

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2018-000066-001 DT

10/17/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

COLLEEN ELLIS

LAWRENCE I KAZAN

v.

ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION (001)

RYAN JAMES MILLECAM

TOM FORESE (001)

BOB BURNS (001)

ANDY TOBIN (001)

BOYD DUNN (001)

JUSTIN OLSON (001)

TED VOGT (001)

MATTHEW J NEUBERT (001)

ARIZONA OFFICE OF THE ATTORNEY

GENERAL (001)

JUDGE STARR  
OFFICE OF ADMINISTRATIVE  
HEARINGS  
REMAND DESK-LCA-CCC

MINUTE ENTRY

Appellant Colleen Ellis seeks reversal of the January 3, 2018 Decision of the Arizona Corporation Commission assessing restitution and an administrative penalty jointly and severally against the marital community of Ellis and her former husband, Bart Ellis. For the following reasons, this Court affirms that Decision.

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I. FACTS AND PROCEDURAL BACKGROUND

The Securities Division of the Commission (“the Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action against Oak Capital Partners, LLC (“Oak Capital”), and Bart Ellis and Colleen Ellis. The Commission joined Colleen Ellis solely for the purpose of determining the liability of the marital community.

An Administrative Law Judge held an evidentiary hearing. Bart Ellis and Oak Capital did not appear at the hearing, or otherwise contest the case against them. Colleen Ellis appeared, and while she did not contest the allegations against Bart Ellis and Oak Capital, she argued that the Commission should not hold her or the marital community liable for securities violations committed by Bart Ellis and Oak Capital.

The Commission found that Bart Ellis and Oak Capital violated A.R.S. §§ 44-1842, 44-1991, 44-3151, and 44-3241. (Decision No. 76541, January 3, 2018, at 13.) The Commission then found the marital community of Bart and Colleen Ellis liable for violations of the Arizona Securities Act and Arizona Investment Management Act. (*Id.* at 21.) The Commission noted that the Ellises were married when Bart Ellis violated the Securities Act and the IM Act, and that evidence in the record showed that some of the funds acquired through those violations benefitted the community in the form of rent and personal expenses. (*Id.* at 25.)

Accordingly, the Commission found that the marital community was liable for restitution in the amount of \$1,098,851, and an administrative penalty in the amount of \$100,000. (*Id.* at 22.)

This appeal followed. This Court has jurisdiction pursuant to A.R.S. §§ 12-124(A) 12-905(A), and 44-1981.

II. STANDARD OF REVIEW

A reviewing court shall affirm the action of an agency unless, after reviewing the record, the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion. *Nutek Info. Sys., Inc. v. Arizona Corp. Comm'n*, 194 Ariz. 104, 107–08, ¶ 15 (App. 1998).

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III. ISSUE

This appeal raises one issue: did the Commission act contrary to law when it found the marital community of the Ellises jointly and severally liable to pay restitution and an administrative penalty?

IV. LEGAL ANALYSIS

Colleen Ellis argues that the Commission should not have held her liable for the “*de minimus*” amount of funds by which the marital community benefitted from Bart Ellis’s violations.

First, the Court disagrees with the premise that \$125,000 in investors’ funds used to benefit the marital community is “*de minimus*.” In any event, Ellis provides no authority for the proposition that a certain threshold must be met before the marital community may be held liable.

Under Arizona law, the Commission was authorized to join Colleen Ellis to the underlying action in order to determine the liability of the marital community. A.R.S. §§ 44-2031 & 44-3291(C). There was a presumption that the marital community was liable. “Generally, all debts incurred during marriage are presumed to be community obligations unless there is clear and convincing evidence to the contrary.” *Schlaefler v. Fin. Mgmt. Serv., Inc.*, 196 Ariz. 336, 339, ¶ 10 (App. 2000). Ellis provided no evidence to the contrary, and thus failed to rebut the presumption.

Moreover, the Commission presented evidence that Bart Ellis paid rent on a house in which Colleen Ellis resided. (Reporter’s Transcript of Proceedings, September 12, 2016 (“RT 9/12/16”) at 60-61.) Bart Ellis also made payments (through Oak Capital) to Colleen Ellis’s credit card accounts. (RT 9/12/16 at 88.) Thus, even without benefit of the presumption, the Commission established that the marital community benefitted from Bart Ellis’s violations.

Ellis argues that because this action did not arise out of contract, she may not be held liable under A.R.S. § 25-215(D), which provides that:

either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community

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property, and second, from the separate property of the spouse contracting the debt or obligation.

But as used in the statute, the word “contract” does not require the action to arise out of contract. Instead, either spouse may enter into debts, or “otherwise act for the benefit of the community,” and thus subject the community to liability. That is what happened here.

Moreover, spouses have “equal management, control and disposition rights over their community property and have equal power to bind the community.” A.R.S. § 25-214(B). And either spouse may bind the community, as Bart Ellis did here. A.R.S. § 25-214(C).

To find the marital community liable, the Commission was not required to show bad intent on Colleen Ellis’s part. The actions did not arise out of tort, but rather, out of an administrative action arising from statutory securities violations.

The Court is aware that the result may be harsh for Colleen Ellis, who appears to have had no knowledge of or involvement in Bart Ellis’s violations. But unfortunately, the law mandates such a result. While Ellis raised noted at oral argument that there is “innocent spouse” exception in certain contexts, such as federal tax violations, such an exception does not apply here. This Court may not create an exception where none is provided for by the law.

Finally, while the family court may allocate debts as part of a dissolution proceeding, see e.g. *Cadwell v. Cadwell*, 126 Ariz. 460 (App. 1980), Ellis has pointed to no such authority granted to the Court in this matter.

V. CONCLUSION

Based on the foregoing, this Court concludes there is substantial evidence to support the Commission’s January 3, 2018 Decision, and that Decision was not contrary to law, was not arbitrary or capricious, and was not an abuse of discretion.

If any party wishes to appeal this decision, that party must do so pursuant to A.R.S. § 12-913 and Rule 9(a), Ariz. R. Civ. App. Proc.

IT IS THEREFORE ORDERED affirming the January 3, 2018 Decision of the Securities Division of the Arizona Corporation Commission.

IT IS FURTHER ORDERED that this is a final judgment for purposes of appeal, as no further matters remain pending. See Rule 54(c), Ariz.R.Civ.P.

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IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR  
JUDGE OF THE SUPERIOR COURT

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