

OPEN MEETING ITEM

ORIGINAL 2/24/05



0000014902

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



MA

SE
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

615

BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

Arizona Corporation Commission
DOCKETED
FEB 11 2005

FROM: Phillip A. Hofling
Assistant Director of Securities

DOCKETED BY [Signature]

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 FEB 11 P 2:38

RECEIVED

DATE: February 10, 2005

RE: Deborah Lee Brugliera, et al. (S-03560A-04-0000); Proposed Order to Cease and Desist, Order of Disgorgement, Order for Administrative Penalties and Consent to Same by Respondents Deborah Brugliera and Pristine Property Investments, Inc.

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") directed against Respondents Deborah Lee Brugliera ("Brugliera") and her company, Pristine Property Investments, Inc. In short, the Order requires Respondents to 1) cease and desist from further violations of the Securities Act of Arizona; 2) make disgorgement payments approximating the amount of sales commissions received in connection with this matter; and 3) pay an administrative penalty.

The events giving rise to this matter began in early 1999, when Brugliera, a licensed insurance agent, came across an article in an insurance trade magazine promoting a relatively new product known as viatical settlement contracts. The company behind this article, Mutual Benefits Corporation ("MBC"), subsequently brought Brugliera to their Florida-based headquarters for additional marketing and sales agent recruitment purposes. While at the company' headquarters, Brugliera was advised that MBC viaticals were not securities, but that they were nevertheless sound and legal investment alternatives. Brugliera eventually agreed to market these investments to a segment of her client base. During 1999, Brugliera sold approximately 54 viaticals to approximately 8 investors. In so doing, Respondents generated approximately \$100,000 in sales commissions.

The Order finds that Respondents violated the Securities Act of Arizona by a) offering and selling securities while neither registered as securities salesmen or dealers, and b) offering and selling unregistered securities in the form of MBC viaticals. On account of this conduct, the Order requires Respondents to cease and desist from further violations of the Securities Act, requires Respondents to disgorge commissions earned in connection with the sale of MBC viaticals (\$92,704), and requires the payment of administrative penalties in the amount of \$15,000. (The administrative penalties are subject to a reduction of \$10,000 if the disgorgement amounts are paid in full). Additionally, Brugliera may not apply for securities salesmen registration, dealer registration, or investment adviser licensure within this state for a period of at least 5 years from the entry date of this Order and, even at that point, only after all payment obligations have been satisfied.

The Securities Division recommends this Order on the grounds that it requires Respondents to disgorge the profits made in connection with the sale of unregistered securities, while assessing additional penalties to deter such future conduct.

Originator: Jamie B. Palfai

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-03560A-04-0000

9)
10 **PRISTINE PROPERTY &**)
11 **INVESTMENTS, INC.,**)

DECISION NO. _____

12 an Arizona corporation)
13 3116 East Shea Boulevard, #217)
14 Phoenix, Arizona 85028)

**ORDER TO CEASE AND DESIST,
ORDER OF DISGORGEMENT,
ORDER FOR ADMINISTRATIVE
PENALTIES AND CONSENT TO SAME
BY: DEBORAH LEE BRUGLIERA
AND PRISTINE PROPERTY &
INVESTMENTS, INC.**

15 **DEBORAH LEE BRUGLIERA,**)
16 an individual)
17 3420 East Shea, Suite 200)
18 Phoenix, Arizona 85028)

19 Respondents.)
20 _____)
21 _____)
22 _____)
23 _____)
24 _____)
25 _____)
26 _____)

18 Respondents DEBORAH LEE BRUGLIERA ("BRUGLIERA") and PRISTINE PROPERTY &
19 INVESTMENTS, INC. ("PRISTINE PROPERTY") elect to permanently waive any right to a
20 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et*
21 *seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order of Disgorgement,
22 Order for Administrative Penalties and Consent to Same ("Order"). BRUGLIERA and PRISTINE
23 PROPERTY, collectively "RESPONDENTS," admit the jurisdiction of the Arizona Corporation
24 Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law
25 contained in this Order; and consent to the entry of this Order by the Commission.

26 ...
...

I.

FINDINGS OF FACT

1
2
3 1. In approximately 1989, BRUGLIERA founded and began working for PRISTINE
4 PROPERTY, a small real estate business located at 3420 East Shea Boulevard in Phoenix,
5 Arizona. As the president and owner of this firm, BRUGLIERA initially worked as a real estate
6 broker licensed with the Arizona Department of Real Estate. Several years later, in 1996,
7 BRUGLIERA expanded PRISTINE PROPERTY's business operations by becoming a licensed
8 insurance agent through the Arizona Department of Insurance.

