

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: May 24, 2005

DOCKET NO: S-03580A-04-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

GARY R. SHANNON
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

JUNE 3, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

JUNE 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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Arizona Corporation Commission

DOCKETED

MAY 24 2005

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

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:

9 JOHN E. SHANNON and REBECCA F.
10 SHANNON, husband and wife
11 8537 W. Onza
12 Mesa, AZ 85212

13 GARY R. SHANNON
14 3279 Pomme De Terre Circle
15 Flemington, MO 65650

16 Respondents.

DOCKET NO. S-03580A-04-0000

DECISION NO. _____

OPINION AND ORDER

17 DATE OF PRE-HEARING CONFERENCE: February 15, 2005

18 DATE OF HEARING: April 27, 2005

19 PLACE OF HEARING: Phoenix, Arizona

20 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

21 APPEARANCES: Mr. Gary R. Shannon, in propria persona; and

22 Ms. Michelle M. Allen, Staff Attorney, on behalf
23 of the Securities Division of the Arizona
24 Corporation Commission.

25 **BY THE COMMISSION:**

26 On December 28, 2004, the Securities Division ("Division") of the Arizona
27 Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice")
28 against John E. and Rebecca F. Shannon, husband and wife, and Gary R. Shannon (collectively
"Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act
("Act") in connection with the offer and sale of securities in the form of promissory notes or
investment contracts.

The Respondents were duly served with a copy of the Notice.

On January 14, 2005, requests for hearing were filed by Respondents, John E. and Rebecca F.

1 Shannon.

2 On January 20, 2005, by Procedural Order, a pre-hearing conference was scheduled.

3 On January 31, 2005, Respondents, John E. and Rebecca F. Shannon filed their Answers.

4 On February 15, 2005, a pre-hearing conference was held. The Division appeared with
5 counsel. Respondents, John and Rebecca Shannon appeared on their own behalf. Respondent, Gary
6 Shannon, although he had not formally requested a hearing in writing or filed an Answer, appeared
7 telephonically. While the parties discussed a possible settlement, the Division requested that a
8 hearing be scheduled and that Respondent Gary R. Shannon be ordered to file a written request for
9 hearing and an Answer by a date certain or be in default.

10 On February 16, 2005, by Procedural Order, a hearing was scheduled to commence on April
11 27, 2005, and Respondent Gary R. Shannon was ordered to file a written request for hearing and an
12 Answer or be in default.

13 On March 4, 2005, Respondent Gary R. Shannon filed a request for hearing and his Answer.

14 On March 29, 2005, the Commission issued Decision No. 67728, a Consent Order, which
15 resolved the issues raised by the Notice with respect to Respondents, John E. Shannon and Rebecca
16 F. Shannon.

17 On April 27, 2005, a full public hearing was commenced before a duly authorized
18 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division
19 appeared with counsel and Respondent Gary R. Shannon appeared on his own behalf. Following the
20 conclusion of the hearing, the matter was taken under advisement pending submission of a
21 Recommended Opinion and Order to the Commission.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 **FINDINGS OF FACT**

26 1. Gary R. Shannon, is an individual whose last known address is 3279 Pomme De Terre
27 Circle, Flemington, Missouri, 65650.

28 2. On December 28, 2004, the Division issued a Notice against Respondents John E. and

1 Rebecca F. Shannon, husband and wife, and Gary R. Shannon in which the Division alleged multiple
2 violations of the Act in connection with the offer and sale of securities in the form of promissory
3 notes or investment contracts in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.¹

4 3. At all times herein, Respondent Gary R. Shannon was not registered as a securities
5 salesman in the State of Arizona.

6 4. On February 24, 2000, John E. and Gary R. Shannon filed with the Commission the
7 Articles of Organization for Money Tree Auto Services, L.L.C. ("Money Tree"), an Arizona limited
8 liability company, which was to do business as Fast Cash Auto Leasing ("Fast Cash"). According to
9 Commission records, Money Tree was organized with its registered office in Scottsdale, Arizona, and
10 had as its managers, John E. and Gary R. Shannon.

11 5. Additionally, records from the Arizona Secretary of State's office establish that Gary
12 R. Shannon filed an application for the registration of the trade name for Fast Cash on February 24,
13 2000.

14 6. Money Tree/Fast Cash was engaged in the business of purchasing² and leasing back
15 automobiles to individuals who previously owned their automobiles free and clear and who needed
16 cash. When Money Tree/Fast Cash leased the vehicle back to its former owner, the lease required
17 lease payments with a high rate of interest.

18 7. Gary R. Shannon was involved in the operation and management of Money Tree/Fast
19 Cash from its organization through at least September 2002, during which time Respondent Gary R.
20 Shannon solicited investors, placed advertising and signed investment contracts on behalf of Money
21 Tree/Fast Cash.

