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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

DOUG LITTLE – Chairman
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2016 JUL 14 A 8: 54

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE.

DOCKET NO. S-20953A-16-0061

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

Arizona Corporation Commission

DOCKETED

JUL 14 2016

DOCKETED BY *JK*

EIGHTH
PROCEDURAL ORDER
(Grants Motion)

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 McHatton's 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 On May 3, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May 25,
11 2016.

12 On May 5, 2016, counsel for the McHatton and TFF Respondents filed an Application to
13 Withdraw ("Application") as their counsel of record. Counsel indicated that the Application was being
14 made without the consent of their clients. Counsel further indicated that "conflicts" required their
15 withdrawal from the proceeding. It was also indicated that the McHatton and TFF Respondents had
16 been advised of all dates pending in the proceeding.

17 On May 6, 2016, a request for hearing was filed for Ventures by its manager, Vernon R.
18 Twyman, Jr., another named Respondent who has apparently not yet been served.

19 On May 10, 2016, the Division filed its response to counsel's Application and stated that the
20 Division did not oppose the Application.

21 On May 12, 2016, by Procedural Order, the Application by counsel for the McHatton and TFF
22 Respondents was granted.

23 On May 25, 2016, at the pre-hearing conference, the Division appeared with counsel.
24 Respondents Robert Moss, Jeffery McHatton and Starla McHatton appeared on their own behalf.
25 Several Respondents remain to be served and Respondent Krause who was served has not requested a
26 hearing. The Division indicated that would soon amend the Notice and requested that a hearing be
27 scheduled.

28

1 On July 1, 2016, by Procedural Order, a hearing was scheduled on September 19, 2016. As
2 indicated at the pre-hearing conference, the Division filed a Motion for Leave to File Amended
3 Temporary Order and Notice (“Motion for Leave”).

4 There have been no responses filed to the Division’s Motion for Leave.

5 Accordingly, the Division’s Motion for Leave should be granted.

6 IT IS THEREFORE ORDERED that the Division’s Motion for Leave to File Amended
7 Temporary Order and Notice is hereby granted.

8 IT IS FURTHER ORDERED that a **hearing shall be held on September 19, 2016, at 10:00**
9 **a.m.**, at the Commission’s offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,
10 Arizona, as previously ordered.

11 IT IS FURTHER ORDERED **that the parties shall also set aside September 20, 21, 22, 26,**
12 **27, 28, 29, October 4, 5, and 6, 2016, for additional days of hearing**, if necessary.

13 IT IS FURTHER ORDERED that **the Division and Respondents shall exchange copies of**
14 **their Witness Lists and copies of Exhibits by August 5, 2016**, with courtesy copies provided to the
15 presiding Administrative Law Judge.

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

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

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

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

- 1 **1. Ensure that the party has a valid and active email address to which the party has**
2 **regular and reliable access (“designated email address”);**
- 3 **2. Complete a Consent to Email Service using the form available on the**
4 **Commission’s website (www.azcc.gov) or a substantially similar format;**
- 5 **3. File the original and 13 copies of the Consent to Email Service with the**
6 **Commission’s Docket Control, also providing service to each party to the service**
7 **list;**
- 8 **4. Send an email, containing the party’s name and the docket number for this matter,**
9 **to HearingDivisionServicebyEmail@azcc.gov from the designated email address,**
10 **to allow the Hearing Division to verify the validity of the designated email address;**
- 11 **5. Understand and agree that service of a document on the party shall be complete**
12 **upon the sending of an email containing the document to the designated email**
13 **address, regardless of whether the party receives or reads the email containing the**
14 **document; and**
- 15 **6. Understand and agree that the party will no longer receive service of filings in this**
16 **matter through First Class U.S. Mail or any other form of hard-copy delivery,**
17 **unless and until the party withdraws this consent through a filing made in this**
18 **docket.**

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

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

26 **IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance**
27 **with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the**
28 **Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at**

1 all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled
2 for discussion, unless counsel has previously been granted permission to withdraw by the
3 Administrative Law Judge or the Commission.

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

7 DATED this 14TH day of July 2016.

8 
9 _____
10 MARC E. STERN
11 ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 14th day of July 2016 to:

14 Jeffrey D. McHatton
15 Starla T. McHatton
16 The Fortitude Foundation
17 P.O. Box 1983
18 Higley, AZ 85236

19 Robert J. Moss
20 Jennifer L. Moss
21 125 West Baylor Lane
22 Gilbert, Arizona 85233

23 Vernon R. Twyman, Jr., Manager
24 Ventures 7000, LLC
25 11063D S. Memorial Drive
26 Suite 320
27 Tulsa, OK 74133

28 Matt Neubert, Director
29 Securities Division
30 ARIZONA CORPORATION COMMISSION
31 1200 West Washington Street
32 Phoenix, Arizona 85007

33 By: 
34 _____
35 Amy Wilson
36 Assistant to Marc E. Stern