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ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

Arizona Corporation Commission  
**DOCKETED**  
FEB 09 2005

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AZ CORP COMMISSION  
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FROM: Matthew Neubert *MN*  
Director, Securities Division

DOCKETED BY *KJ*

DATE: February 8, 2005

RE: *Retirement Planning Center/John F. Klatt and Marilyn A. Klatt (S-03499A-04-0000)*; Proposed Order to Cease and Desist, Order of Disgorgement, , Order for Administrative Penalties and Consent to Same by Retirement Planning Center, John F. Klatt and Marilyn A. Klatt

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same ("Order") against respondents Retirement Planning Center ("RPC"), John F. Klatt ("Klatt") and Marilyn A. Klatt (collectively, "Respondents"). The Order requires the Respondents to cease and desist from further violations of the Securities Act of Arizona, make a disgorgement payment equaling Klatt's commissions in this matte, and to pay an appropriate administrative penalty.

Complaints lodged with the Division indicate that Klatt was approached by representatives of Mutual Benefits Corp. ("MBC") for the purpose of recruiting Klatt, through RPC, a family run Arizona general partnership, to sell viatical products. The MBC representatives advised RPC and Klatt that these products were not securities, but that they were nevertheless sound and legal investment alternatives. Klatt eventually chose to sell these investments to a segment of his client base and to also recruit other agents for which he would receive a commission on their sales. From approximately July 1999 though July 2001, RPC, by and through agents recruited by Klatt, and Klatt sold approximately 155 viatical investments to at least 54 known investors. In so doing, Klatt generated approximately \$157,944.02 in sales commissions.

In the spring of 2001, the RPC and Klatt received information that, contrary to the recruiters' earlier claims, the MBC viaticals were in fact securities. As a result of this information, RPC and Klatt terminated their involvement with MBC, but have continued to monitor the status of their clients' MBC viaticals.

On May 3, 2004, the SEC commenced an action against MBC and others. The federal court entered a Temporary Restraining Order and placed MBC into receivership. After a hearing, the United States Magistrate Judge recommended that the Preliminary Injunction be granted. The receivership currently remains in place.

The Order finds that RPC and Klatt violated the Securities Act of Arizona by offering and selling unregistered securities in the form of MBC viaticals. On account of this conduct, the Order requires RPC and Klatt to cease and desist from further violations of the Securities Act, requires the Respondents to disgorge all commissions earned in account of Klatt's conduct in the sale of MBC viaticals in the amount of \$157,944.02, and requires the payment of an administrative penalty in the amount of \$10,000.

The Securities Division recommends this Order on the grounds that it requires RPC and Klatt disgorge all profits made in connection with the sale of unregistered securities, while assessing an additional penalty to deter such future conduct. This Order also takes into account the fact that Klatt fully cooperative with the Securities Division during the course of its investigation into this matter.

Originator: Julie Coleman

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 **In the matter of:**

) DOCKET NO. S-03499A-04-0000

9 **RETIREMENT PLANNING CENTER,**  
10 an Arizona general partnership,  
11 13576 W. Camino Del Sol, Suite 24  
12 Sun City West, AZ 85375

) DECISION NO. \_\_\_\_\_

13 **JOHN F. KLATT,** a married man  
14 7650 W. McRae Way  
15 Glendale, AZ 85308

) **ORDER TO CEASE AND DESIST,**  
) **ORDER OF DISGORGEMENT,**  
) **ORDER FOR ADMINISTRATIVE**  
) **PENALTIES, AND CONSENT TO SAME**  
) **BY: RETIREMENT PLANNING**  
) **CENTER, JOHN F. KLATT and**  
) **MARILYN A. KLATT**

16 **MARILYN A. KLATT,** a married woman  
17 7650 W. McRae Way  
18 Glendale, AZ 85308

19 Respondents.  
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20 Respondents RETIREMENT PLANNING CENTER, an Arizona general partnership, JOHN  
21 K. KLATT and MARILYN A. KLATT elect to permanently waive any right to a hearing and  
22 appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*  
23 (“Securities Act”) with respect to this Order to Cease and Desist, Order of Disgorgement, Order  
24 for Administrative Penalties and Consent to Same (“Order”). RESPONDENTS admit the  
25 jurisdiction of the Arizona Corporation Commission (“Commission”); neither admit nor deny the  
26 Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this  
Order by the Commission.

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...

**FINDINGS OF FACT**

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2           1.       Respondent RETIREMENT PLANNING CENTER, an Arizona general partnership  
3 (“RPC”) is a retirement planning business located at 13576 W. Camino Del Sol, Suite 24, Sun City  
4 West, Arizona 85375. RPC, owned and operated by Respondents JOHN F. KLATT and MARILYN  
5 A. KLATT, husband and wife, along with their daughter and son-in-law, engages in the sale of  
6 insurance products together with providing a variety of other estate planning services. At no time was  
7 RPC registered with the Division.

