

COPY

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4 Attorneys for the Receiver

5  
6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
7  
8 IN AND FOR THE COUNTY OF MARICOPA

8 Arizona Corporation Commission,  
9 Plaintiff,

9 v.

10 One Vision Children's Foundation, Inc.,  
11 an Arizona non-profit corporation;  
12 Hollister M. Marx, an individual; Wealth  
Management Resources, Inc., an Arizona  
13 corporation; Michael B. and Betty  
Maksudian, husband and wife; Michael  
A. and Lorrina Diaz, husband and wife,  
14 Defendants.

Cause No. CV 2002-020878

PETITION NO. 17  
EX PARTE PETITION FOR  
AUTHORIZATION TO FILE AND  
PROSECUTE LAWSUIT AGAINST JUAN  
AND MARTHA DIAZ

(Assigned to Judge Kenneth L. Fields)

14  
15 Lawrence J. Warfield, as the court appointed Receiver, respectfully petitions the  
16 Court, *ex parte*, as follows:

17 1. On October 28, 2002, this Court entered its *Order Appointing Receiver*, which  
18 appointed Lawrence J. Warfield as Receiver of all of the assets of One Vision Children's  
19 Foundation, Inc. and Wealth Management Resources, Inc. ("Receivership Order").

20 2. One of the duties of the Receiver is to identify and recover receivership assets  
21 and to institute proceedings as may be necessary for the collection of Receivership Assets.

*Order Appointing Receiver* ¶12.

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1           3.     The Receiver is authorized to file this petition *ex parte* pursuant to this Court's  
2 *Order Re: Petition No. 2, Order Governing the Administration of the Receivership*, which  
3 provides in pertinent part as follows:

4                   4. Ex Parte Petitions. Counsel for the Receiver may file an *ex parte*  
5 petition without providing notice or service as provided in this order or by the  
6 Rules of Civil Procedure, where the Court expressly so authorizes such a filing,  
7 or where:

8                   a.     The petition seeks authority to engage outside  
9 professionals to perform services for the Receiver, including outside  
10 counsel to represent the Receiver in pending or contemplated  
11 litigation.

12                   b.     The petition seeks authority to institute or defend  
13 litigation, file an appeal or assert or otherwise perfect a claim or  
14 defense of the Receiver.

15           4.     On July 3, 2003, this Court entered a *Final Judgment* against Defendants  
16 Michael and Lorrina Diaz for, among other things the sum of \$4,357,140.84. *Final*  
17 *Judgment*, page 5. The *Final Judgment* further provides that the Receiver "shall have the  
18 right to enforce the provisions of this Judgment." *Final Judgment*, page 6. A copy of the  
19 *Final Judgment* is attached to the copy of this petition provided to the Court and the persons  
20 on the Master Service List.

21           5.     Although Diaz previously filed a petition in bankruptcy, that proceeding was  
dismissed on June 3, 2003 and Diaz's Motion to Reinstate was denied on September 26,  
2003.

          6.     On or about April 24, 2000, Michael Diaz, through one or more transfers,  
transferred \$77,798.68 of his funds to purchase a single family residence in the name of the

1 Defendants Juan and Martha Diaz. The property acquired in the name of the Defendants is  
2 located at 730 Ithica Street, Gilbert, Arizona (“Property”).

3 7. These transfers by Defendant Diaz constitute fraudulent transfers under  
4 Arizona’s Fraudulent Transfer Act, A.R.S. §44-1001 et. seq. for the reasons that, among other  
5 things: the transfers were made for the benefit of insiders, the Diaz’s parents; Diaz did not  
6 receive consideration; Diaz retained possession of the Property and is currently believed to  
7 reside there; and Diaz attempted to conceal the transaction by utilizing a series of cashiers  
8 checks. By reason of the fraudulent transfers, the Receiver is entitled to recover the Property  
9 and, to the extent necessary, a judgment against the Transferees, Juan and Martha Diaz.

10 8. On March 22, 2004, the Receiver’s counsel mailed to Juan and Martha Diaz a  
11 letter demanding that they turn over to the Receiver the amount of the transferred funds by  
12 April 5, 2004. Attached as Exhibit “B” is a copy of that letter. To date no response has been  
13 received by the Receiver or his counsel.

