

ORIGINAL



0000172518

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

AUG 10 2016

DOCKETED BY *[Signature]*

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,

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.

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 AUG 10 A 9:34

**SEVENTH
PROCEDURAL ORDER
(Grants Motion to Continue, Denies
Motion for Simultaneous Filing,
Grants Consent to Email Service)**

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," and collectively, Mr. Orr and Ms. Orr may be referred to as the "Orrs"). The Respondents

1 were duly served with copies of the Amended Temporary Order to Cease and Desist and Notice of
2 Opportunity for Hearing.

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

6 On February 22, 2016, the Simmonses filed a Request for Hearing pursuant to A.A.C. R14-4-
7 306 and R-14-4-307.

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

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

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

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

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

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

26 On March 25, 2016, by Procedural Order, the Motion to Withdraw Robert D. Mitchell, Sarah
27 K. Deutsch, and the law firm of Tiffany & Bosco, P.A. as counsel for the Respondent Kerrigan was
28 granted.

1 On April 4, 2016, the Simmonses filed a Supplemental List of Witnesses and Documentary
2 Evidence.

3 On April 28, 2016, the Division filed a Motion to Set Deadline for Objections to Potential
4 Conflicts. The Division requested that any Respondents objecting to representation of the Simmonses
5 by counsel, who had previously represented USA Barcelona Realty Advisors, LLC, and USA
6 Barcelona Hotel Land Company, LLC, be required to immediately file any such objection.

7 On May 2, 2016, Respondent Bruce Orr filed a Motion to Suspend Hearing May 11, 2016
8 Afternoon through May 13, 2016. Mr. Orr requested that the hearing be suspended on these days
9 because of a Public Planning Commission meeting that he needed to attend in Rohnert Park, California.

10 On May 4, 2016, the Division filed an Opposition to Bruce Orr's Motion to Suspend Hearing
11 May 11, 2016 Afternoon through May 13, 2016. The Division contended that its planned witness
12 presentation would be significantly inconvenienced and Mr. Orr had failed to establish good cause for
13 the requested delay.

14 On May 9, 2016, a full public hearing was convened before a duly authorized Administrative
15 Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. The Division and the
16 Simmonses were represented by counsel. Mr. Harkins, Mr. Kerrigan and Mr. Orr appeared on their
17 own behalf. Additional days of hearing were held on May 10, 11, 16, 17, 18, and 19, 2016. At the
18 conclusion of the hearing, the matter was taken under advisement and a schedule for the filing of post-
19 hearing briefs was established whereby the Division would file a post-hearing brief by July 8, 2016,
20 the Respondents would file post-hearing briefs by August 8, 2016, and the Division would file reply
21 briefs by August 23, 2016.

22 On July 8, 2016, the Division filed its Post-Hearing Brief.

23 On July 11, 2016, the Division filed an Amended Post-Hearing Brief. The Amended Post-
24 Hearing Brief noted that it corrected the brief to reflect that Mr. Kerrigan, Mr. Simmons and Mr. Orr
25 were not control persons at the time of the first investment in USA Barcelona Realty Advisors, LLC.

26 On August 5, 2016, the Division filed a Consent to Email Service.

27 The Division has opted to receive service of all filings in this docket, including all filings by
28 parties and all Procedural Orders and Recommended Opinions and Orders/Recommended Orders

1 issued by the Commission's Hearing Division, via its designated email addresses rather than via U.S.
2 Mail. The Division has exercised this option by docketing a hard copy of its Consent to Email Service,
3 and by sending an email containing its name and the docket number for this matter to
4 HearingDivisionServicebyEmail@azcc.gov from its designated email address. The Hearing Division
5 has verified the validity of its designated email address, which now appears on the service list for this
6 matter in addition to its address for U.S. Mail. In addition, courtesy email addresses appear for delivery
7 of courtesy emails to other individuals associated with the Division.

8 Also on August 5, 2016, the Division filed a Response to George T. Simmons and Janet B.
9 Simmons' Motion to Maintain Judge Preny's Order that All Respondents' Posthearing Briefs be Filed
10 Simultaneously ("August 5 Response"). The Division argued that while Mr. Harkins presented a
11 compelling medical reason for stipulating to an extension of his briefing deadline, the other
12 Respondents have not established good cause for an extension. At the time of this filing, neither a
13 stipulation as to Mr. Harkins' extension, nor a motion from the Simmonses had been filed. The Hearing
14 Division did receive an email containing a copy of the stipulation and the Simmonses' motion on
15 August 5, 2016.