9 2. Since 1996, BRUGLIERA has served with PRISTINE PROPERTY as both a
10 licensed real estate broker and licensed insurance agent. At no time was BRUGLIERA ever
11 registered as a securities salesman in the state of Arizona, and at no time was PRISTINE
12 PROPERTY ever registered as a dealer in the state of Arizona.

13 3. BRUGLIERA first became familiar with viatical settlement contracts while watching
14 a "60 Minutes" report in 1998. Some months later, while looking through a insurance industry
15 trade magazine, BRUGLIERA came across an article promoting these same products.

16 4. After expressing some interest, BRUGLIERA was invited to review the business
17 operations of a Florida-based corporation dealing in fractionalized viatical settlement contracts.
18 While visiting the company's headquarters, BRUGLIERA toured the facility, met with company
19 representatives, and conversed with the company's legal counsel. During these meetings,
20 BRUGLIERA was told that the company's viaticals were not securities but rather a distinct type of
21 insurance product, and that no securities license was required.

22 5. BRUGLIERA returned to Arizona under the misapprehension that these viaticals
23 were not subject to state or federal securities laws. Shortly thereafter, in early 1999, BRUGLIERA
24 began offering and selling viatical settlement contracts to various of her PRISTINE PROPERTY
25 clients.

26 ...

1 investor's financial future, and claimed that MBC "offer[ed] a unique opportunity for the serious
2 minded and profit motivated individual who [did] not wish to risk their underlying principal."

3 11. Contrary to BRUGLIERA's understanding, investments in MBC viaticals actually
4 contained a number of inherent risks, including the fact that the insurance policies underlying these
5 investments could lapse if any of the premium payments were missed, that insurance companies
6 underwriting the subject insurance policies could fall into insolvency, that medical prognoses for
7 the various viators could be distorted or exaggerated, or that payments on one or more of the
8 insurance policies could be challenged and/or denied by insurance companies on the basis of
9 insurance fraud.

10 12. The misinformation on "risk" was exacerbated by fundamental defects in the MBC
11 viatical settlement program itself. Prospective investors were presented materials showing that the
12 medical condition and prognoses of the viators underlying the viatical settlement contracts had
13 been re-evaluated and confirmed by a second practicing physician. Specifically, MBC
14 promotional materials claimed that a second physician engaged directly by MBC had consulted
15 with treating physicians for the various viators, had reviewed these patients' medical files and,
16 with this information, had reached an informed opinion as to the viators' life expectancies. The
17 validity of these life expectancy projections had a natural bearing on both the value and maturity
18 terms of these MBC policies.

19 13. In fact, at least one "independent" MBC-hired physician failed to discuss the
20 condition of these patients with their attending physicians and failed to review their medical files
21 prior to the assignment of life expectancy projections. BRUGLIERA was not aware of this
22 practice.

23 14. Of the approximately 54 viatical settlement contracts RESPONDENTS sold to
24 Arizona investors beginning in 1999, almost every one involved a viator with a projected life
25 expectancy of 36 months. Despite this, over 90% of these investments have yet to mature within
26

1 the projected three year period. In fact, many of the MBC viatical settlement contracts sold by
2 RESPONDENTS have now exceeded their projected maturity dates by more than two years.

3 **II.**

4 **CONCLUSIONS OF LAW**

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

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

9 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were
10 neither registered nor exempt from registration.

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

13 5. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S.
14 § 44-2032.

15 6. RESPONDENTS' conduct is grounds for an order of disgorgement pursuant to A.R.S. §
16 44-2032.

17 7. RESPONDENTS' conduct is grounds for administrative penalties pursuant to A.R.S. §
18 44-2036.

19 **III.**

20 **ORDER**

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

24 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that BRUGLIERA, and any of
25 BRUGLIERA'S agents, employees, successors and assigns, permanently cease and desist from
26 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 commission profits earned in connection with their activities
3 in this matter; as reflected in the records of the Commission, such disgorgement shall be the in the
4 amount of **\$92,704**. Payment shall be made in installments as follows: an initial payment of **\$2,500**
5 due no later than March 1, 2005; **\$500** per month on or before the 1st day of each month beginning
6 on April 1, 2005; **\$750** per month on or before the 1st day of each month beginning on April 1,
7 2008; and **\$1,000** per month on or before the 1st day of each month beginning on April 1, 2011,
8 until paid in full. Any installment payments that become outstanding under the terms of this Order
9 shall accrue interest at the rate of 10% per annum until paid in full. Payment shall be made by
10 cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing
11 account maintained and controlled by the Arizona Attorney General. The Arizona Attorney
12 General shall disburse the funds on a pro rata basis to all of RESPONDENTS' MBC investors who,
13 as reflected in the records of the Division, possess viatical settlement contracts that have yet to
14 mature as of the entry date of this order. Any funds that the Attorney General is unable to disburse
15 shall revert to the state of Arizona.

