

ORIGINAL

OPEN MEETING ITEM

7/7/05



0000021673

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



BRIAN C. McNEIL
EXECUTIVE SECRETARY

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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

JUN 22 2005

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY	<i>KS</i>
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AZ CORP COMMISSION
DOCUMENT CONTROL

2005 JUN 22 P 3:25

RECEIVED

DATE: June 21, 2005

RE: Proposed Order re: Mark J. Sheehy, Docket No. S-03593A-05-0000

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed default Order for Mark J. Sheehy ("Sheehy"). The Order requires Sheehy to cease and desist from the sale of unregistered securities and violations of the anti-fraud provisions of the Securities Act ("Act"), to pay restitution in the amount \$94,634, and administrative penalties in the amount of \$20,000. The Order also revokes Sheehy's Arizona securities salesman registration for his violations, and for dishonest and unethical conduct under the Act.

On April 15, 2005, the Securities Division ("Division") filed a Notice of Opportunity for Hearing ("Notice") against Sheehy and Jane Doe Sheehy, alleging multiple violations of the Act in connection with his employment as a registered securities salesman. Jane Doe Sheehy was joined in the proceeding pursuant to A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. Sheehy was served with a copy of the Notice by publication. Sheehy did not request a hearing or file an Answer.

The proposed Order finds that from around January 2003 through January 2005, Sheehy solicited investment funds of approximately \$87,034 from an Arizona client, a retired nurse and homemaker, purportedly for stock in a real estate development company. The Order further finds that Sheehy conducted unauthorized transactions and incurred margin loan interest charges in his client's brokerage account to fund monthly distributions to her, which he told her were "dividends" from her purported stock investment, and that Sheehy borrowed money from his client, which is dishonest and unethical conduct under the Act.

The Division recommends approval of the proposed Order as in the public interest.

Originator: Pam Johnson

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

In the matter of:)	DOCKET NO. S-03593A-05-0000
MARK J. SHEEHY, CRD#2224709, and)	DECISION NO. _____
JANE DOE SHEEHY, husband and wife,)	ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND OF REVOCATION AGAINST RESPONDENT MARK J. SHEEHY
28432 N. 112 th Way)	
Scottsdale, AZ 85262)	
Respondent.)	

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12 On April 15, 2005, the Securities Division (“Division”) of the Arizona Corporation
13 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order
14 To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for
15 Other Affirmative Action (“Notice”) of Opportunity for Hearing against Respondents MARK J.
16 SHEEHY (“SHEEHY”) and JANE DOE SHEEHY, subsequently identified as Terri A. Sheehy
17 (“RESPONDENTS”) alleging violations of the Arizona Securities Act (the “Act”). The Notice
18 specified that RESPONDENTS would be afforded an opportunity for an administrative hearing upon
19 written request filed with the Commission’s Docket Control within ten (10) days after receipt of the
20 Notice, in accordance with A.A.C. R14-4-306(B).
21

22 SHEEHY was served by publication pursuant to A.A.C. Rule R14-4-303(H). Pursuant to
23 A.A.C. R14-4-303(H), the Division has published a statement regarding the administrative
24 proceedings at least once a week for four consecutive weeks in the “Arizona Business Gazette” on
25 April 21, 2005; April 28, 2005; May 5, 2005; and May 12, 2005. The “Arizona Business Gazette”
26

1 is published in Maricopa County, the county of SHEEHY's last known residence. Terri A. Sheehy
2 was served by certified mail and requested a hearing.

3 Service of process of the Notice as to SHEEHY is complete. SHEEHY failed to request an
4 administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and
5 A.A.C. R14-4-306. SHEEHY failed to file an Answer within 30 days of service of the Notice,
6 pursuant to A.A.C. R14-4-305. Upon information and belief, SHEEHY is not represented by
7 counsel.

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9 **I.**

10 **FINDINGS OF FACT**

11 1. SHEEHY was at all pertinent times a registered securities salesman in Arizona since
12 February 3, 1992, CRD# 2224709. At all times pertinent to this action, SHEEHY was registered in
13 Arizona in association with UBS Financial Services, Inc. f/k/a PaineWebber Inc. ("UBS") from
14 October 1999 through April 2004; Morgan Stanley from April 2004 through December 2004; and
15 Southwest Securities Inc. d/b/a First Financial Equity Corporation ("First Financial") from January
16 2005 to February 4, 2005, when First Financial terminated SHEEHY. SHEEHY's registration was
17 automatically suspended pursuant to A.R.S. § 44-1949.

