 provisions of the order and this consent, the Commission may bring further legal proceedings
18 against him, including application to the superior court for an order of contempt.

19 16. Respondent understands that default shall render him liable to the Commission for
20 its costs of collection and interest at the maximum legal rate.

21 17. Respondent agrees and understands that if he fails to make any payment as required
22 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
23 without notice or demand. Respondent agrees and understands that acceptance of any partial or late
24 payment by the Commission is not a waiver of default by the Commission.

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1 Signature page for Respondent Robert D. Bjerken

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Robert D. Bjerken, Respondent

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STATE OF ARIZONA)

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) ss

County of MARICOPA)

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SUBSCRIBED AND SWORN TO BEFORE me this 19 day of OCTOBER, 2015.

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NOTARY PUBLIC

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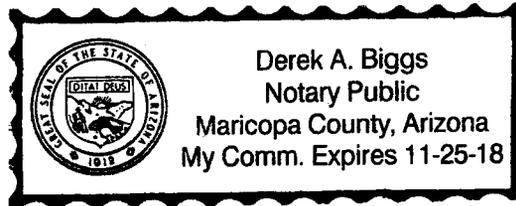
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My commission expires:

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11/25/18

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1 SERVICE LIST FOR: *Deer Park Development Corporation, et al.*

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3 Joseph C. Crary, Esq.
4 2339 West Monte Avenue
5 Mesa, AZ 85202
6 *Attorney for the O'Malleys*

7

8 Robert D. Bjerken
9 P.O. Box 2921
10 Scottsdale, AZ 85252

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

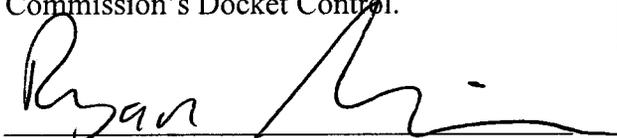
In the matter of:)
Deer Park Development Corporation,)
Marty O'Malley and Julie Unruh O'Malley,)
husband and wife,)
Robert D. Bjerken,)
Respondents.)

DOCKET NO. S-20926A-15-0116

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties, Re: Deer Park Development Corporation was filed with the Arizona Corporation Commission's Docket Control.

Dated: 11/13/15

By: 
Ryan J. Millecam, Staff Attorney

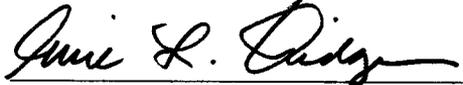
Decision No. _____

1 I hereby certify that I have this day served the foregoing document on all parties of record in
2 this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

3 Joseph C. Crary, Esq.
4 2339 West Monte Avenue
5 Mesa, AZ 85202
Attorney for the O'Malleys

6 Robert Bjerken
7 P.O. Box 2921
8 Scottsdale, AZ 85252
Respondent

9
10 Dated: 11/3/15

By: 
Emie R. Bridges, Executive Assistant

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