

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 OBJECTION TO MOTIONS OF RESPONDENT, NORMAN FRAGER, TO STRIKE THE DEPARTMENT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, TO EXTEND DEADLINE TO RESPOND

The Oklahoma Department of Securities ("Department") objects to the *Motion of Respondent, Norman Frager, to Strike the Department's Motion for Reconsideration or, in the alternative, Motion to Extend Deadline to Respond*, filed on June 15, 2012 ("Frager's Motions").

I. Department's Motion for Reconsideration Should Not Be Stricken.

Respondent Norman Frager ("Frager") has moved for an order striking the *Department's Motion for Reconsideration on Motion for Summary Decision*, filed May 31, 2012 ("Department's Motion for Reconsideration"). The essence of Frager's motion to strike appears to be that the Department's Motion for Reconsideration is a new request for summary decision that was filed eighteen (18) days before the hearing that was set to commence on June 18, 2012. Frager's motion to strike has no merit.

The Department's Motion for Reconsideration is not a new motion for summary decision. Despite Frager's claims to the contrary, the Department's Motion for Reconsideration addresses the material "issue" that was a primary topic of the hearing

on the Department's motion for summary decision held on April 27, 2012: Whether the minimum net capital requirement of Geary Securities, Inc. ("GSI") was \$250,000 or \$100,000 pursuant to SEC Rule 15c3-1 during February 2010.¹ See Exhibit "A" at pp. 37-41 and 51-62. During the April 27th hearing, Frager's counsel represented that the language of SEC Rule 15c3-1 demonstrates GSI's minimum net capital requirement was not \$250,000 during February 2010. See Exhibit "A" at p. 41, ln. 1-7. However, the language of SEC Rule 15c3-1, when applied to the facts, demonstrates that GSI's minimum net capital requirement was \$250,000 during February 2010 because GSI received checks made payable to itself on every business day in February 2010 except one.

As was explained in the Department's Motion for Reconsideration, the Department has relied on the fact that both GSI and Frager made the following **unqualified** admission in their answers to *the Enforcement Division Recommendation* ("Recommendation"): "At all times material hereto, the minimum net capital requirement for [GSI] was \$250,000." *Answer and Request for Hearing by Respondent Norman Frager*, ¶ 14 (Oct. 15, 2010); *Answer by Respondents Geary Securities, Inc., Keith D. Geary, and CEMP, LLC*, ¶ 95 (Oct. 15, 2010); see Okla. Admin. Code § 660:2-9-2(a) ("When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. . . . Any allegation not denied shall be deemed admitted."). Such admission is conclusive and binding on Frager for the duration of the proceeding. See *Tway v. Hartman*, 75 P.2d 893, 896 (Okla. 1937) ("The rule is stated in *Lee v. Little* (1921) 81 Okl. 168, 197 P. 449

¹ The Department continues to contend that this purported "issue" is not truly an issue for purposes of considering a motion for summary decision because Frager has not properly disputed the relevant facts.

. . . that ‘Where a party to an action makes solemn admissions against his interest in a pleading, they should be treated as admitted facts, and he will not be heard to question the correctness thereof at any stage of the case in the trial court or on appeal . . . so long as they remain a part of the record.’”)

Fragers act of now disputing a fact that he unqualifiedly admitted 20 months ago in his answer to the Recommendation has perpetrated a deception on the Department. The Department was deceived into justifiably relying on Frager’s admission and believing that it did not have to prove facts establishing that GSI’s minimum net capital was \$250,000, in February 2010. Surely recognizing such deception, Frager boldly claims that the Department’s Motion for Reconsideration is a “clear result of the Department’s lack of diligence in prosecuting its case.” See Frager’s Motions, p. 4. Such statement could not be further from the truth.²

Fragers further claim that the Department’s Motion for Reconsideration should be stricken because it was filed eighteen days before the hearing was set to commence on June 18, 2012, is meritless and now moot. The *Final Amended Scheduling Order*, dated May 17, 2012 and agreed to by Frager and the Department, did not provide a deadline for filing motions. The prior scheduling order, dated February 11, 2011, set a deadline for the filing of dispositive motions; however, that scheduling order was stricken on April 8, 2011. See *Agreed Order Striking Scheduling Order Deadlines*, ¶ 1 (April 8, 2011). Frager referenced no statutory authority or case law that would prohibit

² In Frager’s Motions, Frager represents that the Department had never issued discovery directly to Frager prior to April 1, 2012. See Frager’s Motions, ¶ 5. Frager omits that, in addition to much other investigation and discovery, the Department conducted his deposition in May 2010, and issued multiple requests for documents that related directly to him as an agent of GSI. For example, on September 8, 2010, the Department requested “All written correspondence between or among Mr. Norman Frager and FINRA relating to the net capital position of [GSI], or its predecessor, Capital West Securities, Inc., during the time period January 1, 2009, through the present.”

the filing of the Department's Motion for Reconsideration. Further, on May 25, 2012, six days prior to the filing of the Department's Motion for Reconsideration, Frager filed a motion to continue the hearing date that was ultimately granted in an Order dated June 1, 2012. The hearing has yet to be reset. If the hearing is reset to commence during the month of August 2012, as ordered by the Hearing Officer on June 1, 2012, the filing of the Department's Motion for Reconsideration will have occurred over two months prior to the hearing.³

For the foregoing reasons, Frager's motion to strike the Department's Motion for Reconsideration is meritless and should be denied.