8           2.       Respondent JOHN F. KLATT (“KLATT”), whose last known address is 7650 W.  
9 McRae Way, Glendale, Arizona 85308, is a partner of RPC. At all times relevant hereto, KLATT  
10 served with RPC as a general partner, certified senior advisor, and an insurance agent licensed  
11 with the State of Arizona. At no time was KLATT registered with the Division.

12           3.       Respondent MARILYN A. KLATT, whose last known address is 7650 W. McRae  
13 Way, Glendale, Arizona 85308, is the spouse of KLATT and, at all relevant times hereto, was a  
14 general partner of RPC.

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

17           5.       Mutual Benefits Corporation (“MBC”) is a viatical settlement provider company  
18 located at 2881 E. Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306. MBC sold viatical  
19 and life settlements (collectively, “viaticals”) to investors through agents such as insurance and  
20 securities persons.

21           6.       From approximately 1995 through January 2003, MBC sold viaticals through  
22 individual and business entity agents to Arizona investors.

23           7.       From approximately July 1999 through July 2001, RPC, by and through its agents,  
24 and KLATT offered and sold approximately 155 MBC viaticals to at least 54 known investors.  
25 The principal amount of these investments totaled at least \$1,836,101.55. MBC paid RPC which,  
26

1 in turn, paid KLATT at least \$157,944.02 in direct and override commissions for these Arizona  
2 sales.

3 8. The RESPONDENTS' viatical sales were not registered as securities nor were they  
4 exempt from registration.

5 9. At all times relevant, MBC was not registered as a securities dealer in Arizona and  
6 RESPONDENTS (and their agents) were not registered as securities salesmen in Arizona nor were  
7 they exempt from registration.

8 **II.**

9 **CONCLUSIONS OF LAW**

10 1. RESPONDENTS offered or sold securities within or from Arizona, within the meaning  
11 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

12 2. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were  
13 neither registered nor exempt from registration.

14 3. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while  
15 neither registered as dealers or salesmen nor exempt from registration.

16 4. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §  
17 44-2032.

18 5. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-  
19 2036.

20 **III.**

21 **ORDER**

22 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the  
23 RESPONDENTS consent to the entry of this Order, the Commission finds that the following relief  
24 is appropriate, in the public interest, and necessary for the protection of investors:

25 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents,  
26 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,  
2 jointly and severally, disgorge all sales commissions earned in connection with KLATT'S sales  
3 activities (and the sales by sales agents recruited by KLATT) in this matter; as reflected in the  
4 records of the Commission, such disgorgement shall be the in the amount of \$157,944.02  
5 ("Disgorgement").

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall,  
7 jointly and severally, pay an administrative penalty in the amount of \$10,000.00 ("Penalty").

8 The payment of Disgorgement and Penalty shall be made as follows: (a) Ten Thousand  
9 Dollars (\$10,000.00) upon entry of this Order; and (b) the remaining balance of Disgorgement and  
10 Penalty ("Outstanding Balance") shall be repaid in equal monthly installments of One Thousand  
11 Dollars (\$1,000.00) on the first of each month starting April 1, 2005 and continuing until the  
12 Outstanding Balance and all accrued interest have been repaid in full. Interest on the Outstanding  
13 Balance shall be amortized over a thirty (30) year period at the rate of 6.5% per annum. All  
14 payments shall be first applied to interest on the Outstanding Balance, then to Disgorgement, and  
15 finally to Penalty.

16 Payment shall be made by cashier's check or money order payable to the "State of  
17 Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona  
18 Attorney General. The Arizona Attorney General shall disburse the Disgorgement funds on a pro  
19 rata basis to all known investors who acquired their viatical policy from RPC as a result of  
20 KLATT'S sales activities and who, as of the entry of this Order, retain one or more viatical policy  
21 interests that has yet to mature. Any funds that the Attorney General is unable to disburse shall  
22 revert to the state of Arizona.

23 For the purposes of this Order, a bankruptcy filing by either RESPONDENT shall be  
24 considered an act of default on KLATT'S disgorgement obligations.

25 If either RESPONDENT does not comply with the terms and conditions of this  
26 administrative penalty, the Outstanding Balance shall be deemed in default and shall become

1 immediately due and payable and payable shall accrue interest at the rate of 10% per annum until  
2 paid in full.

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

4  
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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7 \_\_\_\_\_  
CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 \_\_\_\_\_  
COMMISSIONER

COMMISSIONER

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11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
12 Executive Secretary of the Arizona Corporation  
13 Commission, have hereunto set my hand and caused the  
14 official seal of the Commission to be affixed at the  
15 Capitol, in the City of Phoenix, this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2005.

