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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

DOCKETED

TOM FORESE - Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

JAN 23 2017

DOCKETED BY

In the matter of:)
)
Visionary Business Works, Inc., d/b/a Fleetronix,)
an Arizona corporation,)
)
Robert Brian Brauer and Melissa Brauer, husband)
and wife,)
)
Timothy John Wales and Stacey Wales, husband)
and wife,)
)
)
Respondents.)

DOCKET NO. S-20976A-16-0210
**SECURITIES DIVISION'S RESPONSE
TO RESPONDENTS BRAUERS'
MOTION TO DEPOSE**

The Securities Division ("Division") respectfully requests that Respondents Robert Brian Brauer ("Brauer") and Melissa Brauer's (collectively "the Brauers") Motion to Depose Visionary Business Works, Inc., Respondents Timothy John Wales and Stacey Wales, and Persons Identified in the Commission's Pleadings as J.C., J.D.L.C., J.W.W., and T.W. ("Motion") be denied.

The Brauers' motion requests an order permitting prehearing depositions of Visionary Business Works, Inc. ("Visionary") and six individuals, namely Timothy John Wales ("Tim Wales") and Stacey Wales (collectively "the Wales"), and investors J.C., J.D.L.C., J.W.W., and T.W. The Administrative Procedure Act provides that a hearing officer may order prehearing depositions, "... provided that the party seeking such discovery demonstrates that the party has reasonable need of the deposition testimony" A.R.S. § 41-1062(A)(4). The Brauers also cite "general due process principles" as grounds to be granted the requested depositions. However, due process does not require prehearing discovery in administrative proceedings. See Silverman v. Commodity Futures Trading Com'n, 549 F.2d 28, 33 (7th Cir. 1977) ("There is no basic constitutional right to pretrial discovery in administrative

1 proceedings.”). The Brauers’ motion should be denied because they have not demonstrated a reasonable
2 need for the requested prehearing depositions.

3 The Brauers have not shown a reasonable need for prehearing depositions of Tim Wales, Stacey
4 Wales, or Visionary. The Brauers list six topics of testimony that they seek from the Wales, but the
5 Brauers already have access to testimony from the Wales on those topics. The Division has produced
6 to the Brauers the hearing exhibits, including transcripts of examinations under oath of Tim Wales and
7 Stacey Wales (“EUOs”), it prepared for the previous December 16, 2016, deadline to exchange exhibits.
8 Those EUOs include testimony from the Wales regarding the day-to-day operations of Visionary,
9 possession of Visionary’s accounting and taxation records, and the identity of the legal professionals
10 relevant to the sale of Visionary’s shares to the investors. The EUOs also include testimony from the
11 Wales regarding the roles and tasks of relevant Visionary personnel.¹ The Brauers’ request for
12 testimony regarding “all applicable master-servant relationships” is not relevant to any applicable
13 claims or defenses regarding the Brauers in this case because the Division does not allege that Brauer
14 was a controlling person of Visionary. The Brauers seek testimony on the same topics from Visionary
15 but have not suggested any individual who could give such testimony on behalf of Visionary other than
16 the Wales. Because the testimony the Brauers seek from the Wales and Visionary is already available
17 to them, to the extent relevant, in the Wales’ EUOs, the Brauers have no reasonable need to depose
18 them.

19 The Brauers have not shown a reasonable need for prehearing depositions of investors J.C. and
20 J.D.L.C. either. The Brauers’ motion suggests that they seek to depose J.C. and J.D.L.C. regarding due
21 diligence conducted by the investors and the signing of documents “acknowledging that the business
22 transaction was not a registered offering and that the deal was consummated in a manner to avoid any
23 violation of Arizona or federal law.” However, the Brauers have no reasonable need for such testimony
24 because it would not be relevant to any applicable claims or defenses. “The statutes do not require
25 investors to act with due diligence; ... [t]o the contrary, defendants have an affirmative duty not to

26 ¹ See Exhibit A, EUO excerpts

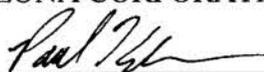
1 mislead potential investors." Trimble v. Am. Sav. Life Ins. Co., 152 Ariz. 548, 553 (App. 1986).
2 Similarly, the investors' subjective understanding of whether a securities offering is registered or
3 intended to be in legal compliance is not relevant to the elements of the securities violations that the
4 Division has alleged that Brauer committed. See A.R.S. §§ 44-1841, 44-1842, 44-1991. Therefore the
5 Brauers have no reasonable need to depose J.C. and J.D.L.C.

