

NEW APPLICATION  
ORIGINAL



0000010267

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2004 OCT -4 A 11: 14

DOCKETED

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

AZ CORP COMMISSION  
DOCUMENT CONTROL

OCT 04 2004

DOCKETED BY

In the matter of:

DOCKET NO. S-03499A-04-0000

**RETIREMENT PLANNING CENTER,**  
a general partnership  
13576 W. Camino Del Sol, Suite 24  
Sun City West, AZ 85375

**NOTICE OF OPPORTUNITY FOR  
HEARING REGARDING PROPOSED  
ORDER TO CEASE AND DESIST,  
ORDER FOR RESTITUTION, FOR  
ADMINISTRATIVE PENALTIES, AND  
FOR OTHER AFFIRMATIVE ACTION**

**JOHN F. KLATT,** a married man  
7450 W. McRae  
Glendale, AZ 85308

**MARILYN A. KLATT,** a married woman  
7450 W. McRae  
Glendale, AZ 85308

Respondents.

**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 have 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.

...

...

1 **II.**

2 **RESPONDENTS**

3 2. Respondent RETIREMENT PLANNING CENTER, an Arizona general partnership  
4 (“RPC”) is a retirement planning business located at 13576 W. Camino Del Sol, Suite 24, Sun City  
5 West, Arizona 85375. RPC, owned and operated by Respondent JOHN F. KLATT along with his  
6 spouse, daughter and son-in-law, engages in the sale of insurance products together with providing a  
7 variety of other estate planning services.

8 3. Respondent JOHN F. KLATT (“KLATT”), whose last known address is 7450 W. McRae,  
9 Glendale, Arizona 85308, has, at all times relevant hereto, served with RPC as a general partner,  
10 certified estate planning advisor, and an insurance agent licensed with the State of Arizona.

11 4. Respondent MARILYN A. KLATT, whose last known address is 7450 W. McRae,  
12 Glendale, Arizona 85308, was at all relevant times the spouse of Respondent KLATT. MARILYN  
13 A. KLATT is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the  
14 liability of the marital community.

15 5. At all times relevant, Respondent KLATT and MARILYN A. KLATT were acting for their  
16 own benefit, and for the benefit or in furtherance of the marital community.

17 6. Respondent KLATT and Respondent RPC may be collectively referred to as  
18 “RESPONDENTS.” MARILYN A. KLATT may be referred to as “RESPONDENT SPOUSE.”

19 **III.**

20 **FACTS**

21 7. A viatical settlement is the sale of a life insurance policy by a terminally ill policy owner  
22 (the “insured” or “viator”) to a third party at a discount from the life insurance policy’s face value.  
23 The third party who, in turn, sells the beneficial interest in the policy’s death benefit is known as  
24 the “viatical settlement provider.” Viatical settlement providers usually sell fractionalized interest  
25 in the policy’s death benefit to investors at a markup from the third party’s purchase price but less  
26

1 than the policy face value. The third party may remain as the owner of the policy with the  
2 investors designated as beneficiaries. Upon the viator's death, the viatical settlement "matures"  
3 and the investors receive their assigned portion of the policy's death benefit.

4 8. A life settlement is similar to a viatical settlement except that the insured does not have a  
5 terminal illness.

6 9. Mutual Benefits Corporation ("MBC") is a viatical settlement provider company located at  
7 2881 E. Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306. MBC sold viatical  
8 settlements to investors through agents such as insurance and securities sales persons.

9 10. From approximately 1995 through January 2003, MBC sold viatical and life settlements  
10 (collectively referred to as "viaticals") through individual and business entity agents to Arizona  
11 investors.

12 11. Prior to July 18, 2000, viaticals were regulated as investment contracts under the Securities  
13 Act. As investment contracts, viaticals were required to be registered in Arizona unless a viatical  
14 sale qualified for a transactional exemption.

15 12. Prior to July 18, 2000, dealer and salesman registration requirements also applied to  
16 viatical providers and their sales agents.

17 13. Effective July 18, 2000, revisions to the Securities Act codified the existing investment  
18 contracts analysis with respect to viaticals by revising A.R.S. §§44-1801(26) and (29) and adding  
19 A.R.S. §44-1850 (collectively referred to as the "new law"). The new law no longer required the  
20 registration of viaticals provided the issuer/seller conformed to the filing and disclosure  
21 requirements set forth in A.R.S. §44-1850. Additionally, viatical issuers and their agents were no  
22 longer required to be registered contingent upon full compliance with A.R.S. §44-1850.<sup>1</sup>

23 14. On April 3, 2001, almost nine (9) months after the new law went into effect, MBC made  
24 its first filing under A.R.S. §44-1850. On April 17, 2001, the Division informed MBC that it

25 \_\_\_\_\_  
26 <sup>1</sup> Effective August 22, 2002, the registration exemption for viatical issuers and sales agents under A.R.S. §44-1850 was eliminated. Offers for sale and sales of viaticals must be through a registered dealer and salesman.

1 filing was substantially incomplete and that additional disclosures and clarifications were required  
2 before MBC could sell under the exemption. On June 19, 2001, the Division again placed MBC  
3 on notice that the exemption under A.R.S. §44-1850 would not be available until MBC's filing  
4 deficiencies were addressed and resolved. Nothing further was heard from MBC until September  
5 2001 when MBC informed the Division that it was no longer doing business in Arizona.

6 15. From approximately July 1999 through July 2001, RPC, by and through its agents, and  
7 KLATT offered and sold approximately 155 MBC viaticals to at least 54 known investors. The  
8 principal amount of these investments totaled at least \$1,836,101.55. MBC paid RPC and/or  
9 KLATT at least \$209,376.34 in commissions for these Arizona sales. RPC and/or KLATT  
10 received at least \$157,944.02 in direct and override commissions for these Arizona sales.

