

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. GUS ARAGON

CASE NO. C20154431

COURT REPORTER: Kristi Valdez
Courtroom - 814

DATE: October 02, 2015

BARBARA TELLMAN
Plaintiff

Vincent L. Rabago, Esq. counsel for Plaintiff

VS.

FOUNDATION FOR RESPONSIBLE
ACCOUNTABLE GOVERNMENT INC.
Defendant

Andrew H. Barbour, Esq. counsel for Defendant

M I N U T E E N T R Y

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION AND ORDER TO SHOW CAUSE**

Plaintiff is present. Christine Bauserman, President of the Foundation, is present. Frank Antenori, member of Board of Directors, is present.

Upon inquiry of the Court, counsel indicate that there is no objection to the cameraman being in the courtroom.

Plaintiff's Exhibits 1 through 12 are identified as set forth below:

1. Copy of State of Delaware frequently asked questions webpage
2. Copy of CitizenAudit.org page re: Foundation for Responsible Accountable Government Inc
3. Copy of Exempt Organizations Select Check
4. Copy of Exempt Organizations Select Check tax period 2014
5. Copy of Arizona Corporation Commission search
6. Copy of Foundation for Responsible Accountable Government webpage
7. Copy of Arizona Secretary of State Registered Name Information search
8. Copy of City of Tucson Political Committee Statement of Organization
9. Copy of Revitalize Tucson Report of Independent Expenditure
10. Copy of City of Tucson campaign Finance Administration Report Receipt dated 8/10/15
11. Copy of City of Tucson Campaign Finance Administration Report Receipt dated 8/31/15
12. Copy of City of Tucson Campaign Finance Administration Report Receipt dated 9/24/15

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Deputy Clerk

MINUTE ENTRY

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FOR THE PLAINTIFF:

Barbara Tellman is sworn, examined, cross-examined and excused.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7 8, and 12, are admitted.

Plaintiff's Exhibit 13 being, Copy of Affidavit of Barbara Tellman, is identified and admitted.

Christine Bauserman is sworn, examined by Mr. Barbour, cross-examined by Mr. Rabago and questioned by the Court.

12:01 p.m. The Court stands at recess until 1:15 p.m. this date.

1:15 p.m. Same parties, counsel and court reporter are present.

Christine Bauserman is further cross-examined by Mr. Rabago, questioned by the Court, and further examined by Mr. Barbour.

Counsel make closing arguments to the Court.

The Court takes the matter UNDER ADVISEMENT.

LATER IN CHAMBERS

The Defendant having been served and being represented by counsel, the Court has confirmed that the parties are ready to proceed with the order to show cause hearing. The Court has considered the evidence and arguments of counsel and issues this ruling.

Plaintiff has brought this action to challenge certain activities of Defendant under ARS Sec. 10-11502(F) which prohibits a foreign corporation from transacting business in Ariz. without authority. Defendant is a Delaware corporation not registered with the Ariz. Corp. Commission. Plaintiff argues that Defendant has given money to an organization known as Revitalize Tucson (RT) used for the purchase of bill board advertising space that advocates a political position, and by doing so, Defendant has transacted business here and should be required to register as a foreign corporation doing business in Ariz. The bill board space, purchased on approximately 3 separate occasions, questions whether certain members of the Tucson City Council are doing a good job for the community. Defendant has presented evidence that Defendant is not transacting business here, but has instead given grant money to RT for the purpose of improving the business climate in Tucson. There was also evidence that RT or Defendant became involved in some Town Hall activity, but the Court did not receive sufficient evidence to make any finding that the Town Hall activity involved the direct expenditure of any money or the transaction of any business by Defendant in Ariz.

The Court finds, at this stage of the proceedings, that Plaintiff has failed to show that Defendant's giving money under its grant program is transacting business in Ariz. The Court finds that Defendant's current

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board of directors are the same two persons that sponsor and run RT. While this may raise suspicions in some people's minds, there has not been a sufficient showing that Defendant did not follow an appropriate grant funding program at this stage of the proceedings.

There was also evidence presented that Defendant made a direct expenditure of money in Ariz. by hiring a consultant in Phoenix to conduct a telephone survey which may have been for the purpose of advocating a political position. This was the only showing of a direct expenditure of money by Defendant in Ariz. presented in evidence. Assuming that this constitutes a business transaction in Ariz., there has been no showing that this is anything other than a single transaction permitted under ARS Sec. 10-11501(B)(10), without requiring Defendant to register in Ariz. as a foreign corporation transacting business here.

Based upon the above analysis the Court finds that, at this stage of the proceedings, Plaintiff has failed to make the necessary showing for the grant of a temporary restraining order or a preliminary injunction. There has been no showing of probable success on the merits, likelihood of irreparable harm if the injunction is not issued, a balanceing of the hardships favoring Plaintiff, nor has there been a showing that the grant of the relief requested would advance the public interest. Ariz. Assoc. of Providers for Persons with Disabilities v. State, 223 Az. 6 (2009). These findings are preliminary and are based only upon the evidence presented at TRO hearing which was conducted on an accelerated basis.

cc: Hon. Gus Aragon
Andrew H. Barbour, Esq.
Vincent L. Rabago, Esq.

Keri Skay
Deputy Clerk