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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
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TOM FORESE
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2016 MAR 25 P 1:28

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20938A-15-0308

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

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

Arizona Corporation Commission
DOCKETED

RICHARD C. HARKINS, an unmarried man,

MAR 25 2016

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

DOCKETED IN *[Signature]*

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

BRUCE L. ORR and SUSAN S. ORR, husband and wife,

Respondents.

**SIXTH
PROCEDURAL ORDER
(Grants Motion to Withdraw)**

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 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.

1 The Respondents were duly served with copies of the T.O. and Notice.

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

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

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

8 On September 18, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.R.S.
9 § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307, was filed on behalf of Robert J. Kerrigan by
10 counsel Robert D. Mitchell and Sarah K. Deutsch.

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

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

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

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

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

24 Also on October 2, 2015, George T. Simmons, and the marital community of George T.
25 Simmons and Janet B. Simmons, filed an Answer to the Temporary Order to Cease and Desist and
26 Notice of Opportunity for Hearing.

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

1 the answer of Barcelona Advisors and Barcelona Land Company.

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

7 On October 14, 2015, by Procedural Order, a hearing was scheduled to commence on March 7,
8 2016.

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

18 On December 30, 2015, by Procedural Order, the hearing scheduled to commence on March 7,
19 2016, was vacated and rescheduled to commence on May 9, 2016. Mr. Orr was given until January
20 13, 2016, to file a response to the Stipulation.

21 On January 20, 2016, by Procedural Order, the Division was granted leave to amend the T.O.
22 and Notice, pursuant to A.A.C. R14-3-106(E).

23 On January 25, 2016, the Division filed an Amended Temporary Order to Cease and Desist and
24 Notice of Opportunity for Hearing ("Amended T.O. and Notice"). Among other changes, the Amended
25 T.O. and Notice added Susan S. Orr as a respondent. The spouse of Bruce L. Orr, Susan S. Orr is
26 joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability
27 of the marital community (collectively, Ms. Orr and Ms. Simmons may be referred to as "Respondent
28 Spouses"). The Respondents were duly served with copies of the Amended Temporary Order to Cease

1 and Desist and Notice of Opportunity for Hearing.

2 On February 1, 2016, Respondent Kerrigan filed a Request for Hearing, pursuant to A.R.S. §
3 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307. Mr. Kerrigan also filed an Answer to the
4 Amended Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

5 On February 22, 2016, the Simmonses filed a Request for Hearing pursuant to A.A.C. R14-4-
6 306 and R-14-4-307.

7 On March 7, 2016, Respondent George T. Simmons filed an Answer to the Amended
8 Temporary Order to Cease and Desist and Notice of Opportunity for Hearing.

9 On March 10, 2016, Respondent Kerrigan filed a List of Witnesses and Exhibits.

10 On March 14, 2016, Respondent George T. Simmons “for himself and the marital community
11 with his wife Janet B. Simmons,” filed a List of Witnesses and Documentary Evidence.

12 On March 15, 2016, Respondent Harkins filed an Answer to the Amended Temporary Order to
13 Cease and Desist and Notice of Opportunity for Hearing. Mr. Harkins also filed a list of Witnesses and
14 Exhibits.

15 On March 21, 2016, attorneys Robert D. Mitchell and Sarah K. Deutsch, and the law firm of
16 Tiffany & Bosco, P.A., (collectively “Kerrigan Counsel”) filed a Motion to Withdraw as Counsel for
17 Respondent Kerrigan, pursuant to Ariz. R. Civ. P. 5.1. Kerrigan Counsel contends that Respondent
18 Kerrigan “has failed to comply with his financial commitments to counsel and therefore good cause
19 exists for counsel to be permitted to withdraw.” Kerrigan Counsel states that Mr. Kerrigan has been
20 advised of the scheduled hearing dates.

21 Also on March 21, 2016, the Division filed its Response to Motion to Withdraw as Counsel.
22 The Division notes that Ariz. R. Civ. P. 5.1 does not apply in these proceedings as withdrawal is
23 governed by A.A.C. R14-3-104(E). The Division states that it does not object to the Motion to
24 Withdraw as Counsel provided that the withdrawal does not affect the scheduling of the hearing.

25 IT IS THEREFORE ORDERED that the Motion to Withdraw as Counsel filed by Kerrigan
26 Counsel is hereby granted, good cause having been established for the withdrawal of Robert D.
27 Mitchell, Sarah K. Deutsch, and the law firm of Tiffany & Bosco, P.A. as counsel for Respondent
28 Kerrigan.

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

4 IT IS FURTHER ORDERED that the parties shall also reserve May 10-13, 16-20, and 23-
5 27, 2016, for additional days of hearing, if necessary.

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

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

11 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
12 31, 38 and 39, and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

22 DATED this 25TH day of March, 2016.

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25 
26 MARK PRENY
27 ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
this 25th day of March, 2016, to:

2 Robert D. Mitchell
3 Sarah K. Deutsch
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