16 On August 9, 2016, Mr. Harkins and the Division filed a Stipulated Motion to Continue,
17 requesting that the due date of Mr. Harkins' post-hearing brief be extended to August 22, 2016.

18 Also on August 9, 2016, the Simmonses filed a Response to the Stipulated Motion to Continue
19 and Motion that all Respondents' Posthearing Briefs Be Filed Simultaneously. The Simmonses stated
20 that they do not object to the Stipulated Motion to Continue provided that all Respondents be allowed
21 to submit their briefs simultaneously on the same date. The Simmonses argued that allowing Mr.
22 Harkins to file his brief after the other Respondents would unfairly allow him to benefit from the
23 opportunity to consider the arguments of others in shaping his brief.

24 Further on August 9, 2016, the Simmonses filed a Reply to the Division's August 5 Response.
25 The Simmonses contended that the Division ignores the real possibility of prejudice posed by non-
26 simultaneous filings and that the schedule of Division counsel does not pose a hardship in preparing
27 reply briefs.

28 Additionally, on August 9, 2016, Mr. Orr filed his post-hearing brief.

1 Also on August 9, 2016, the Simmonses filed their post-hearing brief.

2 The Stipulated Motion to Continue the filing deadline for Mr. Harkins has been opposed by the
3 Simmonses unless a simultaneous filing of motions be ordered. However, the Simmonses and Mr. Orr
4 have already filed their briefs contemporaneously with the filing of the Simmonses' motion.
5 Accordingly, the issue of simultaneous filing for all Respondents has been rendered moot. Good cause
6 has been established for the extension request for Mr. Harkins. Mr. Kerrigan has failed to file a post-
7 hearing brief or to request an extension of time, and he is therefore deemed to stand on his closing
8 statement in lieu of presenting a brief.

9 The Consent to Email Service filed by the Division should be granted.

10 IT IS THEREFORE ORDERED that the **Stipulated Motion to Continue the filing of Mr.**
11 **Harkins' post-hearing brief is granted. Mr. Harkins shall file his post-hearing brief by August**
12 **22, 2016.**

13 IT IS FURTHER ORDERED that the **Division shall file a reply brief to Mr. Harkins' brief**
14 **by September 6, 2016. The Division's replies to the post-hearing briefs of Mr. Orr and the**
15 **Simmonses shall remain due on August 23, 2016.**

16 IT IS FURTHER ORDERED that the Simmonses' Motion that all Respondents' Posthearing
17 Briefs Be Filed Simultaneously is denied as moot.

18 IT IS FURTHER ORDERED that the request by the Division to receive service of all filings in
19 this docket, including all filings by parties and all Procedural Orders and Recommended Opinions and
20 Orders/Recommended Orders issued by the Commission's Hearing Division, via its respective
21 designated email address rather than via U.S. Mail, is hereby approved.

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

25 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
26 31, 38, 39, and 42, and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

27 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
28 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona

1 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
2 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
3 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
4 Law Judge or the Commission.

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

8 DATED this 10th day of August, 2016.

9
10
11 
12 MARK PRENY
ADMINISTRATIVE LAW JUDGE

13 On this 10th day of August, 2016, the foregoing document was filed with Docket Control as a
14 Procedural Order – Miscellaneous, and copies of the foregoing were mailed on behalf of the Hearing
15 Division to the following who have not consented to email service. On this date or as soon as possible
thereafter, the Commission’s eDocket program will automatically email a link to the foregoing to the
following who have consented to email service

16 Robert J. Kerrigan
17 8062 East Del Tornasol Drive
18 Scottsdale, AZ 85258

Bruce L. Orr
Susan S. Orr
3757 Falcon Avenue
Long Beach, CA 90807

18 Richard C. Harkins
19 4422 East Lupine Avenue
20 Phoenix, AZ 85028

Matthew Neubert, Director
Securities Division
ARIZONA CORPORATION COMMISSION
1300 West Washington Street
Phoenix, AZ 85007
pkitchin@azcc.gov
wcoy@azcc.gov
kh@azcc.gov

20 Charles R. Berry
21 Stanley R. Foreman
22 CLARK HILL, PLC
23 14850 N. Scottsdale Road, Suite 500
24 Scottsdale, AZ 85254
25 Attorneys for George T. Simmons and Janet B.
26 Simmons

Consented to Service by Email

25 By: 
26 Rebecca Tallman
27 Assistant to Mark Preny
28