18 2. From in or around January 2003 through January 2005, SHEEHY solicited
19 \$87,034.00 from an unsophisticated retired nurse and homemaker for the purchase of stock in a
20 real estate development company.

21 3. SHEEHY advised the client to invest her inheritance through him in a brokerage
22 account, and assured her that he would assist her in purchasing conservative stocks to provide for
23 her future needs. SHEEHY had his client sign account documents, including a margin agreement.

24 4. Beginning in or around January 2003, SHEEHY solicited his client to invest in
25 stock in a real estate development company, representing the investment as a "sure thing," which
26 would start paying dividends immediately.

1 5. SHEEHY told his client that he was also investing his own money in the stock and
2 was making the investment available to a select few of his clients.

3 6. SHEEHY advised his client to transfer money from her brokerage account to her
4 personal checking account and to write checks payable to SHEEHY to purchase stock in the real
5 estate development company.

6 7. SHEEHY conducted unauthorized transactions in his client's brokerage account to
7 fund distributions to her in the amount of approximately \$3,400 per month, which he told her were
8 "dividends" from the investment.

9 8. In addition, from in or around January 2005, SHEEHY borrowed \$1150 from the
10 client, in violation of his dealers' policies and procedures.

11 9. In or around January 2005, after SHEEHY failed to repay the loan or to return the
12 client's telephone calls, the client contacted SHEEHY's dealer, First Financial. First Financial
13 conducted an investigation of the client's brokerage account with First Financial, UBS and Morgan
14 Stanley and found no evidence of any real estate development investments, and further discovered
15 that the client's withdrawals from her account for the purported real estate investment and the
16 purported stock dividend distributions to the client were funded by unauthorized sales of stock and
17 margin loans in the client's account.

18 10. The client was not aware that she had incurred margin loan interest charges in the
19 amount of approximately \$6,450.00 from the withdrawals from her brokerage account.

20 11. SHEEHY misrepresented and/or failed to disclose the use of the client's investment
21 funds.

22 12. SHEEHY misrepresented and/or failed to disclose background or financial
23 information about the purported development company or its principals.

24 13. SHEEHY misrepresented the source of "returns" from the purported investment.

25 14. SHEEHY failed to adequately disclose the risks of the purported investment.

26 15. SHEEHY engaged in unauthorized transactions in the client's account.

III.**ORDER**

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3 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
4 Commission finds that the following relief is appropriate, in the public interest, and necessary for the
5 protection of investors:

6 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that SHEEHY, his agents,
7 employees, successors and assigns, permanently cease and desist from violating the Securities Act.
8 Respondent shall not sell any securities in or from Arizona without being registered in Arizona as
9 dealers or salesmen, or exempt from such registration. Respondent shall not sell securities in or
10 from Arizona unless the securities are registered in Arizona or exempt from registration.
11 Respondent shall not transact business in Arizona as an investment adviser or an investment
12 adviser representative unless licensed in Arizona or exempt from licensure.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that SHEEHY
14 shall pay restitution to investors shown on the records of the Commission in the amount of
15 \$94,634, plus interest at the rate of 10% per annum from the date of this Order. Payment shall be
16 made by cashier's check or money order payable to the "State of Arizona" to be placed in an
17 interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona
18 Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the
19 Attorney General is unable to disburse shall be transferred to the general fund of the state of
20 Arizona. If Respondent does not comply with this order of restitution, any outstanding balance
21 shall be in default and shall be immediately due and payable.

22 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that SHEEHY
23 shall pay administrative penalties in the amount of \$20,000. Payment shall be made in full by
24 cashier's check or money order on the date of this Order, payable to the "State of Arizona." Any
25 amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order
26 until paid in full.

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IT IS FURTHER ORDERED that SHEEHY's registration as a securities salesman is revoked pursuant to A.R.S. § 44-1962.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

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

BRIAN C. McNEIL
Executive Secretary

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@azcc.gov

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