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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
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OLS

BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

FROM: Matthew J. Neubert
Director of Securities

DATE: October 4, 2004

RE: S-03540A-04-0000 HCH Enterprise, L.L.C., Helen C. Hartze and Mark Kesler

CC: Brian C. McNeil, Executive Secretary

Arizona Corporation Commission
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On April 30, 2004, the Securities Division filed a Notice of Opportunity against HCH Enterprise, L.L.C. ("HCH"), Helen C. Hartze ("Hartze") and Mark Kesler ("Kesler"), collectively known as Respondents. The Respondents were served and on May 10, 2004, HCH and Hartze requested a hearing. Kesler requested a hearing on May 18, 2004. On May 28, 2004, Kesler filed an Answer. On June 1, 2004, HCH and Hartze filed an Answer.

HCH is an Arizona limited liability company that was organized in August of 2002. Hartze is the statutory agent and sole member of HCH. Kesler was an employee for HCH.

Beginning in about October of 2002 through January of 2003, HCH and Hartze through Kesler offered and sold interests in two different investment opportunities raising approximately \$360,000 from about nine individuals. The investment opportunities involved interests in two different Arizona limited liability companies. The investor funds were pooled with other investors. Some of the investors' money went to the trustee, HCH, some was wired directly to the borrower.

The investments were to be secured by an interest in real property. A check of the Records office in the county where the property is located reveals that no filings have been made to reflect the investors' interest in the property. Furthermore, it appears that the property has not been transferred into the trust as represented to investors.

Prior to working with HCH, Hartze was a loan officer and Responsible Person for American National Mortgage Partners L.L.C. On September 5, 2002, the Commission issued a Temporary Cease and Desist order against American National Mortgage Partners L.L.C. and a number of other entities and individuals (Hartze was not named), Docket No. S-03491A-02-0000. In addition, the Commission filed a civil action, including request for a receiver, against American National Mortgage Partners L.L.C. and a number of other entities and individuals (not including Hartze), *Arizona Corporation Commission v. American National Mortgage Partners L.L.C. et al.*, CV2003-005724.

This Order requires HCH and Hartze to cease and desist from violations of the Arizona Securities Act. HCH and Hartze neither admits nor denies the Findings of Facts and the Conclusions of Law. HCH and Hartze are jointly and severally liable for the restitution in the amount of \$363,500 plus interest at the rate of 10% annum from the date of each investment until paid in full. In addition, HCH and Hartze will pay administrative penalties in the amount of \$7,500 and 10,000 respectively.

This Order will resolve the action against HCH and Hartze. The Commission approved a consent order against Kesler in August of 2004. The Securities Division believes that this Order and Consent will resolve the Notice of Opportunity filed on April 30, 2004 and is in the best interest of the investors.

Originator: Wendy Coy

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of)
HCH ENTERPRISE, L.L.C)
5952 West Gail Drive)
Chandler, Arizona 85226)
HELEN C. HARTZE and JOHN DOE HARTZE,)
husband and wife)
5952 West Gail Drive)
Chandler, Arizona 85226)
MARK KESLER and JANE DOE KESLER,)
husband and wife)
10783 W. Encanto Blvd)
Avondale, Arizona 85323)
RESPONDENTS.)

DOCKET NO. S-03540A-04-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AND FOR OTHER AFFIRMATIVE
ACTION AND CONSENT TO SAME
BY: HELEN C. HARTZE**

RESPONDENT HELEN C. HARTZE ("HARTZE") elects to permanently waive her right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order Of Restitution, Order For Administrative Penalties and For Other Affirmative Action and Consent To Same ("Order"). HARTZE admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

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I.

FINDINGS OF FACT

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3 1. HCH ENTERPRISE, L.L.C. ("HCH"), was at all relevant times an Arizona limited
4 liability company organized in August of 2002. HARTZE is the statutory agent and sole member
5 of HCH. HCH is the statutory agent of two investor entities, Ashberry Apartments, L.L.C.
6 ("Ashberry") and Williamsburg Apartments L.L.C. ("Williamsburg"). HCH is the Trustee of
7 1112 Ashberry Trust dated November 14, 2002 and 1221 Jackson Lane Trust dated November 1,
8 2002.

9 2. HARTZE was at all relevant times the statutory agent and sole member of HCH.
10 Since December 12, 2001, HARTZE has been a licensed mortgage broker with the Arizona
11 Department of Banking doing business under the name HCH.

