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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

DOCKET CONTROL

COMMISSIONERS

2016 AUG 5 PM 4 43

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

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

Respondents.

DOCKET NO. S-20938A-15-0308

SECURITIES DIVISION'S RESPONSE TO GEORGE. T. SIMMONS AND JANET B. SIMMONS' MOTION TO MAINTAIN JUDGE PRENY'S ORDER THAT ALL RESPONDENT'S POSTHEARING BRIEFS BE FILED SIMULTANEOUSLY

Arizona Corporation Commission
DOCKETED
 AUG 05 2016

DOCKETED BY *[Signature]*

On August 5, 2016, Respondents George T. Simmons and Janet B. Simmons (collectively, "the Simmons") filed a Motion to Maintain Judge Preny's Order that All Respondent's Posthearing Briefs Be Filed Simultaneously. The Simmons argue that because of Mr. Harkins' medical grounds for a two week extension of his briefing deadline, all of the Respondents should receive the same two week extension. However, the Simmons have failed to establish good cause for the other Respondents to receive such an extension. See A.A.C. R14-3-109(Q) (continuance upon showing of good cause).

The Respondents do not need and are not entitled to simultaneous submission of their briefs. The Simmons have not argued any reason that they would be prejudiced if Mr. Harkins files his brief

1 two weeks after theirs. There is no reason to think Mr. Harkins would be able to take any unfair
2 advantage of the situation. In fact, Mr. Harkins' stated repeatedly during the hearing that he
3 supported the Simmons' theory of defense that Mr. Simmons was not a control person of USA
4 Barcelona Realty Advisors, LLC.

5 The Securities Division ("Division"), however, would be highly prejudiced by such an
6 extension. The proposed extended briefing deadline would be August 22, 2015, and if the Division
7 is allowed a two-week period for its reply briefs, then the reply briefs would be due September 6,
8 2016 (the day after Labor Day on September 5, 2016). But September 6, 2016, is also the deadline
9 for Division's counsel ("Counsel") to file the Division's reply brief for the Shadow Beverages and
10 Snacks, LLC case, Docket No. S-20948A-15-0422. In addition, Counsel will be out of state on
11 vacation from August 24–26, 2016, a vacation that was scheduled to fall after the Division's reply
12 brief deadline in this case of August 23, 2016. As a result, if the Respondents' briefing deadline is
13 extended to August 22, 2016, and the Division's reply brief deadline is extended to September 6,
14 2015, then Counsel will have approximately seven business days to prepare reply briefs for two
15 different hearings involving five different non-spouse Respondents.¹ Granting the Division a longer
16 period for its reply briefs would not cure this prejudice either. Counsel is scheduled for hearing in
17 the LoanGo Corporation case, Docket No. S-20932A-15-0220, on September 12, 2016.

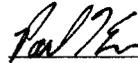
18 Because the Simmons have not established good cause to extend their briefing deadline, and
19 because extending all of the Respondents' briefing deadlines would significantly prejudice the
20 Division, the Simmons' motion should be denied. Instead, if Mr. Harkins' brief somehow takes
21 advantage of his extended deadline in a way that prejudices the other Respondents, they should later
22 request leave to file sur-reply briefs that address such issues.

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25 ¹ Counsel stipulated to the extension of Mr. Harkins' briefing deadline despite this scheduling burden because Mr.
26 Harkins' medical reason was very compelling and because Counsel would be able to reply to the other Respondents'
briefs according to the original schedule. Extending only Mr. Harkins' deadline is a modest burden. Extending all of
the Respondents' deadlines is a substantial burden.

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RESPECTFULLY SUBMITTED this 5th day of August, 2016.

ARIZONA CORPORATION COMMISSION

By:  _____

Paul Kitchin
Attorney for the Securities Division of the
Arizona Corporation Commission

1 On this 5th day of August, 2016, the foregoing document was filed with Docket Control as a
2 Securities Division Response to Motion, and copies of the foregoing were mailed on behalf of the
3 Securities Division to the following who have not consented to email service. On this date or as
4 soon as possible thereafter, the Commission's eDocket program will automatically email a link to
5 the foregoing to the following who have consented to email service.

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