17 \_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

18 \_\_\_\_\_  
DISSENT

19 \_\_\_\_\_  
DISSENT

20  
21 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant  
22 to the Executive Secretary, phone number (602) 542-3931, E-mail [LHogan@cc.state.az.us](mailto:LHogan@cc.state.az.us).

23 (JC)

**CONSENT TO ENTRY OF ORDER**

1  
2 1. RETIREMENT PLANNING CENTER, a general partnership, and JOHN F.  
3 KLATT and MARILYN A. KLATT, husband and wife, including their marital community,  
4 (collectively, "RESPONDENTS") admit the jurisdiction of the Commission over the subject  
5 matter of this proceeding. RESPONDENTS acknowledge that they have been fully advised of  
6 their right to a hearing to present evidence and call witnesses and knowingly and voluntarily  
7 waive any and all rights to a hearing before the Commission and all other rights otherwise  
8 available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.  
9 RESPONDENTS acknowledge that this Order to Cease and Desist, Order of Disgorgement,  
10 Order for Administrative Penalties and Consent to Same ("Order") constitutes a valid final order  
11 of the Commission.

12 2. RESPONDENTS knowingly and voluntarily waive any right under Article 12 of  
13 the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief  
14 resulting from the entry of this Order.

15 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and  
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. RESPONDENTS acknowledge and agree that by signing this Order to recognize  
18 any and all obligations, liabilities, responsibilities, and encumbrances as set forth in this Order,  
19 and each of them agree that said obligations, liabilities, responsibilities, and encumbrances are  
20 nondischargeable under 11.U.S.C. §§523(a)(2), (7) and (19).

21 5. RESPONDENTS acknowledge that they have been represented by counsel in this  
22 matter and that they have reviewed this Order with their attorney and understands all terms  
23 contained therein.

24 6. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of  
25 Law contained in this Order. RESPONDENTS agree that it shall not challenge their validity in  
26 any present or future administrative proceeding before the Commission or any other state agency

1 concerning the denial or issuance of any license or registration required by the State to engage in  
2 the practice of any business or profession.

3 7. By consenting to the entry of this Order, RESPONDENTS agree not to take any  
4 action or to make, or permit to be made, any public statement denying, directly or indirectly, any  
5 Finding of Fact or Conclusion of Law contained in this Order, or to create the impression that this  
6 Order is without factual basis. Notwithstanding the foregoing, this Order is not intended to  
7 collaterally estop, factually bind or preclude the RESPONDENTS from defending themselves in  
8 any administrative, civil or criminal proceedings to which the Commission is not a party.  
9 RESPONDENTS shall undertake steps necessary to assure that all of their agents and employees  
10 understand and comply with this agreement.

11 8. While this Order settles this administrative matter between the RESPONDENTS  
12 and the Commission, RESPONDENTS understand that this Order does not preclude the  
13 Commission from instituting other administrative proceedings based on violations that are not  
14 addressed by this Order.

15 9. RESPONDENTS understand that this Order does not preclude the Commission  
16 from referring this matter to any governmental agency for administrative, civil, or criminal  
17 proceedings that may be related to the matters addressed by this Order.

18 10. RESPONDENTS understand that this Order does not preclude any other agency or  
19 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
20 proceedings that may be related to matters addressed by this Order.

21 11. RESPONDENTS agrees that they will not apply to the state of Arizona for  
22 registration under the Securities Act of Arizona or under the Arizona Investment Management  
23 Act for at least one year from the entry date of this Order *and* until such time as all each of them  
24 have complied with all terms and conditions of this Order, including the payment in full of all  
25 disgorgement amounts and administrative penalties promulgated under this Order.

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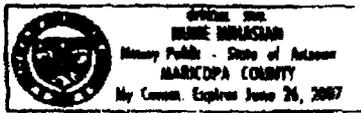
Docket No. S-03499A-04-0000

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Agreed: RETIREMENT PLANNING CENTER, a general partnership

By: *John F. Klatt*  
JOHN F. KLATT, partner

SUBSCRIBED AND SWORN TO before me, by JOHN F. KLATT and MARILYN A. KLATT, husband and wife, this 7<sup>th</sup> day of February, 2005.

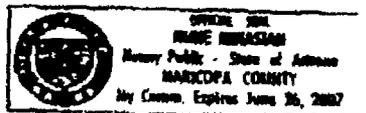


*Bruce Mungaiyan*  
NOTARY PUBLIC

My Commission Expires:

6/26/07

SUBSCRIBED AND SWORN TO before me, by JOHN F. KLATT, as partner of RETIREMENT PLANNING CENTER, a general partnership, this 7<sup>th</sup> day of February, 2005.



*Bruce Mungaiyan*  
NOTARY PUBLIC

My Commission Expires:

6/26/07