16 If RESPONDENTS do not comply with the terms and conditions of this disgorgement, any
17 outstanding balance may be deemed in default and, in such case, shall become immediately due and
18 payable; disgorgement amounts deemed in default shall accrue interest at the rate of 10% per
19 annum until paid in full.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall,
21 jointly and severally, pay an administrative penalty in the amount of **\$15,000**. Payment shall be
22 made by cashier's check or money order, payable to the "State of Arizona." If RESPONDENTS
23 satisfy, in a timely manner, all disgorgement payment obligations as set forth above, the
24 administrative penalty amount shall immediately be reduced to the amount of **\$5,000**.

25 Administrative penalty amounts shall become immediately due and payable only after
26 disgorgement payments as set forth above have been paid in full or, alternatively, if

1 RESPONDENTS have defaulted prior to fulfilling their disgorgement obligations. Satisfaction of
2 this administrative penalty may be made in one payment or through monthly installment payments
3 in accordance with the terms and conditions for the monthly disgorgement payments as set forth in
4 the installment payment provisions above.

5 If RESPONDENTS do not comply with this Order for administrative penalties, any
6 outstanding balance may be deemed in default and, in such case, shall become immediately due and
7 payable; all outstanding administrative penalty amounts shall accrue interest at the rate of 10% per
8 annum until paid in full.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

11
12 _____
CHAIRMAN

COMMISSIONER

COMMISSIONER

13
14 _____
COMMISSIONER

COMMISSIONER

15
16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
17 Executive Secretary of the Arizona Corporation
18 Commission, have hereunto set my hand and caused
19 the official seal of the Commission to be affixed at
20 the Capitol, in the City of Phoenix, this _____
day of _____, 2005.

21 _____
BRIAN C. McNEIL
Executive Secretary

22
23 _____
DISSENT

24 _____
DISSENT

25 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to
26 the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us.
(JBP)

CONSENT TO ENTRY OF ORDER

1
2 1. BRUGLIERA admits the jurisdiction of the Commission over the subject matter of
3 this proceeding. BRUGLIERA acknowledges that she has been fully advised of her right to a
4 hearing to present evidence and call witnesses and BRUGLIERA knowingly and voluntarily
5 waives any and all rights to a hearing before the Commission and all other rights otherwise
6 available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.
7 BRUGLIERA acknowledges that this Order to Cease and Desist, Order of Disgorgement, Order
8 for Administrative Penalties and Consent to Same ("Order") constitutes a valid final order of the
9 Commission.

10 2. BRUGLIERA knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

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

15 4. BRUGLIERA acknowledges that she has been represented by counsel in this matter
16 and that she has reviewed this Order with her attorney and understands all terms contained therein.

17 5. BRUGLIERA neither admits nor denies the Findings of Fact and Conclusions of
18 Law contained in this Order.

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

24 7. While this Order settles this administrative matter between BRUGLIERA and the
25 Commission, BRUGLIERA understands that this Order does not preclude the Commission from
26

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

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

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

9 10. BRUGLIERA agrees that she will not apply to the state of Arizona for registration
10 under the Securities Act of Arizona or under the Arizona Investment Management Act for at least
11 five years from the entry date of this Order *and* until such time that she has complied with all terms
12 and conditions of this Order, including the payment in full of all disgorgement amounts and
13 administrative penalties promulgated thereunder.

14 11. BRUGLIERA agrees that she will not exercise any control over any entity that
15 offers or sells securities or provides investment advisory services, within or from Arizona, until
16 such time that she has complied with all terms and conditions promulgated under this Order.

17 12. BRUGLIERA agrees that until disgorgement and penalties are paid in full,
18 BRUGLIERA will notify the Director of the Securities Division within 30 days of any change in
19 home address or any change in BRUGLIERA's ability to pay amounts due under this Order.
20 BRUGLIERA agrees that failure to perform any action in this paragraph shall result in her being in
21 default with any outstanding balance being immediately due and payable without notice or
22 demand.

23 13. BRUGLIERA understands that a default shall render her liable to the Commission
24 for its costs of collection and interest at the maximum legal rate.

25 ...
26 ...

ace

1 14. BRUGLIERA understands and agrees that she shall cooperate fully with the
2 Securities Division by, without limitation, providing information pertinent to any related
3 investigation and, if necessary, presenting complete and accurate testimony at any related hearing.

4 15. BRUGLIERA agrees that she shall similarly cooperate with any other agency of the
5 state of Arizona in any investigation or in any other matter arising from the activities described in
6 this Order.

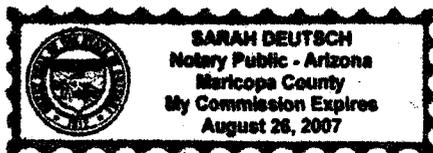
7 16. BRUGLIERA consents to the entry of this Order and agrees to be fully bound by its
8 terms and conditions. If BRUGLIERA breaches any provision of this Order, the Commission may
9 vacate this Order and restore this case to its active docket.