II. Frager's Deadline to Respond to Department's Motion for Reconsideration Should Not Be Extended.

In the alternative to his motion to strike, Frager has moved for an order extending his deadline to respond to the Department's Motion for Reconsideration until ten days after the deposition of David Paulukaitis – or July 26, 2012. The essence of Frager's motion to extend the deadline appears to be that he has not yet deposed David Paulukaitis and Carol Gruis, and he believes their testimony to be relevant to the issues raised in the Department's Motion for Reconsideration.⁴ Frager's motion to extend has no merit.

³ During the month of August 2012, the Department's expert witness is only available on August 6-10 and 23-24. The Department made the limited availability of its expert witness known at the time it objected to Frager's motion to continue the hearing. Frager will not agree to resetting the hearing to commence during the time period August 6-10, 2012. Frager has yet to agree to reset the hearing to August 23-24th.

⁴ Frager mentions that the depositions of two other witnesses, in addition to Mr. Paulukaitis and Ms. Gruis, are scheduled to be taken between now and July 30, 2012. Those two other witnesses, Samuel Luque and James Roth, are Frager's witnesses. Presumably, Frager would not need to depose his own witnesses in order to respond to the Department's Motion for Reconsideration.

Carol Gruis has been identified by the Department as a witness in this matter since December 22, 2010, when the Department filed its preliminary witness list. See *Department's Preliminary List of Witnesses and Exhibits*, ¶ 20 (Dec. 22, 2010). Frager did not take Carol Gruis' deposition until June 20, 2012.⁵ Had Frager taken Ms. Gruis' deposition prior to the June 11, 2012, discovery deadline set forth in the *Final Amended Scheduling Order*, Frager would not have been in the position of having to respond to the Department's Motion for Reconsideration without having deposed Ms. Gruis. Regardless, Frager has now deposed Ms. Gruis and this purported basis for his motion to extend the deadline is moot.

David Paulukaitis has also been identified by the Department as a witness in this matter since December 22, 2010, when the Department filed its preliminary witness list. See *Department's Preliminary List of Witnesses and Exhibits*, ¶ 5 (Dec. 22, 2010). Frager has had 18 months to take Mr. Paulukaitis' deposition. Even though the Department filed an affidavit of Mr. Paulukaitis in support of its motion for summary decision against Frager on November 1, 2011, Frager has still not taken Mr. Paulukaitis' deposition. Further, Frager purportedly has his own expert witness, Samuel Luque. If expert testimony is necessary to establish what GSI's net capital requirement was pursuant to SEC Rule 15c3-1 in February 2009, why has Frager not obtained an affidavit by Mr. Luque?

For the foregoing reasons, Frager's motion to extend the deadline to respond to the Department's Motion for Reconsideration is meritless and should be denied.

⁵ Interestingly, Frager claims in footnote 2 of Frager's Motions that Ms. Gruis' deposition was moved to June 20, 2012, "to accommodate all parties' schedules." Such representation is wrong. The Department agreed to move the deposition to June 20, 2012, at the request of Frager's counsel, to accommodate the schedule of Frager's counsel.

Conclusion

The Department's Motion for Reconsideration should not be stricken. It presents additional evidence on the primary "issue" that arose during the April 27th hearing relating to the alleged February 2010 net capital violations and was filed at least two months before the hearing on the merits will commence in August 2012. Further, Frager should not be afforded additional time to respond to the Department's Motion for Reconsideration. Frager has had 18 months to take the depositions of Ms. Gruis and Mr. Paulukaitis. Frager's Motions should be denied.

Respectfully submitted,



Melanie Hall, OBA #1209
Terra Bonnell, OBA #20838
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73102
Phone: 405-280-7700 /Fax: 405-280-7742
Attorneys for Department

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing objection was emailed and mailed, with postage prepaid, this 25th day of June, 2012, to:

Mr. Bruce R. Kohl
201 Camino del Norte
Santa Fe, NM 87501
Bruce.kohl09@gmail.com

Donald A. Pape, Esq.
Donald A. Pape, PC
401 W. Main, Suite 440
Norman, OK 73069
don@dapape.com

Susan E. Bryant
Bryant Law
P.O. Box 596
Camden, ME 04843
sbryant@bryantlawgroup.com