22 8. Initially, in order to fund the operations of Money Tree/Fast Cash, Gary R. Shannon
23 helped develop an investor packet that was termed an "Executive Business Plan and Investor
24 Introduction". The packet included a multi-page document given to initial prospective investors to
25 encourage an investment in Money Tree/Fast Cash; however, according to Respondent Gary R.

26 ¹ On March 29, 2005, the Commission issued Decision No. 67728, a Consent Order with respect to Respondents
27 John E. and Rebecca F. Shannon. Decision No. 67728 ordered John E. and Rebecca F. Shannon to permanently cease
28 and desist from violating the Act, to pay restitution in the amount of \$671,054 and to pay administrative penalties of
\$15,000.

² Money Tree/Fast Cash purchased the automobiles for approximately one-half of their Kelly Blue Book value.

1 Shannon, its use was subsequently discontinued after the initial start up period of Money Tree/Fast
2 Cash.

3 9. Money Tree/Fast Cash located investors who wished to invest funds by the use of
4 either word of mouth advertising or by the placement of advertisements in a Phoenix Jewish
5 newspaper.

6 10. Based on the record, it was established that during Respondent Gary R. Shannon's
7 involvement with Money Tree/Fast Cash, seven individuals invested at least \$255,000 by signing one
8 year promissory notes or investment contracts. These notes/contracts were guaranteed personally by
9 Respondent Gary R. Shannon even though he lacked sufficient funds or assets to guarantee the
10 investments. These agreements promised returns to investors varying from 30 percent to 48 percent
11 annually, and by their terms could be extended for an additional period of time.

12 11. Of the seven investors, only one investor, Mr. Santos Acosta, who invested \$10,000,
13 was paid back his entire investment in April 2002. However, the funds used for the repayment to Mr.
14 Acosta were provided from the invested funds of later investors in the offering.

15 12. While the record established that some of the remaining six investors received some
16 return on their investments, based on the evidence presented by the Division's investigator, the
17 remaining six investors are still owed \$174,450. Respondent Gary R. Shannon signed as a guarantor
18 on these investors' promissory notes or investment contracts. During the hearing, Respondent Gary
19 R. Shannon acknowledged that he lacked sufficient assets to repay the amounts invested in Money
20 Tree/Fast Cash by these investors.

21 13. Based on the record, it is established that Respondent Gary R. Shannon
22 misrepresented the financial health of the business to investors and began to use later investor money
23 to repay earlier investors. It was also established that risks inherent in the auto leasing business were
24 not disclosed, such as problems with missing vehicles and what their loss would mean to the
25 investors.

26 14. Evidence was also presented that Respondent Gary R. Shannon misrepresented the
27 liquidity of an investment in Money Tree/Fast Cash and also failed to disclose past criminal
28 convictions of the company's business manager to investors.

1 and controlled by the Arizona Attorney General until distributions are made. The Arizona Attorney
2 General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General
3 is unable to disburse shall revert to the State of Arizona.

4 IT IS FURTHER ORDERED that if Respondent Gary R. Shannon does not comply with this
5 Order of restitution, any outstanding balance shall be in default and shall be immediately due and
6 payable, without further notice.

7 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
8 A.R.S. § 44-2036, Respondent Gary R. Shannon shall pay as and for administrative penalties: for the
9 violation A.R.S. § 44-1841, \$5,000; for the violation of A.R.S. § 44-1842, \$5,000; and for the
10 violation of A.R.S. §44-1991, \$5,000; for a total of \$15,000.

11 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
12 A.R.S. § 44-2036, that Respondent Gary R. Shannon shall pay the administrative penalty ordered
13 above in the amount of \$15,000 payable by either cashier's check or money order payable to the
14 "State of Arizona" for deposit in the General Fund for the State of Arizona. The payment obligation
15 for his administrative penalty shall be subordinate to any restitution obligations ordered hereinabove
16 and shall become immediately due and payable only after restitution payments have been paid in full,
17 or if Respondent has defaulted prior to fulfilling his restitution obligations.

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IT IS FURTHER ORDERED that if Respondent Gary R. Shannon fails to pay the administrative penalty ordered hereinabove, any outstanding balance plus interest at the maximum lawful amount may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that this Decision 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 _____

1 SERVICE LIST FOR: GARY R. SHANNON

2 DOCKET NO.: S-03580A-04-0000

3 GARY R. SHANNON
4 3279 Pomme De Terre Circle
5 Flemington, MO 65650
6 Respondent

7 Matt Neubert, Director
8 Securities Division
9 ARIZONA CORPORATION COMMISSION
10 1300 West Washington Street
11 Phoenix, AZ 85007

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