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BEFORE THE ARIZONA CORPORATION COMMISSION

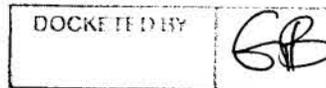
COMMISSIONERS

Arizona Corporation Commission

8 **DOUG LITTLE- Chairman**
 9 **BOB STUMP**
 10 **BOB BURNS**
 11 **TOM FORESE**
 12 **ANDY TOBIN**

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DEC 09 2016



11 In the matter of:
 12 **COLLEEN ELLIS,**
 13 **husband and wife,**

DOCKET NO. S-20949A-16-0002

**POST HEARING MEMORANDUM
 OF COLLEEN ELLIS**

14 **OAK CAPITAL PARTNERS, LLC, an**
 15 **Arizona limited liability company,**
 16 **Respondents,**

17 Respondent, Colleen Ellis, through counsel, submits her memorandum with respect to
 18 the hearing held September 12, 2016.

19 **RESPECTFULLY SUBMITTED** this 9th day of December 2016.

20 **DEBUS, KAZAN & WESTERHAUSEN, LTD.**

21 By 
 22 **Lawrence I. Kazan**
 23 **Attorneys for Colleen Ellis**

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1 **I. Introduction**

2 Colleen Ellis had the misfortune of marrying Bart Ellis who has apparently, without Mrs.
3 Ellis' knowledge, taken financial advantage of a number of clients in a business that was his
4 sole and separate property. This was evidenced by his filing for bankruptcy in the state of
5 Illinois. This was a business that he transferred to the state of Arizona but funded
6 predominantly with monies provided by his clients in the state of Illinois.

7 Colleen Ellis has now dissolved the relationship with her husband. The termination
8 became final in October of 2016. Colleen Ellis did not participate in her husbands business in
9 any way, shape, or form. There has been no evidence provided indicating she had any
10 awareness of his conduct that violated the law. For these reasons, she will not address the
11 conduct of Bart Ellis. He chose not to participate in these proceedings, possibly because he is
12 fearful of criminal prosecution.

13 What is to be addressed, however, is the wrongfulness of the Securities Division's
14 request that she be held financially accountable for the wrong doing of her husband, both in
15 restitution and penalty assessments solely because she had the circumstance of being his wife
16 during the time he committed his wrongful acts.

17 **II. Argument**

18 It is important to note that at no time during the presentation of the Securities Division's
19 case was evidence introduced to show that Colleen Ellis knew about or consented to her
20 husbands illegal and tortious conduct.

21 Prior to moving to Arizona, Ellis filed for Bankruptcy protection (R.T. at 66). He did so
22 for himself because Illinois is not a community property State (R.T. at 67). The bankruptcy
23 involved Mr. Ellis's sole and separate obligations including the business he eventually
24 transferred to Arizona as Oak Capital Partners. Bart Ellis was the only person listed for the
25 company. (R.T. at 67). He had no other partners (R.T. at 68).

26 The investigation revealed he had no joint bank accounts with Colleen Ellis (R.T. at 68).
27 This was evidence of an intent to keep their financial arrangements sole and separate. The
28 investigation found no bank accounts used by both and there was no mention of Colleen Ellis

1 in any business documents (R.T. at 69-71). The investigation revealed no participation in the
2 business of Oak Capital Partners by Colleen Ellis (R.T. at 72-73). On the other hand, Colleen
3 Ellis maintained sole and separate employment (R.T. at 74).

4 All of the clientele of Oak Capital Partners, Stone, Miller, Richter, and Gelhar were all
5 clients of Ellis in Illinois where he was properly licensed working at Ameriprise or Merrill
6 Lynch (R.T. at 74). During the time that Ellis worked with Mrs. Miller, it appeared to her that
7 all dealings were performed in Chicago (R.T. at 157). She believed he was still working with
8 Merrill Lynch and was living in Chicago (R.T. at 156-157). In fact, when they did business with
9 each other, it would be an in person meeting halfway at a local restaurant (R.T. at 156). She
10 believed he was investing in CD's, but had nothing in writing to confirm that arrangement (R.T.
11 at 158).