Melvin R. McVay, Jr.
Jason M. Kreth
PHILLIPS MURRAH P.C.
Corporate Tower, 13th Floor
101 North Robinson
Oklahoma City, OK 73102
jmkreth@phillipsmurrah.com
MRMcVay@phillipsmurrah.com


Terra Bonnell

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

IN THE MATTER OF:)
Geary Securities, Inc. fka)
Capital West Securities, Inc.;) File No. 09-141
Keith D. Geary; Norman Frager;)
And CEMP, LLC,)

* * * * *

TRANSCRIPT FROM DIGITAL RECORDING

OF TELEPHONIC HEARING

ON MOTION FOR SUMMARY DECISION

HAD ON APRIL 27TH, 2012

* * * * *

A P P E A R A N C E S

HEARING OFFICER: BRUCE R. KOHL
201 Camino del Norte
Santa Fe, NM 87501

FOR THE DEPARTMENT: TERRA BONNELL
MELANIE HALL
Oklahoma Department of
Securities
120 N. Robinson
Suite 860
Oklahoma City, OK 73102

EXHIBIT

A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR RESPONDENTS CEMP, GEARY
SECURITIES AND KEITH GEARY: JOE HAMPTON
Corbyn Hampton, PLLC
211 N. Robinson
Suite 1910
Oklahoma City, OK 73102

FOR RESPONDENT
NORMAN FRAGER: SUSAN BRYANT
Bryant Law
PO Box 596
Camden, ME 04842

And DONALD PAPE
Attorney at Law
401 W. Main, Suite 440
Norman, OK 73069

REPORTED BY: KIT VICKERY, R.D.R.
Court Reporter

(Audio transcription time started at 8:04.)
OPERATOR VOICE: Bruce Kohl has joined the conference.
MR. PAPE: Oh.
MS. BRYANT: There's Bruce, okay.
MR. PAPE: There he is.
HEARING OFFICER KOHL: Good morning.
MS. BRYANT: Good morning.
HEARING OFFICER KOHL: I'm sorry for the delay. I was misdialing the number.
And thank you, Ms. Bryant, for straightening me out on what the correct number is.
(Laughter.)
MS. BONNELL: I apologize, that's my fault.
HEARING OFFICER KOHL: Well, somebody somewhere in the world named Penny has gotten a lot of calls from me.
(Laughter.)
Good morning, everyone. Would you please all identify yourselves for the record? I'm Bruce Kohl, the hearing officer.
MS. BRYANT: Susan Bryant, attorney for Norm Frager.
MR. PAPE: Don Pape, counsel for Norm Frager.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

	Page
Argument by Ms. Bonnell.....	6
Argument by Ms. Bryant.....	36
Argument by Ms. Bonnell.....	51
Certificate of reporter.....	70

MS. BONNELL: Terra Bonnell, counsel for the Department, and I had with me Melanie Hall. She went down the hall to try to find your telephone number, so she should be back shortly.
HEARING OFFICER KOHL: Okay, thank you.
Are we ready to proceed, or do you want to wait for her to return?
MS. BONNELL: We can proceed.
MR. PAPE: Terra, could you scoot closer to the phone? I can just barely hear you.
MS. BONNELL: Let me turn up my volume.
MR. PAPE: Thank you.
MS. BONNELL: Is that better?
MR. PAPE: Yes, I think so.
MS. BONNELL: Okay.
HEARING OFFICER KOHL: Yes. Please speak up. Are you on a speaker phone, Ms. Bonnell?
MS. BONNELL: I am.
HEARING OFFICER KOHL: Just if you could just get close to it so we can all hear you.
MS. BONNELL: Okay, I will.
HEARING OFFICER KOHL: Okay. We're here this morning to hear the motion for summary decision filed by the Department against the respondent, Norman Frager.

1 So then on February 10th is when they realized. They
2 did the first calculation showing that it was under
3 net capital, and he should have filed the reports in a
4 timely manner, which he didn't.

5 He should have made sure that the broker dealer
6 ceased operation, which it didn't, that was his duty
7 as the FINOP, the financial and operations principal.
8 He should have made sure that Geary Securities quit
9 operating when it was under net capital. If the firm
10 didn't -- you know, refused to do that, then he had a
11 duty to resign, but as the FINOP he had a duty to make
12 sure that the firm quit operating, period.

13 With respect to the May 2009 net capital
14 violation, he did not learn -- admittedly, he didn't
15 learn about the net capital violation until the day
16 that it was corrected. So at that point they had
17 already operated. It would be -- we're not -- we're
18 not saying that he should be liable for them not
19 operating since he didn't learn about it until -- the
20 transactions until after the fact, but at that time he
21 should have filed a notice saying that they were under
22 net capital and he didn't.

23 And he's -- there is all this testimony about
24 how, you know, the cancel and rebill, that he thought
25 that they were cancel and rebills, and he assumed that

1 they were be doing -- that they were done, but he
2 never verified any of that. The cancel and rebills
3 were never done, period. They were never done until
4 November 2012, and when they were done in November --
5 excuse me, not 2012, that would be very late --
6 November 2009.