6 The Brauers have not shown a reasonable need for prehearing depositions of investors J.W.W.
7 and T.W. for the same reasons they have not shown a reasonable need for prehearing depositions of
8 investors J.C. and J.D.L.C. In addition, the Brauers further lack a reasonable need to depose J.W.W.
9 and T.W. because Brauer already has firsthand knowledge of Visionary's contact with J.W.W. and
10 T.W. The Brauers admitted in their answer that Brauer was a friend of J.W.W. and T.W., that he
11 discussed an investment in Visionary with J.W.W. and T.W., and that he was involved in a phone call
12 with J.W.W., T.W., and Tim Wales in which they discussed Visionary.² Therefore the Brauers have no
13 reasonable need to depose J.W.W. and T.W.

14 Because the Brauers have not shown a reasonable need for the prehearing depositions they
15 requested, their motion should be denied. In the alternative, if the Brauers are granted leave to depose
16 investors J.W.W. and T.W., then to minimize the burden on those witnesses, the Brauers should be
17 ordered to take those depositions concurrently with the Wales' depositions of those witnesses, and if
18 the Wales take J.W.W. and T.W.'s depositions with notice to the Brauers prior to a decision on the
19 Brauers' motion, the Brauers should be deemed to have already had a deposition opportunity during
20 cross-examination of J.W.W. and T.W.

21 RESPECTFULLY SUBMITTED this 23rd day of January, 2017.

22 ARIZONA CORPORATION COMMISSION

23 By:  _____

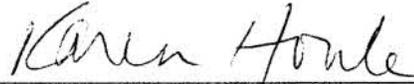
24 Paul Kitchin
25 Attorney for the Securities Division of the
26 Arizona Corporation Commission

² See Answer of Respondents Robert Brian Brauer and Melissa Brauer at ¶¶ 13-14

1 On this 23rd day of January, 2017, 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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12 By: 

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Exhibit A

BEFORE THE
ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

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IN THE MATTER OF THE INVESTIGATION)
OF:) FILE NO. 8526
)
)
VISIONARY BUSINESS WORKS,)
INCORPORATED.)
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)
_____)

EXAMINATION UNDER OATH OF STACEY WALES

Phoenix, Arizona
March 17, 2016

COASH & COASH, INC.
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Certified Reporter
Certificate No. 50464
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1 pay him, umm, equity was given to Rob Brauer.

2 So I don't know if that falls in the
3 definition of investor or not, but he was on the Board
4 at some -- at some time.

5 Q. How did the company look for potential
6 investors?

7 A. When the company was early on and we knew we
8 needed financing, we went to banks to try to see if we
9 could get SBA loans or any kind of financing from
10 traditional banks. And that was leading to a lot of
11 dead ends.

12 We asked, of course, family and friends. And
13 family did step up, and by the way of Ben Wales and
14 Dorothy Sabellico. But that wasn't going to last us
15 long term or the foreseeable future.

16 We were introduced to Jorge De Las Casas and
17 Javier Cano through an acquaintance that we knew as
18 people that might be interested in what our company was
19 doing.

20 Umm, and when Rob Brauer was brought on as
21 CFO, he was tasked with trying to find us funding. And
22 he did that by reaching out to his network. And I don't
23 -- I don't know how he found, umm, a company called
24 Belmont Acquisitions, which was definitely supposed to
25 have been -- the goal was that we would be getting

1 funding and an investment through Belmont Acquisitions.
2 It never happened. Actually, it ended up being some
3 kind of a Ponzi scheme. But I don't know -- I don't
4 know how he found them.

5 But when Rob Brauer was brought on board in
6 2010, he was tasked with finding the company some money,
7 investments, cash flow.

8 Q. When he was tasked with looking for funding
9 did that include, potentially, individual investors?

10 A. Yeah.

11 Q. Do you know what -- what methods do you know
12 of that he used to try to find potential investors?

13 A. I am aware that he had meetings with Tammi
14 Wight and her husband that I was not present at, Tim
15 Wales was not present at. They were held after hours at
16 the residence -- as far as I recall, the residence of
17 either the Brauers or the Wights. And I know he had a
18 few meetings with them before they were even introduced
19 to me and Tim as an option, as interested parties.

