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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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IN THE MATTER OF THE.

DOCKET NO. S-20953A-16-0061

ROBERT J. MOSS AND JENNIFER L. MOSS,
husband and wife,

Arizona Corporation Commission

DOCKETED

THE FORTITUDE FOUNDATION, an Arizona
corporation,

JAN 30 2017

VENTURES 7000, LLC, an Oklahoma limited
liability company,

DOCKETED BY
GB

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

TWELFTH
PROCEDURAL ORDER
(GRANTS MOTION TO ALLOW
TELEPHONIC TESTIMONY)

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 On July 1, 2016, by Procedural Order, a hearing was scheduled on September 19, 2016. As

1 indicated at the pre-hearing conference, the Division filed a Motion for Leave to File Amended
2 Temporary Order and Notice ("Motion for Leave").

3 No responses were filed to the Division's Motion for Leave.

4 On July 14, 2016, by Procedural Order, the Division's Motion for Leave was granted.

5 On July 19, 2016, the Division filed the Amended T.O. and Notice.

6 On July 21, 2016, the Moss Respondents and also on behalf of TFF filed a response to the
7 Amended T.O. and Notice requesting a hearing and a 30 day extension of time to file an Amended
8 Answer and for the exchange of the Witness Lists and Exhibits.

9 On July 26, 2016, the Division filed a response to the request for a 30 day delay by the Moss
10 Respondents to file their Amended Answer and for the exchange of Witness Lists and Exhibits. The
11 Division stated that, based on the service date of the Amended T.O. and Notice, the Moss Respondents'
12 Amended Answer is not due until August 19, 2016, and that if they were granted a 30 day extension to
13 file their Amended Answer, until September 19, 2016, that date is the date that the hearing is to
14 commence. Further, the Division argued that the Moss Respondents had not shown good cause for an
15 extension of time to file their Amended Answer and to exchange Witness Lists and Exhibits.

16 On August 2, 2016, counsel for Ventures and Respondent Twyman entered an appearance.

17 On August 4, 2016, the McHatton Respondents and also claiming representation for TFF filed
18 a response to the Amended T.O. and Notice requesting a hearing and a 15 day extension of time to file
19 an Amended Answer and for the exchange of Witness Lists and Exhibits.

20 On August 4, 2016, Respondent Kevin Krause filed a response to what appeared to be the
21 Amended T.O. and Notice in the form of an Answer. Respondent Krause had previously not appeared
22 in the proceeding earlier, but this filing was treated as a request for hearing and Answer by the
23 Respondent appearing on his own behalf.

24 On August 5, 2016, the Division filed a response which contained a Motion to Extend Date to
25 Exchange Witness Lists and Exhibits pending the outcome of a Motion to Continue Hearing which the
26 Division anticipated would be filed by counsel for Respondents Twyman and Ventures after contact
27 between counsel for the Division and counsel for Twyman and Ventures. The Division stated that the
28 date for the exchange of Witness Lists and Exhibits had passed (August 5, 2016), and requested that

1 the exchange be postponed until the issue was decided on the anticipated Motion for a Continuance by
2 the Twyman and Ventures Respondents so that an actual exchange can take place prior to the hearing
3 rather than the Division unilaterally providing its Witness List and Exhibits to the Respondents.

4 On August 8, 2016, the Moss Respondents filed an Answer to the Amended T.O. and Notice.

5 On August 9, 2016, by Procedural Order, although unknown whether a Motion for a
6 Continuance would be filed by the counsel for Respondents Ventures and Twyman, an extension for
7 the exchange of the Witness Lists and Exhibits was granted until August 31, 2016.

8 In addition, on August 9, 2016, Respondents Ventures and Twyman filed a request for hearing
9 and a motion for at least a 90 day continuance citing a need for discovery and a need for additional
10 time for preparation for the hearing.

11 On August 11, 2016, the Division filed a Consent to Email Service and a Response to the
12 Motion for a Continuance by the Ventures and Twyman Respondents. The Division argued that the
13 Ventures and Twyman Respondents had been aware of the pending proceeding from sometime in early
14 May 2016, but their local counsel did not enter an appearance until August 2, 2016, and although
15 service had been made on Ventures, there was no evidence that Respondent Twyman had been
16 personally served prior to August 2, 2016.

17 On August 12, 2016, the Division sent an email containing the names and the docket number
18 for this matter to HearingDivisionServicebyEmail@azcc.gov from their designated email addresses.
19 The Hearing Division verified the validity of the designated email address, which now appears on the
20 service list for this matter in addition to their addresses for U.S. Mail.