7 So in November 2009 when they were finally redone
8 after FINRA pointed it to his attention, they still
9 weren't done correctly. The settlement date wasn't
10 changed. The settlement date remained June 1st for
11 the purchase by the Geary customers, and the firm kept
12 its records on a settlement date basis. So he had a
13 duty to make sure that it was done properly at that
14 time and he didn't.

15 So he can't -- he's ultimately responsible for
16 the financial operation of the firm, and he had a duty
17 to verify to make sure it was done correctly. He
18 couldn't just assume that people knew how to do it and
19 that it had been done correctly.

20 I hope that answers your question.

21 HEARING OFFICER KOHL: It did. If I
22 understand, I guess he's just a part-time employee of
23 the firm. He only works a couple days a week or
24 something.

25 MS. BONNELL: He does. However, there is

some notices to members. There is notice to member
06 -- I have it right here -- 06-23, and there is
prior notices to members that FINRA has published that
make it very clear that it doesn't matter if he's
off-site or on-site or full-time or part-time, his
responsibilities are exactly the same.

HEARING OFFICER KOHL: Okay. Anything
further?

MS. BONNELL: No, thank you.

HEARING OFFICER KOHL: Thank you.

Mr. Pape or Ms. Bryant?

MS. BRYANT: I guess I am responding, and I
guess I would -- I would start out with just a couple
things.

One, as I'm sure the hearing officer is aware, is
that summary decision is only appropriate if there are
no material facts in dispute, or if there are no
material facts that are subject to differing
interpretations.

Secondly, according to case law, all of the facts
and interpretations must be construed in favor of the
party against whom summary decision is being
requested.

I also would like to incorporate our responses
that we've already filed, and I really had not

anticipated reiterating much of what's in those
responses. I would like to summarize Attorney Bonnell
with due respect has categorized any number of facts
as being undisputed, and we clearly disputed many of
those facts in our responses.

I think I would like to address two issues, one
with respect to the February 2010 net capital
violations, and again, as we had in our response,
there are net capital obligations that differ for
different purposes, and the membership agreement
contained a net capital requirement of \$250,000, which
is undisputed, but under the SEC rules that is not the
number that is used for determining when a firm has to
cease business.

And the FINOP, Mr. Frager, relied on the fact
that under the SEC rule there is a \$100,000 limit that
allows the firm to continue to do business if it is
not accepting payments directly from customers, and at
that time it was not doing so, that is a fact that we
disputed. We said that there's -- that's a fact that
we believe should be subject to hearing, and it is not
clear, and we did not agree to that fact, and the rule
itself I think was included with our response.

The rule that requires net capital computations
and ceasing business refers to 15 C3-11 I believe it

1 is, and that rule has -- 15 C3-1 excuse me -- and that
2 rule has a \$100,000 threshold instead of the 250 if
3 you're not accepting payments, that would be a fact
4 that would need to be determined at a hearing.

5 HEARING OFFICER KOHL: So if that -- if that
6 rule, in fact, says what you said, then Oklahoma would
7 not be permitted to impose a higher net capital
8 requirement, \$250,000 requirement.

9 MS. BRYANT: That's exactly right.

10 HEARING OFFICER KOHL: In that situation.

11 MS. BRYANT: That's correct.

12 HEARING OFFICER KOHL: Would the lowering of
13 the net capital requirement for the February 2010
14 period have made a difference as far as whether the
15 firm was -- was or was not in compliance?

16 MS. BRYANT: Yes. For most of those days
17 that were in -- you know, that the State is alleging
18 the firm was out of compliance, the firm was in
19 compliance with the \$100,000 threshold.

20 HEARING OFFICER KOHL: You alluded in
21 your -- your response that you had experts that were
22 going to testify to this, but as far as I know you
23 haven't named any of the experts, nor have you
24 provided any kind of -- of evidentiary material
25 concerning what their opinions would be.

we were notified that they had no -- they didn't know
anything, and they weren't ready to be deposed and
could we hold off, so we held off, and then about
January or February of this year we started asking
again.

The opposing counselor gave us a date for one of
the depo -- for one of the experts just this morning,
and it was the first date that's ever been provided to
us. Somewhere in the meantime, I contacted one of the
experts directly, and he gave me dates and I -- but
opposing counsel wasn't available on those dates. So
to answer your question, no, we have not had the
opportunity, but we have tried, and we are intending
to depose them.

HEARING OFFICER KOHL: Ms. Bryant, have
the -- have these experts rendered any kind of an
opinion yet on these issues?

MS. BRYANT: Not in writing, only verbally
to us.

HEARING OFFICER KOHL: I mean would not it
have been appropriate in this case to include at the
very minimum an affidavit from them dealing with these
points?