20 Q. Who was it that tasked Mr. Brauer with looking
21 for funding?

22 A. Tim Wales and Stacey Wales.

23 Q. You mentioned an acquaintance who introduced
24 you to Mr. Cano and Mr. De Las Casas. Did that
25 acquaintance know that the company was looking for

1 Q. Yes, that does.

2 A. Okay.

3 Q. Was the idea that Fleetronix International
4 might eventually have some kind of licensing agreement
5 to sell Visionary Business Works' software?

6 A. Yeah. We agreed that, yes, they would be more
7 than -- we were happy to have them represent any sales
8 interests of the Fleetronix software internationally.
9 So a licensing agreement, if I recall, was discussed.

10 Q. Did Visionary Business Works provide the
11 investors with any offering documents?

12 A. Rob Brauer had documents drawn up with a law
13 firm, and he was in charge of and responsible for that
14 part of the company.

15 Umm, I don't -- I don't personally know if
16 they were offering documents, but I am aware that there
17 were documents that outlined how much equity the players
18 would receive. Signatures were gathered. They were
19 legally prepared.

20 Shareholder agreements, same thing, were
21 prepared by the law firm. I don't know if they are
22 considered offering documents or not, but I am aware of
23 those documents prepared by the law firm.

24 So it was my understanding that the efforts of
25 Rob Brauer with that law firm were so that Visionary

1 Business Works, Inc., could take in monies in exchange
2 for equity and that it would be a proper transaction.

3 Q. Do you know what firm he worked with to draft
4 the documents?

5 A. Wallin Harrison.

6 MR. KEYT: Wallin Hester.

7 THE WITNESS: Maybe it's Hester now. I think
8 it was Wallin Harris -- Harrison. It was some years
9 ago. Well, definitely Troy Wallin.

10 MR. KEYT: Um-hum.

11 THE WITNESS: Right? Yeah, definitely Troy
12 Wallin. There was another guy there that we worked
13 with. I don't recall his name. I think he has since
14 left, which possibly could be why I recall it as Wallin
15 Harrison. Maybe now it's Wallin Hester.

16 But in any event, all trail will lie with
17 Wallin.

18 BY MR. KITCHIN:

19 Q. Do you have current contact information for
20 Robert Brauer?

21 A. I do not. It is rumored that he essentially
22 fled to Florida in the summer of 2013, and I no longer
23 have a known address. I could assume he may have
24 retained his cell phone number that he used to have when
25 he was here and/or possibly the same personal e-mail

1 Installers, LLC, how was that company started?

2 A. How?

3 Q. Yes.

4 A. It was started as a quality control, umm, for
5 the hardware installations of any sales that Fleetronix
6 made. So Fleetronix, being a software company, did have
7 a third-party hardware that was sold with the software
8 solution. But that hardware needed to be installed on
9 the actual vehicle that was driving around.

10 For insurance purposes and liability purposes,
11 we formed Visionary Mobile Installers as a separate
12 company with its own, like, insurance policy -- garage
13 keepers is what it was called -- so that if any
14 installer related to this project blew up a vehicle, it,
15 you know, was covered under a very specific insurance
16 policy called garage keepers. And it was, you know,
17 recommended that that be separate, you know, from the
18 regular operations of Fleetronix.

19 So for that quality control we formed
20 Visionary Mobile Installers to handle installations of
21 GPS hardware.

22 Q. Did Visionary Mobile Installers, LLC, ever
23 have any investors?

24 A. No -- well, by -- well, it was an LLC. And
25 any monies that it needed that it couldn't cover, Tim

1 Q. And I guess for both this and for Exhibit 2,
2 does the signature line that's by Stacey Wales, its
3 president, were you, in fact, the person to sign them
4 both?

5 A. Yes.

6 Q. Next I'm going to hand you what's been marked
7 as Exhibit 4, another subscription agreement, Bates
8 Number ACC15383, this one to Robert Brauer. This one
9 mentions a date of August 2011. Do you know
10 approximately when this was actually signed?

