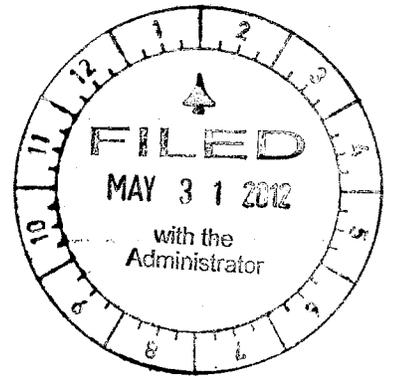


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc. *fka* Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

**DEPARTMENT'S RESPONSE TO
MOTION OF RESPONDENT, NORMAN FRAGER, TO CONTINUE HEARING**

The Oklahoma Department of Securities ("Department") submits the following objection and response to the *Motion of Respondent, Norman Frager, to Continue Hearing*, filed on May 25, 2012 ("Motion to Continue"). In his Motion to Continue, Respondent Norman Frager requests the hearing set to commence on June 18, 2012, be continued sixty (60) days.

After the filing of the Motion to Continue, counsel for Respondent Frager notified the Department on May 29, 2012, that Respondent Frager would not be able to travel out-of-state next week for depositions of two expert witnesses because his wife is in the hospital.¹ Respondent Frager's counsel asked the Department to agree, on that basis, to the 60-day extension requested in the Motion to Continue. The Department's response was that it would agree to continue the hearing to the week of August 6, 2012, solely on the basis of Mrs. Frager's health and under certain conditions. The conditions are: 1) the discovery deadline remains June 11, 2012, with the exception of depositions

¹ Respondent Frager's counsel provided additional information regarding Mrs. Frager's medical condition. To respect Mrs. Frager's privacy, the Department is not disclosing that information in this response.

of Samuel Luque, Jr., and David Paulukaitis, 2) the deposition of Mr. Paulukaitis be set for July 16th or July 17th as he is not available on any other dates in July, and 3) Mr. Luque be presented for deposition on or before July 20, 2012. The Department and Respondent Frager have not reached an agreement regarding a continuance.

In this response, the Department objects to a continuance on the purported bases set forth in Respondent Frager's Motion to Continue.² The purported bases are: 1) Respondent Frager's desire to depose representatives of the Department and Pershing, LLC ("Pershing") who participated in certain telephone conversations, 2) an anticipated objection by the Department to deposition subpoenas to counsel for the Department, Melanie Hall and Terra Bonnell, and the Departments' Director of Licensing and Examinations, Carol Gruis, 3) the lack of disclosure by the Department of the "identity of the witness it intends to call from Pershing," and 4) Respondent Frager's purported recent discovery "that the documents produced by the Department pursuant to discovery issued herein are incomplete."

The stated bases for the Motion to Continue do not justify another continuance of the hearing on the merits or the discovery deadline. Respondent Frager has had 20 months to conduct discovery in this matter. Respondent Frager has known about the recorded telephone conversations since at least March 28, 2011, when the Geary Respondents filed a motion to compel the recordings, and has known about the unrecorded telephone conversations since at least March 5, 2012, when the

² The bases for a continuance stated in the Motion to Continue do not include the medical condition of Mrs. Frager. The Department asserts that if a continuance were to be granted on the basis of Mrs. Frager's health, the June 11, 2012, discovery deadline should not be extended except with respect to the depositions of Mr. Luque and Mr. Paulukaitis. The Department also contends that if the hearing is continued, it be continued to the week of August 6, 2012, when Mr. Paulukaitis is available to travel to Oklahoma to testify.

Department filed the Affidavit of Carol Gruis as Exhibit "D" to the *Department's Reply to Supplemental Response of Norman Frager to Department's Motion for Summary Decision Against Norman Frager, and Objection to Motion to Dismiss*. Even prior to that time, Respondent would have known about the unrecorded telephone conversations had he requested the Department's email communications with Pershing or had reviewed the emails the Department produced to the Geary Respondents.

Melanie Hall, Terra Bonnell, and Carol Gruis are apparently the representatives of the Department whom Respondent Frager desires to depose. Carol Gruis has been listed on all four witness lists filed by the Department in this matter. The first witness list was filed on December 22, 2010, but only now is Respondent Frager attempting to depose her. While the Department does not object to the deposition of Ms. Gruis, the Department does object to a continuance of the discovery deadline in order for Respondent Frager to do so. As the attorneys who represent the Department in this proceeding, Melanie Hall and Terra Bonnell should not be deposed by Respondent Frager for the reasons set forth in the *Department's Objection to Issuance of Deposition Subpoenas Duces Tecum to Terra Bonnell and Melanie Hall*, filed on May 29, 2012.

The purported lack of disclosure by the Department of the "identity of the witness it intends to call from Pershing" also does not justify another continuance of the hearing on the merits or the discovery deadline. The Department does NOT intend on calling a representative of Pershing as a witness in its case-in-chief. Instead, the Department anticipates that it may be necessary to call a representative of Pershing as a witness to rebut and/or impeach testimony presented in Respondent Frager's defense. The identity of such rebuttal witness, if such a witness is even necessary, will not be known

until Respondent Frager presents his defense. For that precise reason, the Department listed “[a]ll witnesses needed to rebut the testimony of a witness or a document or exhibit identified on Respondents’ final witness lists or exhibit lists or offered at hearing by Respondents”, on the *Department’s Amended Final List of Witnesses*, filed on March 28, 2011.

In addition, Respondent Frager’s purported recent revelation “that the documents produced by the Department pursuant to discovery issued herein are incomplete” is not a valid basis for continuing the hearing and/or discovery deadline. Respondent Frager has never served the Department with a request for production of documents. Other respondents herein served the Department with requests for production of documents. Those requests were made well over a year ago and have been the subject of a motion to compel and a hearing on the motion to compel. The respondents who propounded those requests for production of documents are no longer parties to this proceeding. The Department has no remaining obligation with respect to those requests for production of documents.

Respondent Frager’s failure to conduct adequate discovery over the past 20 months simply does not justify another continuance of the hearing or the discovery deadline in this matter. For the foregoing reasons, Respondent Frager’s Motion to Continue should be denied as presented.

Respectfully,



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CERTIFICATE OF SERVICE

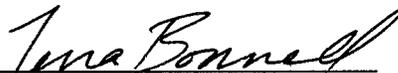
The undersigned hereby certifies that a true and correct copy of the above and foregoing response was emailed and mailed, with postage prepaid, this 31st day of May, 2012, to:

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