ORIGINAL

0000168019

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

RECEIVED

2015 DEC 30 A 11: 39

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

USA BARCELONA REALTY ADVISORS, LLC, an Arizona limited liability company,

USA BARCELONA HOTEL LAND COMPANY I, LLC, an Arizona limited liability company,

RICHARD C. HARKINS, an unmarried man,

ROBERT J. KERRIGAN (CRD no. 268516), an unmarried man,

GEORGE T. SIMMONS and JANET B. SIMMONS, husband and wife,

BRUCE ORR, an unmarried man,

Respondents.

DOCKET NO. S-20938A-15-0308

Arizona Corporation Commission
DOCKETED
DEC 30 2015
DOCKETED BY

FOURTH PROCEDURAL ORDER (Continues Hearing)

BY THE COMMISSION:

On August 26, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("T.O. and Notice") against USA Barcelona Realty Advisors, LLC ("Barcelona Advisors"), USA Barcelona Hotel Land Company I, LLC ("Barcelona Land Company"), Richard C. Harkins, Robert J. Kerrigan, George T. Simmons and Janet B. Simmons, husband and wife (the "Simmonses"), and Bruce Orr (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 promissory notes, and investment contracts or membership interests.

The spouse of George T. Simmons, Janet B. Simmons ("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 T.O. and Notice.

On September 11, 2015, Respondent George T. Simmons, individually and on behalf of his marital community, filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 14, 2015, Respondent Robert J. Kerrigan filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 15, 2015, Respondent Richard C. Harkins filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 18, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.R.S. § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307, was filed on behalf of Robert J. Kerrigan by counsel Robert D. Mitchell and Sarah K. Deutsch.

On September 23, 2015, by Procedural Order, a pre-hearing conference was scheduled to commence on October 13, 2015.

On September 28, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.A.C. R14-4-306 and R14-4-307, was filed on behalf of George T. Simmons and Janet B. Simmons by counsel Charles R. Berry and Stanley R. Foreman.

On September 29, 2015, Respondent Robert J. Kerrigan filed an Answer to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

Also on that day, Bruce Orr filed a letter. Mr. Orr's letter responded to assertions made in the T.O. and Notice. Mr. Orr further requested to "have my name removed from this complaint." To preserve Mr. Orr's due process rights, his September 29, 2015 letter was considered a request for hearing and answer to the T.O. and Notice.

On October 2, 2015, by Procedural Order, the pre-hearing conference remained scheduled for October 13, 2015.

Also on October 2, 2015, George T. Simmons filed an Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

On that same day, Richard Harkins filed a pro per Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing. Mr. Harkins asserted the pro per answer to also be the answer of Barcelona Advisors and Barcelona Land Company.

On October 13, 2015, the pre-hearing conference was held as scheduled. The Division appeared through counsel, as did Mr. Kerrigan and the Simmonses. Mr. Harkins appeared on his own behalf and purportedly on behalf of Barcelona Advisors and Barcelona Land Company. The scheduling of a hearing date was discussed. Mr. Harkins was informed that because he is not an attorney, he cannot represent Barcelona Advisors and Barcelona Land Company.

On October 14, 2015, by Procedural Order, a hearing was scheduled to commence on March 7, 2016.

On December 29, 2015, the parties, except Mr. Orr, filed a Stipulation Regarding Leave to Amend Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and Regarding Continuing Hearing (the "Stipulation"). As stated in the Stipulation, the Division seeks to amend the T.O. and Notice to add factual allegations arising from the Division's ongoing investigation. The parties, except Mr. Orr, stipulate that the Administrative Law Judge may allow for the Division to amend the T.O. and Notice under A.A.C. R14-3-106(E). The Stipulation further contains a request that the March 7, 2016 hearing be continued to commence on or after May 9, 2016, with a corresponding change of the January 8, 2016 deadline for the exchange of witness lists and copies of exhibits.

With the January 8, 2016 deadline rapidly approaching, good cause exists to grant the requested continuance while allowing the non-stipulating party, Mr. Orr, an opportunity to respond to the stipulated request to grant the Division leave to amend the T.O. and Notice.

IT IS THEREFORE ORDERED that the hearing scheduled on March 7, 2016, is hereby vacated.

IT IS FURTHER ORDERED that the **hearing is rescheduled to commence on May 9, 2016, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix, Arizona**.

IT IS FURTHER ORDERED that **the parties shall also reserve May 10-13, 16-20, and 23-27, 2016, for additional days of hearing**, if necessary.

IT IS FURTHER ORDERED that **the Division and Respondents shall exchange copies of their Witness Lists and copies of the Exhibits by March 10, 2016,** with courtesy copies provided to the presiding Administrative Law Judge.

IT IS FURTHER ORDERED that a **response to the Stipulation may be filed by Mr. Orr. Any such response shall be filed on or before January 13, 2016. If a response is filed, any of the remaining parties may file a reply on or before January 20, 2016.**

IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in the Notice prior to the hearing, the Division shall file a Motion to Vacate the Proceeding.**

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

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules 31, 38 and 39, and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

DATED this 30TH day of December, 2015.

MARK PRENY
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
this 30TH day of December, 2015, to:

Robert D. Mitchell
Sarah K. Deutsch
TIFFANY & BOSCO PA
Camelback Esplanade II, Seventh Floor
2525 East Camelback Road
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Attorneys for Robert J. Kerrigan

Richard C. Harkins
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Charles R. Berry
Stanley R. Foreman
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Attorneys for George T. Simmons and Janet B. Simmons

Bruce Orr
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1300 West Washington Street
Phoenix, AZ 85007

COASH & COASH, INC.
Court Reporting, Video and Videoconferencing
1802 North 7th Street
Phoenix, AZ 85006

By: _____
Tammy Velarde
Assistant to Mark Preny

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BEFORE THE ARIZONA CORPORATION COMMISSION

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GEORGE T. SIMMONS and JANET B. SIMMONS, husband and wife,

BRUCE ORR, an unmarried man,

Respondents.

DOCKET NO. S-20938A-15-0308

Arizona Corporation Commission
DOCKETED
DEC 30 2015
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FOURTH PROCEDURAL ORDER (Continues Hearing)

BY THE COMMISSION:

On August 26, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("T.O. and Notice") against USA Barcelona Realty Advisors, LLC ("Barcelona Advisors"), USA Barcelona Hotel Land Company I, LLC ("Barcelona Land Company"), Richard C. Harkins, Robert J. Kerrigan, George T. Simmons and Janet B. Simmons, husband and wife (the "Simmonses"), and Bruce Orr (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 promissory notes, and investment contracts or membership interests.

The spouse of George T. Simmons, Janet B. Simmons ("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 T.O. and Notice.

On September 11, 2015, Respondent George T. Simmons, individually and on behalf of his marital community, filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 14, 2015, Respondent Robert J. Kerrigan filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 15, 2015, Respondent Richard C. Harkins filed a Request for Hearing pursuant to A.A.C. R14-4-306.

On September 18, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.R.S. § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307, was filed on behalf of Robert J. Kerrigan by counsel Robert D. Mitchell and Sarah K. Deutsch.

On September 23, 2015, by Procedural Order, a pre-hearing conference was scheduled to commence on October 13, 2015.

On September 28, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.A.C. R14-4-306 and R14-4-307, was filed on behalf of George T. Simmons and Janet B. Simmons by counsel Charles R. Berry and Stanley R. Foreman.

On September 29, 2015, Respondent Robert J. Kerrigan filed an Answer to Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

Also on that day, Bruce Orr filed a letter. Mr. Orr's letter responded to assertions made in the T.O. and Notice. Mr. Orr further requested to "have my name removed from this complaint." To preserve Mr. Orr's due process rights, his September 29, 2015 letter was considered a request for hearing and answer to the T.O. and Notice.

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On October 14, 2015, by Procedural Order, a hearing was scheduled to commence on March 7, 2016.

On December 29, 2015, the parties, except Mr. Orr, filed a Stipulation Regarding Leave to Amend Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and Regarding Continuing Hearing (the "Stipulation"). As stated in the Stipulation, the Division seeks to amend the T.O. and Notice to add factual allegations arising from the Division's ongoing investigation. The parties, except Mr. Orr, stipulate that the Administrative Law Judge may allow for the Division to amend the T.O. and Notice under A.A.C. R14-3-106(E). The Stipulation further contains a request that the March 7, 2016 hearing be continued to commence on or after May 9, 2016, with a corresponding change of the January 8, 2016 deadline for the exchange of witness lists and copies of exhibits.

With the January 8, 2016 deadline rapidly approaching, good cause exists to grant the requested continuance while allowing the non-stipulating party, Mr. Orr, an opportunity to respond to the stipulated request to grant the Division leave to amend the T.O. and Notice.

IT IS THEREFORE ORDERED that the hearing scheduled on March 7, 2016, is hereby vacated.

IT IS FURTHER ORDERED that the **hearing is rescheduled to commence on May 9, 2016, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix, Arizona**.

IT IS FURTHER ORDERED that **the parties shall also reserve May 10-13, 16-20, and 23-27, 2016, for additional days of hearing**, if necessary.

IT IS FURTHER ORDERED that **the Division and Respondents shall exchange copies of their Witness Lists and copies of the Exhibits by March 10, 2016,** with courtesy copies provided to the presiding Administrative Law Judge.

IT IS FURTHER ORDERED that a **response to the Stipulation may be filed by Mr. Orr. Any such response shall be filed on or before January 13, 2016. If a response is filed, any of the remaining parties may file a reply on or before January 20, 2016.**

IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in the Notice prior to the hearing, the Division shall file a Motion to Vacate the Proceeding.**

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

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules 31, 38 and 39, and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

DATED this 30TH day of December, 2015.

MARK PRENY
ADMINISTRATIVE LAW JUDGE

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Camelback Esplanade II, Seventh Floor
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