12 3. MARK KESLER ("KESLER") was at all relevant times an employee with HCH.
13 On September 5, 2002, the Commission issued a Temporary Cease and Desist order against a
14 number of Respondents including KESLER, Docket No. S-03491A-02-0000. KESLER is a named
15 Defendant in a pending Maricopa County Superior Court action, *Arizona Corporation*
16 *Commission v. American National Mortgage Partners L.L.C. et al.*, CV2003-005724.

17 4. Beginning in about October of 2002 through January of 2003, HCH, directly or
18 indirectly, offered and sold interests in two different investment opportunities raising approximately
19 \$360,000 from about nine individuals. The investment opportunities involved interests in two
20 different Arizona limited liability companies ("L.L.C."), Ashberry and Williamsburg.

21 5. HARTZE was employed with American National Mortgage Partners L.L.C.
22 ("ANMP") and was the Responsible Person under ANMP's mortgage banking license while
23 operating HCH. KESLER was salesperson for ANMP before and during the time he was involved
24 with HCH.

25 6. Similar to ANMP, the Ashberry and Williamsburg investments involved raising
26 money from investors to fund loans secured by real property. Investors were placed in an L.L.C. and

1 the L.L.C. funded the loans. KESSLER located individuals or entities in need of funds and who had
2 equity in real property to secure the loans. In Ashberry and Williamsburg, the funds were raised for
3 one Borrower ("Borrower").

4 7. HARTZE, HCH and KESLER decided to contact previous investors in ANMP, to
5 offer those investors an investment opportunity similar to ANMP but through HCH. Certain of these
6 investors believed that HCH was part of or connected in some way with ANMP. The Borrower, who
7 also had loans with ANMP, indicated that he did not see a difference between ANMP and HCH

8 8. HCH, HARTZE and KESLER formed two Trusts, 1112 Ashberry Trust dated
9 November 11, 2002 and 1221 Jackson Lane Trust dated November 11, 2002. HCH was the Trustee
10 of the two Trusts. The Borrower would complete documentation transferring the beneficial interests
11 in their property to the Trust and the investors, through a limited liability company created by HCH,
12 HARTZE and KESLER, would become the second beneficiary on the Trust. The Borrower also
13 signed a promissory note setting forth the terms of repayment and interest rate.

14 9. Although both Ashberry and Williamsburg were formed to be, member-managed
15 L.L.C.'s, the investors were not given all of the relevant information to exercise management control
16 over the L.L.C.'s. According to the documents provided to the investors, the principal place of
17 business of the L.L.C.'s was that of HCH. The books and records of the L.L.C.s were located at
18 HCH. HCH was the trustee of the trusts and the payments from the Borrower were to be made to
19 HCH. Most of the funds raised from investors, whether they were members of Ashberry or
20 Williamsburg, were deposited into HCH bank accounts. HARTZE was the sole signatory on the
21 HCH account.

22 10. According to the investors and the offering documents, the investment would be
23 secured by real property. However, the final documents signed by the Borrower and the Trustee
24 indicate that the documents would not be recorded unless the Borrower defaulted on the loans.

25 11. At no time were investors informed that they were to replace HCH as the Trustee of
26 the Trusts. The investors were not informed that it was their responsibility to record their interest in

1 the real property if there was a default by the Borrower. In fact, the investors did not know their
2 interests would not be recorded against the property until or unless there was a default. The investors
3 were not provided complete investor records to allow them to independently contact the other
4 members of the L.L.C. in order to take control of the L.L.C. and complete its business activities.

5 12. The Borrower sought \$405,000 from the investors in the Ashberry investment.
6 Starting in November of 2002 through January of 2003, the Ashberry investment raised
7 approximately \$245,000 from about seven investors. The investment was to be secured by an interest
8 in an apartment complex located in Columbus, Ohio. However, HARTZE did not inform investors
9 that there was an agreement with the Borrower whereby the investors' interest would only be
10 recorded when and if there was a default on the loans.

11 13. In November of 2002, the Borrower sought \$115,000 from the investors. The
12 Williamsburg investment raised approximately \$115,000 from two investors in November of 2002.
13 The investment was to be secured by an interest in an apartment complex located in Middletown,
14 Ohio. However HARTZE did not inform investors that there was an agreement with the Borrower
15 whereby the investors' interest would only be recorded when and if there was a default on the loans.

16 14. The Borrower defaulted on the notes and the investors have not received a return of
17 their investment nor has their interest in the real property been recorded to secure their interests.