MS. BRYANT: Probably. I certainly
understand that position. I think we believe that in

1 MS. BRYANT: We have been trying to pin that
2 down, and just this morning I was finally able to talk
3 with both of the experts, and they are able to discuss
4 that issue and confirm our position.

5 HEARING OFFICER KOHL: Well, when were you
6 planning to pin this down? This case has gone on for
7 a year and a half. We're about to get to a final
8 hearing on the merits in this case.

9 MS. BRYANT: Well, to be honest, I had
10 difficulty reaching the -- the first expert had
11 indicated that that was the case, and I've had
12 difficulty confirming it with the expert that we
13 really wanted to use, so that's -- it's been a matter
14 of communicating with the expert.

15 HEARING OFFICER KOHL: Have you listed any
16 of these experts on any of your witness lists?

17 MS. BRYANT: Oh, yes, they're both listed.

18 HEARING OFFICER KOHL: Are they both
19 identified in the witness list?

20 Ms. Bonnell, has the State had an opportunity to
21 depose any of these experts, or did you intend to
22 depose them?

23 MS. BONNELL: That's actually a pretty
24 interesting question because we've been trying to
25 depose them for about a year or over a year. At first

opposing a motion for summary decision we needed to
only introduce one fact that was in dispute that was
material, and that hundred thousand dollar issue with
the statute in place, we referenced the statute and
that disputed that \$250,000 threshold. We believed
that was sufficient and that we didn't really need an
affidavit to support that.

HEARING OFFICER KOHL: Okay, go ahead.

MS. BRYANT: So that's with respect to the
February 2010 issue. The second issue I think is --
is the more significant one, and it's the question of
whether the securities, the private label CMOs, were
ever in the inventory of Geary Securities, and again,
based on the deposition and on our responses from the
original filing and our original response to it, we
vehemently oppose those facts as undisputed.

The way a clearing broker works is that when a
transaction is presented, whatever transaction it may
be, the clearing broker fronts the money for the
transaction and then it is settled. So there is two
sides to each transaction. One is the payment to the
seller, and the other is the delivery of the payment
from the buyer.

HEARING OFFICER KOHL: And there is no
dispute here that they'd, in fact, fronted the money

1 Pershing issue with you, sir, and --
 2 HEARING OFFICER KOHL: Are you referring to
 3 the telephone recording?
 4 MR. PAPE: The telephone recordings were
 5 ones that she had.
 6 HEARING OFFICER KOHL: I have to say I don't
 7 put a lot of stock in the telephone recording. You
 8 know, first of all, it was fairly early in the case.
 9 The Pershing people hadn't really reviewed their
 10 records at that point.
 11 You know, it's not evidence in the sense that the
 12 parties had an opportunity to cross-examine the
 13 participants in the call and so on, so I mean I
 14 don't -- I would not count that as much as far as
 15 evidentiary value in this case.
 16 I would certainly feel more comfortable with your
 17 argument if you had had, you know, some evidence
 18 either in the form of -- of citations to the
 19 depositions or affidavits from your experts or
 20 something along those lines that would put in dispute
 21 some of these issues.
 22 MS. BRYANT: Well, we did have citations to
 23 the depositions, I believe, and we --
 24 HEARING OFFICER KOHL: Okay. Well, I'll
 25 be -- I'll be going back and taking a closer look at

1 that.
 2 Let's talk for a minute about -- well, first of
 3 all, what -- I know we had an issue that arose before
 4 about staying these proceedings because of a FINRA
 5 action. We've already discussed the fact that with
 6 regard to the May 2009 issue that FINRA is taking a
 7 look at that at this point. How about the Feb 2010,
 8 is that part of the same FINRA review?
 9 MS. BRYANT: Yes, it's part of the same --
 10 HEARING OFFICER KOHL: So they're going to
 11 be taking a look at the same issue, those same two
 12 periods that we're looking at at this point.
 13 MS. BRYANT: That's correct.
 14 HEARING OFFICER KOHL: Okay. Ms. Bonnell,
 15 with regard to this \$100,000 net capital issue, are
 16 you all in agreement with them that -- that the net
 17 capital requirement in this situation might, in fact,
 18 be \$100,000, or do you continue to maintain that it's
 19 \$250,000 for all purposes?
 20 MS. BONNELL: We continue to maintain that
 21 it was \$250,000 because I don't know if you would say
 22 for all purposes or not, but it was 200 -- in fact,
 23 \$250,000 pursuant to Rule 15 C3-1 in addition to their
 24 membership agreement because Geary Securities received
 25 checks made payable to them, and Denise -- excuse