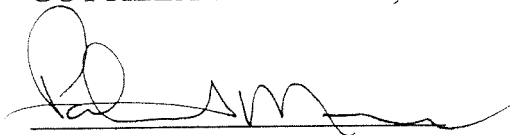
14 9. Attached hereto as Exhibit “A” is a copy of the *Complaint* that the Receiver  
15 intends to file asserting the above claims. As authorized by paragraph 12 of the *Order*  
16 *Appointing Receiver*, the Receiver may file the *Complaint* before the Court acts on this  
17 petition in order to avoid a statute of limitations defense, but will not serve or prosecute the  
18 lawsuit until the court has authorized same.

19 WHEREFORE, the Receiver respectfully requests that the Court enter an order  
20  
21

1 authorizing the Receiver to file, serve and prosecute the lawsuit described in the *Complaint*  
2 attached hereto as Exhibit "A".

3 Respectfully submitted this 16<sup>th</sup> day of April, 2004.

4 GUTTILLA & MURPHY, PC

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6 Patrick M. Murphy  
7 Attorneys for Receiver

8 0795-001(25851)

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4 Attorneys for the Plaintiff

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
6 IN AND FOR MARICOPA COUNTY

7 Lawrence J. Warfield, Receiver )  
8 Plaintiff )  
9 v. )  
10 Juan Diaz and Martha Diaz, husband and )  
11 wife. )  
Defendants. )

Cause No.  
COMPLAINT

12 Plaintiff alleges as follows:

13 1. Plaintiff was appointed the Receiver of One Vision Children's Foundation, Inc.,  
14 an Arizona non-profit corporation, and Wealth Management Resources, Inc., an Arizona  
15 corporation on October 28, 2002, by the Arizona Superior Court for Maricopa County in  
16 cause number CV 2002-020878 entitled *Arizona Corporation Commission v. One Vision*  
17 *Children's Foundation, et al* ("Receivership Court").

18 2. The Defendants are Juan Diaz and Martha Diaz, husband and wife. Defendants  
19 reside at 1032 Banyan Way, Pacifica, California and may be personally served at that  
20 address.

21 EXHIBIT "A"

1           3.     On July 3, 2003, the Receivership Court entered a final judgment against  
2 Michael Diaz and others in the amount of \$4,357,140.84, as restitution for the benefit of the  
3 defrauded investors. The judgment expressly provides that the Receiver "shall have the right  
4 to enforce the provisions of this Judgment." A copy of the Final Judgment is attached hereto  
5 as Exhibit "A".

6           4.     Michael Diaz is the son of the Defendants.

7           5.     On or about April 24, 2000, Michael Diaz, through one or more transfers,  
8 transferred \$77,798.68 of his funds to purchase a single family residence in the name of the  
9 Defendants, Juan and Martha Diaz. The property acquired in the name of the Defendants is  
10 located at 730 Ithica Street, Gilbert, Arizona ("Property") and is legally described as follows:

11                     Lot 248, El Dorado Lakes Golf Community, Tract J,  
12                     According to Book 372 of Maps, Page 2; Records of  
                      Maricopa County, Arizona.

13           6.     Each of the transfers alleged in this Complaint were made with actual intent to  
14 hinder, delay or defraud the creditors of the transferor, Michael Diaz, for the reason that,  
15 among other things, the transferor did not receive reasonable equivalent value in exchange for  
16 the transferred property, the transfer was to insiders, the transferor retained possession of the  
17 Property and is believed to be currently residing in the Property, and the transferor attempted  
18 to conceal the transaction by utilizing a series of cashier's checks.

19           7.     Alternatively, each of the transfers alleged in this Complaint were made without  
20 receiving a reasonable equivalent value in exchange for the transfer and the transferor was  
21

1 engaged in a business or transaction for which the remaining assets of the transferor were  
2 unreasonably small in relation to the business or transaction.

3 8. Alternatively, each of the transfers alleged in this Complaint were made without  
4 receiving a reasonable equivalent value in exchange for the transfer and the transferor  
5 intended to incur, or believed or reasonably should have believed that it would incur, debts  
6 beyond its ability to pay as they became due.

7 WHEREFORE, the Plaintiff prays for the following relief:

- 8 1. Judgment against the Defendants in the sum of \$77,798.68;
- 9 2. Judgment conveying title to the Property to Plaintiff;
- 10 3. Attorneys fees and costs incurred in prosecuting this action; and
- 11 4. For such other and further relief as the Court deems just and proper.

12 Respectfully submitted this \_\_\_\_\_ day of April, 2004.

13 GUTTILLA & MURPHY, PC

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15 \_\_\_\_\_  
Patrick M. Murphy  
Attorneys for the Plaintiff

16 0795-009(25622)