

ORIGINAL
NEW



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

COMMISSIONERS

2004 SEP 28 A 11: 03

SEP 28 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

In the matter of:)	DOCKET NO. S-03500A-04-0000
JAMES L. OPPENHEIMER, AND SYDNEY J. OPPENHEIMER, husband and wife, 695 W. Bear Claw Lane Pinetop, AZ 85935 Respondents.)	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that RESPONDENTS engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

II.

RESPONDENTS

2. JOHN L. OPPENHEIMER, ("RESPONDENT"), resides at 695 W. Bear Claw Lane, Pinetop, AZ 85935.

3. SYDNEY J. OPPENHEIMER was at all relevant times the spouse of JOHN L. OPPENHEIMER. SYDNEY J. OPPENHEIMER is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

1 4. At all times relevant, JOHN L. OPPENHEIMER was acting for his own benefit, and for the
2 benefit or in furtherance of the marital community of John and Sydney Oppenheimer.

3 5. JOHN L. AND SYDNEY J. OPPENHEIMER may be collectively referred to as
4 "RESPONDENTS." SYDNEY J. OPPENHEIMER may be referred to as "RESPONDENT
5 SPOUSE."

6 **III.**

7 **FACTS**

8 6. In March 1999, RESPONDENT entered into a "Sales Agency Agreement" (the
9 "Agreement") with Mutual Benefits Corporation ("MBC"), a viatical company located at 2881 E.
10 Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306, to sell MBC's products consisting of
11 viatical and senior or life settlement contracts. The Agreement provided for commission payments
12 ranging from 5-10% on each sale.

13 7. Between April 1999 and April 2001, RESPONDENT offered for sale and sold twelve MBC
14 viatical settlement contracts to six Arizona investors for a total investment of approximately
15 \$217,573. MBC paid RESPONDENT \$15,410.11 in commissions for these Arizona sales.

16 8. The viatical settlement contracts sold by RESPONDENT were not registered under the
17 Securities Act nor were they exempt from registration.

18 9. RESPONDENT was, at all relevant times, a registered securities salesman, NASD Central
19 Registration Depository ("CRD") #353135, in association with securities dealer Franklin Financial
20 Services Corporation ("FFSC"), NASD CRD #5435.

21 10. FFSC's selling away policies required its representatives to disclose to and receive
22 authorization from FFSC to engage in outside business activities and private securities transactions.

23 11. FFSC policies specifically prohibited its representatives from selling viatical settlement
24 contracts.

1 12. RESPONDENT never disclosed to FFSC his association with MBC or that he was offering
2 for sale and selling viatical settlement contracts.

3 13. On June 27, 2002, FFSC permitted RESPONDENT to resign for violating FFSC's selling
4 away policies and for selling viatical settlement contracts.

5 **IV.**

6 **VIOLATION OF A.R.S. § 44-1841**

7 **(Offer or Sale of Unregistered Securities)**

8 14. From on or about April, 1999, RESPONDENT offered or sold securities in the form of
9 viatical settlement contracts, within or from Arizona.

10 15. The securities referred to above were not registered pursuant to the provisions of Articles 6 or
11 7 of the Securities Act.

12 16. This conduct violates A.R.S. § 44-1841.

13
14 **V.**

15 **REQUESTED RELIEF**

16 The Division requests that the Commission grant the following relief against
17 RESPONDENTS:

18 1. Order RESPONDENT to permanently cease and desist from violating the Securities
19 Act, pursuant to A.R.S. § 44-2032;

20 2. Order RESPONDENT to take affirmative action to correct the conditions resulting
21 from his acts, practices or transactions, including a requirement to pay restitution in the amount of
22 \$217,573.00, pursuant to A.R.S. § 44-2032;

23 3. Order RESPONDENT to pay the state of Arizona administrative penalties of up to
24 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

1 mail ymcfarlin@cc.state.az.us. Requests should be made as early as possible to allow time to
2 arrange the accommodation.

3
4 **VII.**

5 **ANSWER REQUIREMENT**

6 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
7 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer
8 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,
9 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
10 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
11 accompany the Answer. A cover sheet form and instructions may be obtained from
12 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
13 www.cc.state.az.us/utility/forms/index.htm.

14 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon
15 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing
16 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor,
17 Phoenix, Arizona, 85007, addressed to Ella G. Johnson, Attorney Enforcement Section.

18 The Answer shall contain an admission or denial of each allegation in this Notice and the
19 original signature of each RESPONDENT, RESPONDENT SPOUSE or RESPONDENT's
20 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
21 of an allegation. An allegation not denied shall be considered admitted.

22 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
23 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify
24 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or
25 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