me -- Karen Coker, their operations manager, testified
 to that.
 We also have evidence of those checks. We have
 those checks, but her testimony is on page 73 through
 74, and she said previously -- I said previously you
 said one of your duties is reviewing the checks and
 securities received, she said yes. I said is that
 still your responsibility, she said yes.
 I said does the firm still receive checks and
 securities, she said, yes, they do, just not very
 often, and then she goes on to say -- I said are they
 payable to Geary Securities, she said some of them
 still come in that way, but they go directly into
 clients' accounts.
 She says -- but so you're saying they go directly
 into the client's accounts, but some of the checks are
 still payable to Geary Securities, she said yes. And
 Norm Frager himself testified on page 160 of his
 deposition that by his interpretation -- he said so by
 my interpretation we clearly violated receipt of
 customer checks, but we got very few customer checks.
 It might also be -- it's not -- we haven't
 tendered it as evidence, but we can tender it as
 evidence, we can email it afterwards to submit it if
 we need to, but the firm's written supervisory

procedures also specified that their -- that their
 capital requirement was \$250,000 based on the type of
 business they were doing.
 Now maybe their argument is is that for that
 month they weren't -- you know, they didn't require
 that it would be 250,000. Maybe for that month they
 only required 100,000, but that's a ridiculous
 argument because the firm's capital requirement
 shouldn't be allowed to fluctuate on a month-to-month
 basis. It's either -- you know, it's one number or
 another number, but it shouldn't fluctuate on a month
 to month or a week to week --
 HEARING OFFICER KOHL: Well, is it -- is
 it -- if I'm understanding the SEC rule involved here,
 isn't it a question of what type of business they're
 transacting? So the hundred thousand dollar rule
 would come into effect if they weren't, in fact,
 receiving client funds.
 MS. BONNELL: But they were receiving client
 funds, and their policies allowed them to receive
 client funds.
 HEARING OFFICER KOHL: Right.
 MS. BONNELL: Which is key.
 HEARING OFFICER KOHL: So what you're saying
 is they have to choose -- they either have to operate

1 the firm in a -- in a manner where they never receive
2 client funds to get the benefit of the \$100,000 net
3 capital requirement, or if they are going to receive
4 client funds, the \$250,000 level would be the
5 applicable one, but it doesn't change from month to
6 month depending on what their practices are.

7 MS. BONNELL: Right.

8 HEARING OFFICER KOHL: Ms. Bryant, what's
9 your view of that issue?

10 MS. BRYANT: With all due respect, Attorney
11 Bonnell is interpreting SEC rules. That is not the
12 way it works for those purposes. It is our
13 understanding that for purposes of whether you are
14 under net capital or not, it is not uncommon for a
15 firm to go under different requirements at different
16 times. If they are below the \$250,000 level under the
17 rule, they can stop receiving customer funds directly,
18 and they can comply with the hundred thousand dollar
19 rule.

20 It doesn't mean that they haven't violated their
21 membership agreement, but it does not mean that they
22 are under net capital. So it's two different things
23 for two different purposes, and I think that the issue
24 that's in dispute -- again, on summary decision, it's
25 an issue that's in dispute and it needs to be heard

HEARING OFFICER KOHL: Well, I mean do you
agree that the only issue we're really talking about
here with regard to the February net capital violation
is which of the two limits applies here, the 100,000
versus the \$250,000 limit?

MS. BONNELL: Well, I would actually say
that there is no issue with regard to the February
2010 because in their answer they specifically
admitted that at all material times the net capital
requirement was \$250,000, and when they admitted it in
their answer and they have put forth -- all they have
done is put forward testimony of Ms. Bryant, who with
all due respect, may be -- you know, had knowledge on
this, but is not a witness in this matter. They have
put no legal authority and no factual evidence to
support their position that they have already
admitted.

HEARING OFFICER KOHL: Okay. Ms. Bryant,
what's -- if you have discussed this with your expert,
what does your expert say?

MS. BRYANT: My expert agrees with our
position quite emphatically. We believe it was clear
in the rule which is why we didn't put anything else
in support of that, but we are prepared to present him
on that issue at a hearing.

1 fully at hearing is whether the fact that those checks
2 were never processed through Geary Securities
3 constituted payments to Geary Securities or whether
4 they do not under that rule, and that's an issue that
5 needs to be heard at hearing.

6 HEARING OFFICER KOHL: But that's really the
7 only issue we have with regard to the February net
8 capital question, which of these -- which of these
9 limits is the applicable one.

10 MS. BRYANT: Basically that's the primary
11 issue with respect to those violations, correct.

12 HEARING OFFICER KOHL: And I mean I've heard
13 obviously opinions of both counsel on this issue.
14 What expert evidence do we have that supports either
15 of the two positions here?

16 Ms. Bonnell, what is -- have you discussed this
17 with Mr. -- with your expert, Mr. -- is it
18 Paulukaitis?

19 MS. BONNELL: Paulukaitis.

20 HEARING OFFICER KOHL: Yes.

21 MS. BONNELL: Yes. We have discussed it
22 with him. It's not included in the affidavit because
23 it was -- it came up after the fact. However -- I
24 mean do you want me to tell you what he told us even
25 though it's not in an affidavit?