11 A. Approximately -- approximately between August
12 2011 and December of 2011.

13 Q. And the subscription agreements for Mr. Cano,
14 Mr. De Las Casas, Mr. Brauer, and Mrs. Wight, were they
15 all signed about the same time?

16 A. Yes. I recall us having a Board meeting, and
17 I recall collecting all of the signed documents sometime
18 between July 2011 and December 2011, if I remember
19 correctly.

20 Q. And Page 1, Paragraph 1.1, it says that
21 Mr. Brauer is receiving the shares in exchange for
22 services rendered from January 1st, 2011 through
23 July 31st, 2011. What services were -- what services
24 had he rendered during that time?

25 A. CFO services.

1 Q. And what all did that include?

2 A. The financial responsibilities of the company,
3 paying vendors on time, paying wages, making sure that
4 the company had enough cash flow to cover its expenses,
5 and, if it couldn't, to discuss that with the management
6 team and the Board as to what's fallen behind and how
7 much, and sales strategy, umm, meaning, you know, what
8 sales we would need to make in what time period to break
9 even, to be able to cover our expenses, umm, and the
10 general financial health of the company.

11 Q. And the last page of Exhibit 4, it's not
12 signed, but did you at some point sign another copy of
13 this?

14 A. Yes.

15 Q. Next I'm going to hand you what's been marked
16 as Exhibit 5, another subscription agreement, at Bates
17 Number ACC15404 for Tammi Wight. This one, the first
18 paragraph specifies the 27th day of July, 2001. Do you
19 know if that is the correct date?

20 A. As I recall, yes. That -- as I recall, yes.

21 Q. Does that suggest that that's the correct date
22 for all of the subscription agreements, or is that one
23 different?

24 A. Umm, for -- as far as providing them to the
25 investors or as far as obtaining their signatures?

1 running two sets of books, to which I don't have any
2 access to any books anymore. But just what he did log
3 in the books that he showed us, and that I had -- that I
4 did have access to that, is what we could find. So it
5 could have been more but that is what I was able to
6 effectively evidence.

7 Q. Who today has access to the accounting books
8 that Brauer had represented as being the correct ones at
9 the time?

10 A. Last I knew it was Omnivations II, LLC. It
11 was on the servers that house the information for the
12 company that they took through -- the asset purchase
13 agreement didn't go through. They ended up back-dooring
14 it with a UCC-1 purchase that Fleetronix had.

15 And with that, all company documentation that
16 was on the servers, this being one of them -- the
17 accounting system was all virtual, it was all on the
18 server -- went with that. So Omnivations II, LLC.

19 Q. And backing up a bit, in case I didn't get
20 this before, Exhibit 13, in general, does this appear to
21 be an accurate copy of the business meeting agenda for
22 this date?

23 A. Yes.

24 Q. What were the circumstances around Brauer
25 leaving in May 2012?

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BEFORE THE
ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

IN THE MATTER OF THE INVESTIGATION)
OF:) FILE NO. 8526
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VISIONARY BUSINESS WORKS,)
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EXAMINATION UNDER OATH OF TIMOTHY JOHN WALES

Phoenix, Arizona
March 18, 2016

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1 ones. It's been a while.

2 Q. What source of revenue did Visionary Business
3 Works ever have?

4 A. SAS revenue.

5 (Court reporter clarification.)

6 THE WITNESS: SAS revenue, software as a
7 service revenue. And then hardware sales. That was --
8 let me make sure. What company was it?

9 Q. Visionary Business Works.

10 A. Okay. That's correct, or Fleetronix. I don't
11 call it Visionary Business Works.

12 Q. Okay. Yeah, whenever I refer to Visionary
13 Business Works, I mean --

14 A. Fleetronix.

15 Q. Yeah. If I mention Fleetronix, I'm talking
16 about Visionary Business Works.

17 A. Yeah.

18 Q. Okay. Did Visionary Business Works have
19 investors?

20 A. Did Visionary Business Works have investors?
21 Javier and Jorge came in. They were introduced to us as
22 friends. We became friends. And they ended up
23 investing. They were actually supposed to be releasing
24 the product in Mexico. They had exclusive rights to go
25 down there and sell it.

