

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

In the matter of:  THOMAS C. MESSINA [a/k/a THOMAS CAMPBELL MESSINA and TOM C. MESSINA] and DONNA M. MESSINA, husband and wife, 17212 N. Scottsdale Road, # 2239 Scottsdale, Arizona 85255  Respondents.	) DOCKET NO. S- 20392A-05-0507 ) ) <b>NOTICE OF OPPORTUNITY FOR HEARING</b> ) <b>REGARDING PROPOSED ORDER TO</b> ) <b>CEASE AND DESIST, ORDER FOR</b> ) <b>RESTITUTION FOR ADMINISTRATIVE</b> ) <b>PENALTIES AND FOR OTHER</b> ) <b>AFFIRMATIVE ACTION</b> ) )
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**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent THOMAS C. MESSINA has engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.**

**JURISDICTION**

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

**II.**

**RESPONDENTS**

2. THOMAS C. MESSINA ("MESSINA"), an individual, is a resident of the State of Arizona, whose last known address is 17212 N. Scottsdale Road, Apartment #2239, Scottsdale, Arizona 85255.



1 of hiring Mr. Ballard, Mr. Ballard was not hired as the builder for any of MESSINA'S proposed  
2 projects.

3 10. MESSINA led the investors to expect to receive a profit from his efforts if they  
4 invested with him. MESSINA told offerees and investors that he would repay their principal  
5 investment in twelve monthly principal payments, until all of the interest was repaid, then monthly  
6 interest payments would follow. MESSINA promised offerees and investors a 100% return on  
7 their investment.

8 11. The offerees and investors entered into investment contracts based on MESSINA'S  
9 oral promise of repayment except for two investors who received signed promissory notes.  
10 Offerees and investors invested with MESSINA with the expectation that their money would be  
11 invested in real estate.

12 12. MESSINA deposited the \$324,000 he collected from investors into his personal  
13 bank account. He did not use the investors' money to purchase real estate or fund construction  
14 projects.

15 13. MESSINA made some initial payments to investors but the payments eventually  
16 stopped.

17 14. Subsequent to their investment, MESSINA lulled investors by claiming that he  
18 had \$6 million invested in land and real estate projects. MESSINA told investors that he invested  
19 \$1 million of his own money.

20 15. After his payments stopped, MESSINA lulled investors by sending them monthly  
21 letters claiming that he was unable to pay them because his business partner embezzled money  
22 from the business bank account. In the letters, MESSINA claimed a bank investigation and legal  
23 action had commenced in order to recover investor funds.

24 16. MESSINA continued to lull investors with additional claims that his bank had  
25 begun legal action against the original builder, hired a new builder and started construction on  
26 pending real estate projects.



1 fraud or deceit upon offerees and investors. MESSINA'S conduct includes, but is not limited to, the  
2 following:

3 a) MESSINA misrepresented to offerees and investors that he was a successful  
4 real estate investor and developer, when in fact he had not purchased real estate or completed a  
5 construction project.

6 b) MESSINA failed to disclose to offerees and investors that he had not earned  
7 any money as a real estate investor or developer.

8 c) MESSINA misrepresented to offerees and investors that more than 20  
9 investors had invested \$6 million with him in real estate projects.

10 d) MESSINA misrepresented to offerees and investors that he would repay  
11 them their principal investment in twelve equal installments followed by monthly interest  
12 payments, when in fact none of the investors have received full payment of their principal  
13 investment or the interest promised.

14 e) MESSINA misrepresented to investors that they had not been repaid because  
15 MESSINA'S business partner embezzled investors' funds from his business account, when in fact  
16 MESSINA did not have a business account but only a personal account on which MESSINA and  
17 his wife, D. MESSINA, were the only signors.

18 f) MESSINA misrepresented to some offerees and investors that home builder,  
19 Robert Ballard, was hired as the builder for his real estate project, when in fact MESSINA had not  
20 hired Mr. Ballard.

21 g) MESSINA misrepresented to offerees and investors that their investments  
22 would be used to purchase real estate in Phoenix, Arizona to develop a low-income housing  
23 project, when in fact MESSINA had not purchased real estate or funded any construction projects.

24 h) MESSINA misrepresented to offerees and investors that the vacant lots and  
25 construction projects he showed them were examples of his real estate investments and  
26

1 construction projects, when in fact MESSINA had not purchased any real estate or started any  
2 projects.

3 24. This conduct violates A.R.S. § 44-1991.

4 **VII.**

5 **REQUESTED RELIEF**

6 The Division requests that the Commission grant the following relief:

7 1. Order MESSINA to permanently cease and desist from violating the Securities Act,  
8 pursuant to A.R.S. § 44-2032;

9 2. Order MESSINA to take affirmative action to correct the conditions resulting from  
10 his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. §  
11 44-2032;

12 3. Order MESSINA and D. MESSINA to pay the state of Arizona administrative  
13 penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to  
14 A.R.S. § 44-2036;

15 4. Order that the marital community of MESSINA and D. MESSINA be subject to any  
16 order of restitution, rescission, administrative penalties, or other appropriate affirmative action  
17 pursuant to A.R.S. § 25-215; and

18 5. Order any other relief that the Commission deems appropriate.

19 **VIII.**

20 **HEARING OPPORTUNITY**

21 MESSINA and D. MESSINA, may request a hearing pursuant to A.R.S. § 44-1972 and  
22 A.A.C. R14-4-306. **If any respondent requests a hearing, respondent must also answer this**  
23 **Notice.** A request for hearing must be in writing and received by the Commission within 10  
24 business days after service of this Notice of Opportunity for Hearing. Each respondent must deliver  
25 or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington  
26 Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet

1 form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the  
2 Commission's Internet web site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
4 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
5 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
6 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
7 Opportunity for Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language  
9 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
10 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
11 [lhogan@cc.state.az.us](mailto:lhogan@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
12 accommodation.

13 **IX.**

14 **ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if MESSINA and D. MESSINA requests a hearing,  
16 MESSINA and D. MESSINA must deliver or mail an Answer to this Notice of Opportunity for  
17 Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,  
18 Arizona 85007, within 30 calendar days after the date of service of this Notice. A Docket Control  
19 cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained  
20 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
21 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

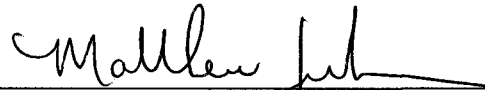
22 Additionally, MESSINA and D. MESSINA must serve the Answer upon the Division.  
23 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
24 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
25 Arizona, 85007, addressed to Rachel F. Strachan.

1 The Answer shall contain an admission or denial of each allegation in this Notice and the  
2 original signature of each MESSINA or his attorney and D. MESSINA or her attorney. A  
3 statement of a lack of sufficient knowledge or information shall be considered a denial of an  
4 allegation. An allegation not denied shall be considered admitted.

5 When MESSINA and D. MESSINA intend in good faith to deny only a part or a  
6 qualification of an allegation, MESSINA and D. MESSINA shall specify that part or qualification  
7 of the allegation and shall admit the remainder. MESSINA and D. MESSINA waive any  
8 affirmative defense not raised in the answer.

9 The officer presiding over the hearing may grant relief from the requirement to file an  
10 Answer for good cause shown.

11 Dated this 20 day of July, 2005.

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14 Matthew J. Neubert  
15 Director of Securities  
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