The issue that makes it subject to a hearing is
whether or not there were client funds being processed
through the firm, which again, we believe is a subject
that needs to be reviewed at a hearing and not for
summary decision.

You know, we did cite the statute, we did cite
the rule, and again, it's not in conflict. The
membership agreement says \$250,000. During
deposition -- excuse me -- during depositions it is
not our position to clarify answers of our client with
respect to which type of net capital he was
discussing, or in our answer we -- we admit that the
membership agreement had a \$250,000 net capital
requirement, but we don't admit that that applied for
purposes of net capital deficits during this period of
time.

MS. BONNELL: But -- I'm sorry, I didn't
mean to interrupt. Would now be a good time to make a
statement?

HEARING OFFICER KOHL: Go ahead.

MS. BONNELL: And I'm sorry, Ms. Bryant, I
didn't mean to interrupt you.

One thing that you have to keep in mind here that
I think is very telling is the fact that Mr. Frager
filed 17 A-11-B2 notices stating that the firm was

1 under net capital. Then the firm -- it specifically
2 states that it's under the net capital required by 15
3 C3-1. So if he truly -- if the firm truly was not
4 conducting business as a \$250,000 broker dealer, and
5 they were truly not in that capital violation, the
6 question remains why did they file the 17 A-B notices.

7 HEARING OFFICER KOHL: Well, wouldn't that
8 be a fact, though, that should be explored through
9 hearing on the issue?

10 MS. BRYANT: Absolutely.

11 MS. BONNELL: No, because they haven't
12 put -- I would say no because all it does is show, it
13 demonstrates that the file -- that the requirement was
14 \$250,000, and on the notice themselves it states the
15 requirement is \$250,000. So I don't think it raises
16 any issues. All it does is show that the requirement
17 was, in fact, \$250,000, and they're only raising this
18 other issue after the fact to try to cover themselves.

19 HEARING OFFICER KOHL: Well, if -- if, in
20 fact, though, this issue is a legitimate issue,
21 shouldn't we explore what that issue is before we make
22 a final ruling on this matter? I mean I think I would
23 agree with you that from the standpoint of the rules
24 of summary decision here you've shown the evidence
25 that supports your position, and they, quite frankly,

the experts that Mr. Frager will present here will at
least support the contention that the net capital
limit should be 100,000 as opposed to the 250,000
during that period and there was accordingly no net
capital violation, shouldn't we take that into
consideration making our final ruling?

I mean we very likely or could possibly make an
incorrect ruling which sooner or later we'll
contradict, but at least all the evidence would have
been presented on that point.

MS. BONNELL: But I think what's key here is
the fact that they had -- they put those experts on
their witness -- their final witness list that they
had filed over a year ago, yet they still have not
produced any sort of affidavit, and when I called Mr.
Pinto himself just a month ago to try to get a date
from him, he said he hadn't reviewed anything.

So -- and still there is -- a motion for summary
decision is all about showing that there is a genuine
issue as to a material fact, and until they present
evidence, there is no genuine issue.

MS. BRYANT: May I respond?

HEARING OFFICER KOHL: Yes, you -- go ahead.

MS. BRYANT: Okay. I think, first of all, I
don't know why Mr. Pinto hadn't reviewed documents.

1 have really, with the exception of perhaps of the
2 citation to the SEC rule which I will go back and
3 review, have not refuted that evidence.

4 MS. BONNELL: Well --

5 HEARING OFFICER KOHL: And so arguably on
6 a -- on a basis of your request for a summary
7 decision, it seems to me that you should prevail on
8 that point, but what I would hate to have happen here
9 is to make a ruling determining that they were in
10 violation of that net capital requirement and have
11 FINRA come back later and interpret this rule and say,
12 no, that's absolutely untrue, basically accept the
13 position of what Ms. Bryant is contending her experts
14 are about to say.

15 MS. BONNELL: Well, I mean I don't know -- I
16 know that at the onset FINRA clearly adopts the same
17 position because they filed the Wells Notice against
18 Mr. Frager, and they seem to be on the same page, so I
19 don't know that you're going to have any resolution of
20 that until after FINRA decides the matter, so I
21 think --

22 HEARING OFFICER KOHL: Yeah, but wouldn't it
23 be -- and I'm assuming here because I haven't seen any
24 evidence of it, but other than the testimony or the
25 statements of counsel, if we take it as a given that

We sent them to him a year -- starting a year ago, and
you'll get your production this afternoon that shows
that, but secondly, when a statute -- I think the
Department has cited a number of statutes and -- and
stated those as undisputed facts.

We did not believe we needed an affidavit to
backup the language of the statute, so that was
perhaps our error, but we believe the statute was
clear on its face. The statute does not reference the
membership agreement.

Secondly, there were one or two days when, in
fact, there was a violation of all net capital. It
did go below the hundred thousand, and on those dates
Mr. Frager did file notices and indicated that it went
below that.