1 A. No. It was actually utilized for also
2 selling. So as we go to a big corporation -- for
3 example, like Google, we did a small project for Google,
4 and we would use the same documents because it gives
5 insight to who we are as a company.

6 Q. About how long was the document?

7 A. I couldn't even recall. Not less than 10
8 pages -- no. 10 slides. 10 to 12 max. And it's a very
9 long time ago, so I can't recall specifics.

10 Q. Do you still have access to any copies of any
11 versions of it?

12 A. I have nothing on that company.

13 Q. Do you know who would?

14 A. Everything was in that online portal.
15 Everything was stored digitally and was turned over to
16 the gentleman running the Omnivations company. We lost
17 access to that when there was corruption on their side
18 with some illegal moves in the Texas judicial system.

19 Q. Who drafted the offering documents that the
20 company had?

21 A. Troy Wallin.

22 Q. And he's an attorney?

23 A. He is an attorney, yep.

24 Q. Who drafted the summary document?

25 A. I don't even recall what that one is or -- any

1 originally we did Cano and -- Javier and Jorge.

2 Q. And the cloud documents you had before they
3 were lost, would they have included a signed copy of the
4 questionnaire?

5 A. Everything. Everything financial.
6 Everything. Like, each Board of Director had access to
7 a specialized site that was encrypted for the Board of
8 Directors. Legal was broken down. HR. They had access
9 that fed into -- like, even the accounting information
10 system would dump financials in there, so they would
11 always have access. So they were always aware of the
12 status of the company.

13 In addition, we would follow up with
14 notification systems that automatically would let them
15 know when legal documents were added to the system, so
16 on and so forth.

17 That was maintained and managed, too, by
18 Stacey, myself. Our internal company was built
19 proprietary as part of the assets of the company.

20 Q. Next I'm going to hand you what's marked as
21 Exhibit 4, a subscription agreement with Robert Brauer,
22 starting Bates Number ACC15383.

23 And here on the first page, Section 1.1 refers
24 to shares in exchange for service rendered from
25 January 1st to July 31st, 2011. What services rendered

1 I was working seven days a week, pretty much
2 24 hours a day, Stacey and I. So -- and trying to
3 figure out where in the heck all the money's going.

4 Q. Any other big picture risks you can think of?

5 A. I don't remember, to be honest. I don't
6 recall.

7 Q. Next I'm going to hand you what's been marked
8 as Exhibit 11, a Unanimous Written Consent in Lieu of a
9 Special Meeting of the Shareholders, starting with Bates
10 Number ACC59.

11 The second page of this has a bunch of
12 signature lines. Do you know if this document was ever
13 signed?

14 A. I believe so.

15 Q. Do you know if it was signed by everyone?

16 A. It was. Like, everything was signed by
17 everyone, and audited, and then uploaded. And e-mails
18 were sent out to everybody explaining where it was with
19 links to exactly to what was signed for everybody.

20 Because we pushed, and the Board approved, we
21 were trying to go as paperless as possible, only when
22 needed. Digital signature wasn't approved at the time,
23 so we printed things out to get everybody to sign, and
24 then it would be stored in a digital repository.

25 Q. Who would have access to Visionary Business

1 Works' e-mails at the time?

2 A. Who would have access to them? That stuff was
3 all turned over, including PST files. So it was -- the
4 server -- when Omnivations took over -- we used to
5 maintain and host our own mail server internally for
6 protection.

7 With the shift to Omnivations, we shifted to
8 the cloud, Office 365. Microsoft gave us free accounts
9 as a young and up and coming company. And that entire
10 system, including e-mails, when it gets turned over, we
11 lose control access. It's all in the cloud.

12 So the e-mail was migrated off our regular
13 machines, kept in Office 365, and we don't even have
14 access to it anymore. All mail was routed to whatever,
15 you know, on their side. I don't even get e-mails.

16 Q. When you mentioned PST files, there were PST
17 files sent directly to Technology Solutions?

18 A. No. The PST files were loaded into the cloud.
19 So, umm, you know, it was being stored with digital
20 encryption and for historical purposes.

21 What I do know there is, Microsoft did notify
22 me that those guys in Omnivations did not pay the bill.
23 So I do not know if they got shut down, if they weren't
24 utilizing it. But we don't have access to it anymore so
25 I can't help with that.