11 16. The RESPONDENTS' viatical sales were not registered as securities nor were they exempt  
12 from registration.

13 17. At all times relevant, MBC was not registered as a securities dealer in Arizona and  
14 RESPONDENTS (and their agents) were not registered as securities salesmen in Arizona nor were  
15 they exempt from registration.

16 18. Following the RESPONDENTS' association with MBC in mid-1999, RESPONDENTS  
17 received various MBC marketing materials including promotional brochures. MBC also offered  
18 to the RESPONDENTS suggestions for flyers, direct mail pieces, and advertising. These  
19 marketing materials included various claims such as investors could earn fixed returns as high as  
20 seventy-two percent (72%) with "no speculation or stock market risk" and that the investors  
21 principal and return were "fully secured.". The materials further cautioned prospective investors  
22 not to "gamble your financial future with high risk investments," and boasted that "this [viaticals]  
23 unique opportunity provides consistently higher returns for the serious minded and conservative  
24 individuals" who did not wish to risk their underlying principal.

25

26

1 19. Based, in part, on the MBC marketing materials, RESPONDENTS represented to their  
2 clients that investments in viaticals present little to no risk and provide returns that were higher  
3 than most other investments. However, the RESPONDENTS misrepresented or failed to advise  
4 investors about the potential risks of investing in viaticals.

5 20. Contrary to promotional claims, MBC viatical investments actually contain a number of  
6 inherent risks including, without limitation, the medical prognoses for viators are susceptible to  
7 manipulation and distortion and the detrimental effect on the investors' profits and/or principal  
8 should the viator live beyond the life expectancy.

9 21. The RESPONDENTS' misleading statements and omissions have caused actual harm to  
10 Arizona investors because many of the viaticals sold by RESPONDENTS have not performed or  
11 provided the financial benefits as represented.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

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

15 22. From approximately July 1999 through July 2001, RESPONDENTS offered or sold  
16 securities in the form of investment contracts, within or from Arizona.

17 23. The securities referred to above were not registered pursuant to the provisions of Articles 6 or  
18 7 of the Securities Act nor were they exempt from registration pursuant to Article 4 of the Securities  
19 Act.

20 24. This conduct violates A.R.S. § 44-1841.

21 **V.**

22 **VIOLATION OF A.R.S. § 44-1842**

23 **(Transactions by Unregistered Dealers or Salesmen)**

24 25. From approximately July 1999 through July 2001, RESPONDENTS offered or sold  
25 securities within or from Arizona, while not registered as dealers or salesmen pursuant to the  
26

1 provisions of Article 9 of the Securities Act or exempt from registration pursuant to Article 4 of the  
2 Securities Act.

3 26. This conduct violates A.R.S. § 44-1842.

4 **VI.**

5 **VIOLATION OF A.R.S. § 44-1991**

6 **(Fraud in Connection with the Offer or Sale of Securities)**

7 27. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS  
8 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue  
9 statements of material fact or omitted to state material facts which were necessary in order to make  
10 the statements made not misleading in light of the circumstances under which they were made; and  
11 (iii) engaged in transactions, practices or courses of business which operated or would operate as a  
12 fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited  
13 to, the conduct set forth in paragraphs 18 through 20 herein.

14 28. This conduct violates A.R.S. § 44-1991.

15 29. RESPONDENTS directly or indirectly controlled persons within the meaning of A.R.S. § 44-  
16 1999. Therefore, RESPONDENTS are liable to the same extent as controlled persons their  
17 violations of A.R.S. § 44-1991.

18 30. RESPONDENTS made, participated in or induced the sale of a security within the meaning  
19 of A.R.S. § 44-2003(A). Therefore, RESPONDENTS are jointly and severally liable for the above  
20 violations of A.R.S. § 44-1841, 44-1842, and 44-1991.

21 ...

22 ...

23 ...

24 ...

25 ...

26

**XII.**

**REQUESTED RELIEF**

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

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital communities of RESPONDENT KLATT be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

**XIII.**

**HEARING OPPORTUNITY**

RESPONDENTS, including RESPONDENT SPOUSES, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any RESPONDENT requests a hearing, the RESPONDENT must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
4 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
5 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission  
6 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by  
7 the Division in this Notice of Opportunity for Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language  
9 interpreter, as well as request this document in an alternative format, by contacting Yvonne L.  
10 McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-  
11 mail [ymcfarlin@cc.state.az.us](mailto:ymcfarlin@cc.state.az.us). Requests should be made as early as possible to allow time to  
12 arrange the accommodation.

13 **XIV.**

14 **ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE  
16 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer  
17 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,  
18 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of  
19 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must  
20 accompany the Answer. A cover sheet form and instructions may be obtained from  
21 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
22 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

23 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon  
24 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing  
25  
26

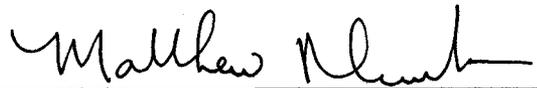
1 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor,  
2 Phoenix, Arizona, 85007, addressed to JULIE COLEMAN, Counsel.

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

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

11 The officer presiding over the hearing may grant relief from the requirement to file an  
12 Answer for good cause shown.

13 Dated this 4<sup>th</sup> day of October, 2004.

14  
15 

16 \_\_\_\_\_  
17 Matthew Neubert  
18 Director of Securities

19 (jc)  
20  
21  
22  
23  
24  
25  
26