21 On August 16, 2016, the Ventures and Twyman Respondents filed a Reply to the Division's
22 August 11, 2016, filing that objected to a continuance of the proceeding. Respondents argued that a
23 continuance would not prejudice anyone.

24 On August 19, 2016, the Ventures and Twyman Respondents filed their Answer to the
25 Amended T.O. and Notice.

26 On August 23, 2016, by Procedural Order, a brief continuance was granted for the hearing from
27 September 19, 2016 to October 31, 2016 , to allow the parties to adequately prepare for the proceeding.
28 In light of the brief continuance, and to insure that the exchange of Witness Lists and Exhibits would

1 be orderly, the date for the exchange was extended to September 16, 2016. Lastly, the Division's
2 Consent to Email was granted.

3 On August 31, 2016, the Division filed a Motion to Continue the hearing that had been
4 continued to October 31, 2016, stating that its counsel would have a conflict with the preparation for a
5 another proceeding that had been scheduled earlier to commence on November 28, 2016. The Division
6 requested that this proceeding be continued to a date early in 2017.

7 On September 6, 2016, Respondents Ventures and Twyman filed a Response to the Division's
8 Motion to Continue and stated that they did not oppose a continuance. Respondents' counsel further
9 stated that he had two previously scheduled FINRA arbitrations in January 2017, and indicated that he
10 would be available in February 2017, for this hearing to be scheduled. Counsel also requested that the
11 deadline for the exchange of Witness Lists and Exhibits be extended to 60 days prior to the
12 commencement of the hearing.

13 On September 12, 2016, the Division filed its Reply in support of its outstanding motion and
14 stated that the Division is available for a hearing in February 2017 and did not oppose the exchange of
15 Witness Lists and Exhibits 60 days prior to the commencement of the hearing.

16 On September 16, 2016, by Procedural Order, a continuance was granted, and the exchange of
17 Witness Lists and Exhibits was extended to 60 days before the commencement of the hearing.

18 On January 17, 2016, the Division filed a motion to allow telephonic testimony and in support
19 of the motion stated that certain witnesses would testify to relevant matters, but to travel and appear in
20 Phoenix would be prohibitively expensive for them. There were no objections to the motion.

21 Under the circumstances, the Division's motion is reasonable and should be granted.

22 IT IS THEREFORE ORDERED that the Division's motion to allow telephonic testimony is
23 hereby granted.

24 IT IS FURTHER ORDERED that the **hearing shall be held on February 21, 2017, at 10:00**
25 **a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix,
26 Arizona, as previously ordered.

27 IT IS FURTHER ORDERED that the **parties shall also set aside February 22, 23, 27 and**
28 **28, March 1, 2, 6, 7 and 8, 2017, for additional days of hearing, if necessary.**

1 IT IS FURTHER ORDERED that **the date for the exchange of Witness Lists and Exhibits**
2 **by the Division and Respondents shall be extended from September 16, 2016, to December 23,**
3 **2016** with courtesy copies provided to the presiding Administrative Law Judge, as previously ordered.

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

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

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

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

16 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
17 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
18 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at
19 all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled
20 for discussion, unless counsel has previously been granted permission to withdraw by the
21 Administrative Law Judge or the Commission.

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1 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Procedural**
2 **Order Regarding Consent to Email Service** issued in this matter on **August 23, 2016**, for additional
3 information regarding the process to consent to service by email. Information regarding Consent to
4 Email Service is also available on the Commission's website (www.azcc.gov) by clicking on "Email
5 Service Consent."

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

9 DATED this 30th day of January, 2017.

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11 
12 MARC E. STERN
13 ADMINISTRATIVE LAW JUDGE
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1 On this 30th day of January, 2017, the foregoing document was filed with Docket Control as a
2 Procedural Order – Grants a Miscellaneous Motion, and copies of the foregoing were mailed on behalf
3 of the Hearing 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.

4 Jeffrey D. McHatton
5 Starla T. McHatton
6 The Fortitude Foundation
7 P.O. Box 1983
8 Higley, AZ 85236

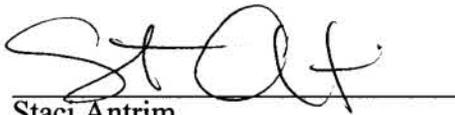
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Consented to Service by Email

22
23 By: 
24 Staci Antrim
25 Assistant to Marc E. Stern
26
27
28