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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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AZ CORP COMMISSION
DOCKET CONTROL

in the matter of:

ROBERT J. MOSS AND JENNIFER L. MOSS,
husband and wife,

THE FORTITUDE FOUNDATION, an Arizona
corporation,

VENTURES 7000, LLC, an Oklahoma limited
liability company,

JEFFREY D. McHATTON AND STARLA T.
McHATTON, husband and wife,

ROBERT D. SPROAT AND JANE DOE SPROAT,
husband and wife,

KEVIN KRAUSE, a single man, and

VERNON R. TWYMAN, JR., a single man,

Respondents.

DOCKET NO. S-20953A-16-0061

Arizona Corporation Commission

DOCKETED

MAY 03 2016

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FIFTH
PROCEDURAL ORDER
(Reschedules Pre-Hearing Conference)

BY THE COMMISSION:

On February 23, 2016, the Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) filed a Temporary Order to Cease and Desist (“T.O.”) and a Notice of Opportunity for Hearing (“Notice”) against Robert J. Moss and Jennifer L. Moss, husband and wife, The Fortitude Foundation (“TFF”), an Arizona Corporation, Ventures 7000, LLC (“Ventures”), an Oklahoma limited liability company, Jeffrey D. McHatton and Starla T. McHatton, husband and wife, Robert D. Sproat and Jane Doe Sproat, husband and wife, Kevin Krause, a single man, and Vernon R. Twyman, Jr., a single man, (collectively “Respondents”), in which the Division alleged multiple violations of the Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of interests, stock and promissory notes. Respondent spouses, Jennifer L. Moss, Starla T.

1 McHatton and Jane Doe Sproat, were joined in the action solely for the purpose of determining the
2 liability of the irrespective marital communities pursuant to A.R.S. 44-2031(C).

3 On March 24, 2016, counsel for the McHatton and TFF Respondents filed a request for hearing
4 in this matter. The McHatton and TFF Respondents, with the agreement of the Division, also filed a
5 Stipulation that extended the date for the filing of their Answer to April 11, 2016.

6 On March 31, 2016, by Procedural Order, a pre-hearing conference was scheduled on April 20,
7 2016.¹

8 Additionally, on March 31, 2016, the Moss Respondents filed a request for hearing and further
9 requested 30 days to retain counsel and to file an Answer to the T.O. and Notice.²

10 On April 4, 2016, by Procedural Order, it was found that ample time would be available for the
11 Moss Respondents to retain counsel and that the pre-hearing conference could go forward on April 20,
12 2016, as previously ordered.

13 On April 6, 2016, the Division filed a response to the request for a 30 day delay by the Moss
14 Respondents. Therein, the Division noted the McHattons and TFF were represented by attorneys who
15 had earlier indicated their representation of those parties in their request for hearing filed on March 24,
16 2016.

17 It was further noted by the Division that the Moss Respondents had been served on March 10,
18 2016, and the Division objected to the lengthy delay requested by the Moss Respondents to file their
19 Answer. Instead the Division proposed only a 10 day extension from the current due date of April 11,
20 2016 to April 21, 2016.

21 On April 8, 2016, by Procedural Order, the Moss Respondents were ordered to file their Answer
22 by April 29, 2016.

23 On April 11, 2016, the Answers of the McHatton and TFF Respondents were filed.

24 On April 20, 2016, at the initial pre-hearing conference, counsel for the Division and counsel
25 for the McHattons and TFF Respondents appeared. Neither of the Moss Respondents appeared and
26 counsel was not present on their behalf. After a brief discussion, it was learned that the Moss
27

28 ¹ As of the date of the First Procedural Order, the following Respondents had been duly served with copies of the T.O. and Notice: the Mosses; Ventures; the McHattons; TFF; and Kevin Krause.

² The Moss Respondents, in their request for a hearing, appeared to also request similar relief for TFF.

1 Respondents had inadvertently not been added to the proceeding's service list and that they did not
2 receive notice of the pre-hearing that had originally been scheduled on April 20, 2016.

3 On April 21, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May
4 18, 2016, with notice provided to all parties who had requested a hearing or their attorney of record.

5 On April 29, 2016, the Division and the McHatton and TFF Respondents filed a Joint Motion
6 to reschedule the pre-hearing conference scheduled on May 18, 2016. Counsel for the parties cited
7 conflicting matters and suggested alternate dates for the proceeding to be rescheduled on May 24th, 25th
8 or 26th, 2016.

9 Additionally, on April 28, 2016, the Moss Respondents filed their Answer.

10 Accordingly the pre-hearing conference should be rescheduled.

11 IT IS THEREFORE ORDERED the **pre-hearing conference** shall be rescheduled and shall be
12 held on **May 25, 2016, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street,
13 **Hearing Room No. 2**, Phoenix, Arizona.

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

17 IT IS FURTHER ORDERED that all parties must comply with Rules 31, 38, 39 and 42 of the
18 Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and
19 admission *pro hac vice*.

20 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to this
21 matter may opt to receive service of all filings in this docket, including all filings by parties and all
22 Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the
23 Commission's Hearing Division, via email sent to an email address provided by the party rather than
24 via U.S. Mail. To exercise this option, a party shall:

- 25 1. Ensure that the party has a valid and active email address to which the party has regular
26 and reliable access ("designated email address");
- 27 2. Complete a Consent to Email Service using the form available on the Commission's
28 website (www.azcc.gov) or a substantially similar format;

- 1 3. File the original and 13 copies of the Consent to Email Service with the Commission's
- 2 Docket Control, also providing service to each party to the service list;
- 3 4. Send an email, containing the party's name and the docket number for this matter, to
- 4 HearingDivisionServicebyEmail@azcc.gov from the designated email address, to allow
- 5 the Hearing Division to verify the validity of the designated email address;
- 6 5. Understand and agree that service of a document on the party shall be complete upon
- 7 the sending of an email containing the document to the designated email address,
- 8 regardless of whether the party receives or reads the email containing the document;
- 9 and
- 10 6. Understand and agree that the party will no longer receive service of filings in this
- 11 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless
- 12 and until the party withdraws this consent through a filing made in this docket.

13 IT IS FURTHER ORDERED that a party's consent to email service shall not become effective
14 until a Procedural Order is issued approving the use of email service for the party. The Procedural
15 Order shall be issued only after the party has completed steps 1 through 4 above, and the Hearing
16 Division has verified receipt of an email from the party's designated email address.

17 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this matter
18 via email does not change the requirement that all filings with the Commission's Docket Control must
19 be made in hard copy and must include an original and 13 copies.

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

26 ...

27 ...

28 ...

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

4 DATED this 3rd day of May 2016.

5
6 
7 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered
9 this 3rd day of May 2016 to:

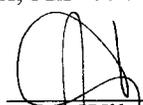
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