With respect to the Wells Notice and the FINRA,
we have prepared, and again, the Department will get a
copy of that this afternoon, a chart that shows the
dates on which we believed that the \$100,000 net
capital requirement applied and that has not been
heard by FINRA or they have not resolved -- they have
not really responded to our Wells response. So we are
really not clear. We expect we'll be going to
hearing, but we haven't been notified one way or the
other.

1 MS. BONNELL: In response --
 2 HEARING OFFICER KOHL: If we -- did you have
 3 something else to add, Ms. Bonnell?
 4 MS. BONNELL: Yes. I just also wanted to go
 5 back about how, you know, we're interpreting the rules
 6 and so forth. I just also want to make note of the
 7 fact that again as Frager testified on page 160 of his
 8 deposition testimony that the firm received customer
 9 checks.
 10 So I just want to point out again that he
 11 admitted that the firm received the checks which
 12 supports the position and the Department. Karen Coker
 13 admitted that they accept the checks which just goes
 14 to show that there's evidence in the record that they
 15 were a \$250,000 broker dealer.
 16 MS. BRYANT: Again, I guess I would say this
 17 is an issue that really needs to be heard. I don't
 18 know what dates they were talking about when they were
 19 talking about receiving checks. The issue would only
 20 apply during those dates where the net capital was in
 21 issue. So I think it's definitely an issue that needs
 22 to be heard at a hearing where we can present evidence
 23 and look at the dates and look at the -- the
 24 documentation.
 25 HEARING OFFICER KOHL: If I were to deny the

1 motion for summary decision, how quickly could we
 2 bring this matter to a final hearing on the merits?
 3 In the status report, I haven't gone and looked at
 4 it -- Mr. Pape, I don't know if you agreed with the --
 5 MR. PAPE: June 18th. She has June 18th
 6 through the 22nd.
 7 HEARING OFFICER KOHL: Okay. Do you concur
 8 with those dates?
 9 MR. PAPE: I believe we could achieve that,
 10 sir.
 11 MS. BRYANT: Those are fine with me.
 12 MR. PAPE: Those are fine with us.
 13 HEARING OFFICER KOHL: And how about
 14 conducting any additional discovery? At the very
 15 least it seems the Department has a right to depose
 16 your experts.
 17 MR. PAPE: And we have dates for those
 18 people prior to the hearing date, sir.
 19 MS. BONNELL: Well, the Department is a
 20 little bit confused because this morning I was
 21 notified that their experts aren't available for
 22 deposition until -- or excuse me -- not even -- I
 23 wasn't given a date for Pinto, but for Mr. Luque I was
 24 given the date of June the 4th forward. So I don't
 25 know how I could have a hearing a week after we take

the deposition of their expert.
 MS. BRYANT: Well, that was 18 -- first of
 all, I don't think our hearing is going to take as
 long as it would have were we hearing all of the
 issues.
 MR. PAPE: Yeah.
 MS. BRYANT: And it's one deposition. I
 think the issues are going to be fairly simple.
 MS. BONNELL: I'm sorry, I may not have
 communicated my point properly, but my point is
 that I think we're going to have to have it later than
 that if their expert is not truly available for
 deposition until June 4th.
 HEARING OFFICER KOHL: Could you make your
 expert available before the June 4th day?
 MS. BRYANT: I have tried, he just is not
 available. We're only going to have the one expert.
 We're not going to be using Mr. Pinto. So we are down
 to just one deposition that has to be taken, and we
 have to take Mr. Paulukaitis, so you know, we both
 would be in the same position. We will take Mr.
 Paulukaitis, and then we can have a hearing as soon as
 the Department is ready after they take the
 deposition. They can take it on June 4th.
 MS. BONNELL: The Department proposes July

16th as a hearing date to -- not because -- but in
 light of the schedule that was given for Mr. Luque as
 June 4th and knowing that the respondents want to take
 the deposition of our expert who is very hard to
 schedule around, for that reason we propose the date
 July 16th.
 HEARING OFFICER KOHL: How much time do the
 parties believe we need for this hearing I think we
 have set aside four or five days for, but there were
 obviously broader issues involved then.
 MR. PAPE: Yes. Just for what it's worth,
 the July 16 dates I'm not available. I'm out of the
 country again, but I would be available the week of
 July 2nd if -- assuming that would work for the
 Department. I would think we could do this in max of
 two days, sir.
 MS. BONNELL: I would agree.
 MS. BRYANT: I would agree as well.
 MS. BONNELL: But I cannot do July 2nd.
 HEARING OFFICER KOHL: Say again.
 MS. BONNELL: We would agree that two days
 would be sufficient; however, the Department is not
 available the week of July 2nd.
 MR. PAPE: Oh. What about the week before,
 June the 23rd -- excuse me, strike that -- the 25th?