12 The Securities Division relies on the presumption that a debt incurred by a spouse during
13 marriage is presumed to be a community obligation. *Hrudka v. Hrudka* 186 AZ 84 919 P 2d 179
14 (1995). While a spouse may contract debt and act for the benefit of the community (A.R.S. § 25-
15 215 D), the obligations in the present matter were not contracted for in any way, shape or form.
16 To the contrary, the allegation against Ellis and HIS company, Oak Capital Partners, are tortious
17 in nature to which Colleen Ellis was not a party. She is not listed on the business formation
18 paperwork of the company and was never a signer on any of the company bank accounts.

19 There is no presumption of community liability if the act is based on the alleged tortious
20 conduct, *Selby v. Savard* 134 AZ 222 (1982). In the area intentional torts the community is not
21 liable for one spouses malicious acts unless it specifically shows the other spouse consented to
22 it, *Garrett v. Shannon* 13 Ariz App 323 (1970).

23 The statute cited by the Securities Division as its authority to hold Colleen Ellis
24 accountable is also misplaced. A.R.S § 25-215(D) provides:

25 "Except as prohibited in section 25-214, either spouse may contract debts and otherwise
26 act for the benefit of the community. In an action on such a debt or obligation the
27 spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the
28 community property, and second, from the separate property of the spouse contracting
the debt or obligation."

1 When the investigation began in this matter, the Ellis's were not living together (R.T at
2 65) and at the time of the hearing a dissolution of marriage proceeding was pending (R.T. at
3 66).

4 The marriage between the Ellis's was dissolved by decree entered in the Maricopa
5 County Superior Court, cause number FC2016-091457, in October of 2016, after this hearing
6 was conducted. There are no community assets remaining. The statute cited by the division
7 directs as a result the separate property of the spouse (Mr. Ellis) contracting the debt or
8 obligation is to be used to pay same.

9 Some of the monies received by Ellis through Oak Capital may have been used toward
10 community obligations (R.T. at 76). However, the fact that some funds were used for this
11 purpose does not automatically create a presumption that all funds were so used. The Securities
12 Division pointed out that some rent, surgery, and car payments were made but these amounts
13 don't come anywhere near the amounts improperly obtained by Bart Ellis.

14 \$1,122,000.00 or so was invested by clients. Of that amount, \$707,000.00 went into
15 Interactive Brokers, an online trading account (R.T. at 110-111). These funds were eventually
16 lost through market fluctuations. Certainly this amount shouldn't be considered as part of the
17 funds used for the benefit of the marital community. Another \$120,000.00 at least was dispersed
18 in unidentifiable means so it was not determined where the funds went (R.T. at 106-107).
19 \$134,000.00 of the funds were untraceable (R.T. at 111-112), \$67,000.00 went to ATM
20 withdrawal, \$23,000.00 went to Bart Ellis, and \$17,000.00 went to cashed counter checks (R.T.
21 at 113).

22 The point is that of the \$1,122,00.00, nearly 3/4 went to unidentifiable sources or was
23 lost in online trades. Again, it can't be concluded these funds were used for the benefit of the
24 marital community.

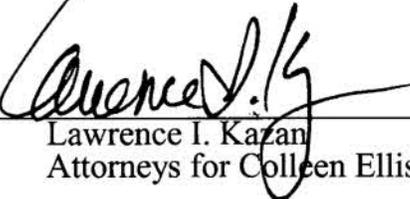
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III. Conclusion

The Securities Division has not demonstrated the investor funds were used for the benefit of the marital community. The request to penalize the marital community is moot because the parties marriage was dissolved in October 2016. As a result, any and all assessment should be solely against Bart Ellis, Oak Capital Partners, and his sole and separate property pursuant to A.R.S. § 25-215(D).

RESPECTFULLY SUBMITTED this 9th day of December 2016.

DEBUS, KAZAN & WESTERHAUSEN, LTD.

By 
Lawrence I. Kazan
Attorneys for Colleen Ellis

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ORIGINAL and 9 COPIES of the foregoing filed
this 9th day of December 2016 to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

A **COPY** of the foregoing mailed
this 9th day of December 2016 to:

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Arizona Corporation Commission
1300 West Washington Street
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