10
11 Deborah L. Brughiera
12 DEBORAH L. BRUGLIERA

13
14 SUBSCRIBED AND SWORN TO before me, by DEBORAH L. BRUGLIERA, this 10th day
15 of February, 2005.

16
17 Sarah Deutsch
18 NOTARY PUBLIC

19
20 My Commission Expires:



CONSENT TO ENTRY OF ORDER

1
2 1. PRISTINE PROPERTY admits the jurisdiction of the Commission over the subject
3 matter of this proceeding. PRISTINE PROPERTY acknowledges that it has been fully advised of
4 its right to a hearing to present evidence and call witnesses and PRISTINE PROPERTY knowingly
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. PRISTINE PROPERTY acknowledges that this Order to Cease and Desist,
8 Order of Disgorgement, Order for Administrative Penalties and Consent to Same ("Order")
9 constitutes a valid final order of the Commission.

10 2. PRISTINE PROPERTY knowingly and voluntarily waives any right under Article
11 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary
12 relief resulting from the entry of this Order.

13 3. PRISTINE PROPERTY acknowledges and agrees that this Order is entered into
14 freely and voluntarily and that no promise was made or coercion used to induce such entry.

15 4. PRISTINE PROPERTY acknowledges that it has been advised by counsel in this
16 matter, has reviewed this Order through its attorney, and understands all terms contained therein.

17 5. PRISTINE PROPERTY neither admits nor denies the Findings of Fact and
18 Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, PRISTINE PROPERTY agrees not to take
20 any action or to make, or permit to be made, any public statement denying, directly or indirectly,
21 any Finding of Fact or Conclusion of Law contained in this Order, or to create the impression that
22 this Order is without factual basis. PRISTINE PROPERTY will undertake steps necessary to
23 assure that all of its agents and employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between PRISTINE PROPERTY
25 and the Commission, PRISTINE PROPERTY understands that this Order does not preclude the
26

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

3 8. PRISTINE PROPERTY 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. PRISTINE PROPERTY 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. PRISTINE PROPERTY agrees that it will not apply to the state of Arizona for
10 registration under the Securities Act of Arizona or under the Arizona Investment Management Act
11 for at least five years from the entry date of this Order *and* until such time that it has complied with
12 all terms and conditions of this Order, including the payment in full of all disgorgement amounts
13 and administrative penalties promulgated thereunder.

14 11. PRISTINE PROPERTY agrees that it will not exercise any control over any entity
15 that offers or sells securities or provides investment advisory services, within or from Arizona,
16 until such time that it has complied with all terms and conditions promulgated under this Order.

17 12. PRISTINE PROPERTY agrees that until disgorgement and penalties are paid in
18 full, PRISTINE PROPERTY will notify the Director of the Securities Division within 30 days of
19 any change in business address or any change in PRISTINE PROPERTY's ability to pay amounts
20 due under this Order. PRISTINE PROPERTY agrees that failure to perform any action in this
21 paragraph shall result in it being in default with any outstanding balance being immediately due
22 and payable without notice or demand.

23 13. PRISTINE PROPERTY understands that a default shall render it liable to the
24 Commission for its costs of collection and interest at the maximum legal rate.

25 14. PRISTINE PROPERTY understands and agrees that it shall cooperate fully with the
26 Securities Division by, without limitation, providing information pertinent to any related

1 investigation and, if necessary, presenting complete and accurate testimony at any related hearing.
2 PRISTINE PROPERTY agrees that it shall similarly cooperate with any other agency of the state
3 of Arizona in any investigation or in any other matter arising from the activities described in this
4 Order.

5 15. PRISTINE PROPERTY consents to the entry of this Order and agrees to be fully
6 bound by its terms and conditions. If PRISTINE PROPERTY breaches any provision of this
7 Order, the Commission may vacate this Order and restore this case to its active docket.

8 16. DEBORAH L. BRUGLIERA represents that she is the owner and president of
9 PRISTINE PROPERTY and has been authorized by PRISTINE PROPERTY to enter into this
10 Order for and on behalf of the company. DEBORAH L. BRUGLIERA represents that she is
11 authorized by law to enter into this Order for and on behalf of PRISTINE PROPERTY.

12
13 PRISTINE PROPERTY & INVESTMENTS, INC.

14
15 By: Deborah L. Brugliera

16 Its: President

17 SUBSCRIBED AND SWORN TO before me this 10th day of February, 2005,
18 by DEBORAH L. BRUGLIERA, President of PRISTINE PROPERTY &
19 INVESTMENTS, INC.

20
21 Sarah Deutsch
22 NOTARY PUBLIC

23 My Commission Expires:

