

ORIGINAL



0000168354

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

Arizona Corporation Commission

2016 FEB 12 A 8: 21

DOCKETED

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

FEB 11 2016

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

In the matter of:)
KENNETH JOSEPH PLEIN, a married man,)
MARY KATHRYN PLEIN (a.k.a. "MARY KAY)
PLEIN"), a married woman,)
KENNETH JOSEPH PLEIN and MARY)
KATHRYN PLEIN (a.k.a. "MARY KAY)
PLEIN"), Co-Trustees of THE PLEIN FAMILY)
TRUST U/T/A dated DECEMBER 1, 1993,)
PLEIN ENTERPRISES INCORPORATED)
(d.b.a. "TRI-STAR REALTY"), an Arizona)
corporation,)
Respondents.)

DOCKET NO. S- 20774A-10-0494

**SECURITIES DIVISION'S
RESPONSE TO EMERGENCY
APPLICATION FOR LEAVE TO
INTERVENE, MOTION TO
REOPEN DOCKET, AND
MOTION OBJECTING TO
PROPOSED MANNER OF
DISTRIBUTION OF VICTIMS'
RESTITUTION FUNDS**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") responds to the Emergency Application for Leave to Intervene, Motion to Reopen Docket and Motion Objecting to Proposed Manner of Distribution of Victims' Restitution Funds ("Motion") filed by Patricia Peterson, through her personal representative M. Christopher Peterson. As the Motion is based on a lack of understanding of the facts and law, the Division requests that the Administrative Law Judge deny the Motion.

Ms. Peterson filed her Motion on February 1, 2016, apparently in anticipation of a hearing scheduled to be held on February 2, 2016, in Maricopa County Superior Court. The Division realizes that Ms. Peterson felt she had limited time to file a pleading before the hearing was held and thus was unable to undertake a complete investigation of the facts and law. Therefore, counsel for the

1 Division discussed the underlying issues with counsel for Ms. Peterson on February 3, 2016,
2 explained the situation and requested that the Motion be withdrawn as it was not supported by facts
3 or law. The Division's counsel requested that Ms. Peterson's counsel inform the Division of his
4 intentions as to the pleading by February 5. Counsel for Ms. Peterson agreed. On February 9, after
5 not hearing from Ms. Peterson's counsel, counsel for the Division contacted him and asked for a
6 decision as to the pleading. No response was received. Therefore, the Division is now forced to file
7 this Response.

8 The Motion is based on a misunderstanding of the facts and law in this matter. After the
9 Commission obtained its Decision in this matter on March 21, 2011, Respondent Kenneth Plein was
10 prosecuted and convicted of criminal violations in Maricopa County Superior Court CR2012-
11 009415. The restitution amount in that case was the same as the Commission order. Recently, due
12 to outstanding work by the Attorney General's Office, \$4,000,000 was recovered to pay victims.

13 In most cases in which the Attorney General's Office collects restitution on behalf of state
14 agencies, such as the Commission, it deposits 35% of the recovery in the Collection Enforcement
15 Revolving Fund pursuant to A.R.S. § 41-191.03, and transfers the remainder to the Commission to
16 be distributed to victims. Those actions are taken by the Attorney General's Office. The state agency,
17 such as the Commission, has no authority or control over the actions of the Attorney General. Once
18 the Commission receives a transfer from the Attorney General it distributes the restitution funds it
19 receives to the investors. The Commission takes nothing from any recovery and withholds nothing
20 from distribution to victims. Every penny that it receives as restitution goes to the victims. Thus,
21 Ms. Peterson's claim that the Commission is diverting 35% of the recovery to itself, or is seeking to
22 divert funds, is simply wrong as a matter of law.

23 The Motion also states that the Commission participated in an off the record conference in
24 the criminal case to further a scheme to divert funds. Ms. Peterson is wrong. The Commission is not
25 a party to the criminal case and does not participate in the hearings before the Court. The state's
26 interest in that case is represented by the Attorney General's Office. No one from the Commission

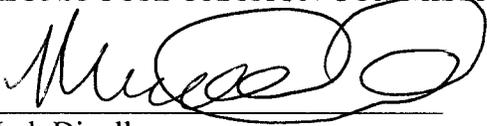
1 attended or participated in such a meeting. Thus the claim that the Commission participated in some
2 meeting to divert investor funds is not only wrong but offensive.

3 It is the Commission's understanding that the Superior Court will be distributing the recovery
4 in this case as criminal restitution and that all distributions will be handled by the Clerk of the Court.
5 See Exhibit A, Minute Entry Order of February 2, 2016, in *State v. Plein*, Case No. CR2012-009415.
6 The funds at issue will not be transferred to the Commission. Any issues regarding the total
7 distribution will be handled by the Court. Therefore, there is nothing for this tribunal to rule upon.

8 In summary, not only was the Commission not going to do the actions Ms. Peterson
9 suggested that it was going to do, namely withhold some investor funds, but the funds themselves
10 will not come under the Commission's control. As Ms. Peterson knew this last week, she could have
11 withdrawn her inaccurate Motion. Since she chose not to do so, the Division hereby requests that
12 the Administrative Law Judge deny the Motion.

13 Dated this 12th day of February, 2016

14 ARIZONA CORPORATION COMMISSION

15 By 
16

17 Mark Dinell

18 Attorney for the Securities Division of
19 the Arizona Corporation Commission
20
21
22
23
24
25
26

1 Original and 6 copies filed this
2 12th day of February, 2016, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington
6 Phoenix, AZ 85007

7 Copy of the foregoing mailed this
8 12th day of February, 2016, to:

9 Thomas K. Irvine
10 Chance Peterson
11 ASU Alumni Law Group
12 Two North Central Av., Suite 1600
13 Phoenix, AZ 85004

14 

15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Exhibit A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-009415-001 DT

02/02/2016

HON. PAMELA GATES

CLERK OF THE COURT
A. Olson
Deputy

STATE OF ARIZONA

SCOTT WAYNE BLAKE
JAMES J CARROLL III
WENDY L COY
CHANCE PETERSON
DONALD J LAWRENCE JR.

v.

KENNETH J PLEIN (001)

MICHAEL SOUCCAR

RFR
VICTIM WITNESS DIV-AG-CCC

STATUS CONFERENCE

9:36 a.m.

Courtroom SCT 5B

State's Attorney: Scott Blake and Don Lawrence
Defendant's Attorney: Michael Souccar
Defendant: Presence Waived

Court Reporter, Treva Colwell, is present.

A record of the proceeding is also made by audio and/or videotape.

LET THE RECORD REFLECT that Chance Peterson is present for the victim Patricia Peterson.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-009415-001 DT

02/02/2016

LET THE RECORD REFLECT that Michelle Watson is present from the Carrol Law Firm.

The Court discloses that her husband has a working and personal relationship with Mr. Brnovich. The State, Defense, and victims waive any conflict and do not request that the Court recuse itself from future proceedings in this case.

Discussion is held regarding Memorandum in Opposition to Manner of Distribution of Victims' Restitution Funds filed 02/01/2016.

With no objection by counsel,

IT IS ORDERED pursuant to A.R.S § 13-804(M) the revision of the payment of restitution pursuant to a court order requiring that \$3 million of restitution received from Mr. Plein's probate matter [372012-00152788 PR PW CTL] shall be distributed immediately to the Maricopa County Clerk of Court for distribution to the victims identified in Addendum 1 of the Plea Agreement in accordance with the distribution formula prepared by the Arizona Corporation Commission which will be provided to the Clerk of Court by 02/03/2016, subject to extension issued by the Court.

THE COURT NOTES that it considers the pleading filed by Attorney Peterson to be a request to modify the restitution payment in a manner in which 100% of the recovery is provided to the victims identified in Addendum 1. Any Response shall be filed by on or before **02/23/2016**. Any Reply is due on or before **03/01/2016**.

IT IS FURTHER ORDERED setting Oral Argument on **03/03/2016 at 9:30 a.m.** before this Division. The parties are reminded that all matters set in this Division are **time certain** as this Court does not have a regular morning calendar. Also be advised that coverage is not available.