18 **II.**

19 **CONCLUSIONS OF LAW**

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

22 2. HARTZE offered or sold securities within or from Arizona, within the meaning of
23 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

24 3. HARTZE violated A.R.S. § 44-1841 by offering or selling securities that were
25 neither registered nor exempt from registration.

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1 payable to the "State of Arizona" to be placed in an interest-bearing account maintained and
2 controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the
3 funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert
4 to the state of Arizona. If HARTZE does not comply with this order for restitution, any
5 outstanding balance may be deemed in default and shall be immediately due and payable.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that HARTZE shall pay an
7 administrative penalty in the amount of \$10,000, payable to the "State of Arizona." Payment shall
8 be made in full by cashier's check or money order on the date of this Order. If HARTZE does not
9 comply with this order for administrative penalties, any outstanding balance may be deemed in
10 default and shall be immediately due and payable.

11 IT IS FURTHER ORDERED, any funds received will go to the restitution order then to the
12 administrative penalty.

13 IT IS FURTHER ORDERED that this Order shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

15
16 CHAIRMAN

COMMISSIONER

COMMISSIONER

17
18 COMMISSIONER

COMMISSIONER

19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of
20 the Arizona Corporation Commission, have hereunto set my hand and
21 caused the official seal of the Commission to be affixed at the Capitol, in
22 the City of Phoenix, this _____ day of _____, 2004

23 _____
BRIAN C. McNEIL
Executive Secretary

24 _____
DISSENT

25 _____
26 DISSENT

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This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail ymcfarlin@cc.state.az.us.
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CONSENT TO ENTRY OF ORDER

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1. HELEN C. HARTZE, an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. HELEN C. HARTZE acknowledges that she has been fully advised of her right to a hearing to present evidence and call witnesses and HELEN C. HARTZE knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. HELEN C. HARTZE acknowledges that this Order To Cease and Desist, Order Of Restitution, Order For Administrative Penalties and For Other Affirmative Action and Consent To Same ("Order") constitutes a valid final order of the Commission.

2. HELEN C. HARTZE knowingly and voluntarily waives any right she may have under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. HELEN C. HARTZE acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. HELEN C. HARTZE acknowledges that she has been represented by counsel in this matter, she has reviewed this Order with her attorney and understands all terms it contains.

5. HELEN C. HARTZE neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order.

6. By consenting to the entry of this Order, HELEN C. HARTZE agrees not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or to create the impression that this Order is without factual basis. HELEN C. HARTZE will undertake steps necessary to assure that all of her agents and employees understand and comply with this agreement.

7. While this Order settles this administrative matter between HELEN C. HARTZE and the Commission, HELEN C. HARTZE understands that this Order does not preclude the

1 Commission from instituting other administrative proceedings based on violations that are not
2 addressed by this Order.

3 8. HELEN C. HARTZE understands that this Order does not preclude the
4 Commission from referring this matter to any governmental agency for administrative, civil, or
5 criminal proceedings that may be related to the matters addressed by this Order.

6 9. HELEN C. HARTZE understands that this Order does not preclude any other
7 agency or officer of the state of Arizona or its subdivisions from instituting administrative, civil or
8 criminal proceedings that may be related to matters addressed by this Order.

9 10. HELEN C. HARTZE agrees that she will not exercise any control over any entity
10 that offers or sells securities or provides investment advisory services, within or from Arizona.

11 11. HELEN C. HARTZE agrees to not apply or seek licensure as a mortgage broker or
12 mortgage banker for a time period of five years from the date of this Order.

13 12. HELEN C. HARTZE agrees that until restitution and penalties are paid in full,
14 HELEN C. HARTZE will notify the Director of the Securities Division within 30 days of any
15 change in home address or any change in HELEN C. HARTZE's ability to pay amounts due under
16 this Order. HELEN C. HARTZE agrees that she shall provide the Commission with an updated
17 financial statement every six months from entry of this Order or when any change in her ability to
18 pay restitution occurs. HELEN C. HARTZE agrees that failure to perform any action in this
19 paragraph shall result in her being in default with any outstanding balance being immediately due
20 and payable without notice or demand.

21 13. HELEN C. HARTZE understands that default shall render her liable to the
22 Commission for its costs of collection and interest at the maximum legal rate.

23 14. HELEN C. HARTZE agrees that she will continue to cooperate with the Securities
24 Division including, but not limited to, providing complete and accurate testimony at any hearing in
25 this matter and cooperating with the state of Arizona in any related investigation or any other
26 matters arising from the activities described in this Order.

