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8/25/05

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



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ARIZONA CORPORATION COMMISSION

TO:

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

FROM:

Matthew J. Neubert
Director of Securities

DATE:

August 10, 2005

RE:

Proposed Default Order in The Matter of Thomas C. Messina, et al.
S-20392A-05-0507

CC:

Brian C. McNeil, Executive Secretary

AZ CORP COMMISSION
DOCUMENT CONTROL

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RECEIVED

The Securities Division is seeking approval of the proposed Default Order against Thomas C. Messina ("Messina") and Donna M. Messina ("D. Messina"). The following order is attached for your review.

On July 21, 2005 the Securities Division of the Arizona Corporation Commission filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution for Administrative Penalties and for Other Affirmative Action. The Respondents were personally served the Notice on July 21, 2005. The Notice explained to Respondents that they would be afforded an opportunity for an administrative hearing upon written request within ten days following receipt of the Notice. To date, the Respondents have not responded to the Notice.

The Notice is the result of Thomas C. Messina offering and selling investment contracts and promissory notes to nine investors from April 2003 through December 2003 totaling \$324,000.

Thomas C. Messina told investors that he was a successful real estate investor and developer who invested in real estate projects on behalf of his clients. Messina told investors that he would use their investments to purchase real estate in Phoenix upon which he would build low-income housing. He also told offerees and investors that buyers for these homes had already been approved. Thomas C. Messina showed potential investors lots and construction projects throughout Phoenix claiming the land and/or the projects belonged to either him or one of his clients. Messina promised investors a 100% return on their investment.

Messina deposited the \$324,000 into his personal bank account. Messina did not use the investors' money to purchase real estate or fund construction projects. Although Messina made some initial payments to investors, the payments eventually stopped.

The proposed Default Order finds that Messina violated A.R.S. §§44-1841, 44-1842 and 44-1991. It orders Messina to cease and desist from further violation of Arizona securities laws. The order also requires Thomas Messina and Donna Messina to pay restitution of \$324,000 and administrative penalties of \$25,000.

The Securities Division recommends that the Commission approve the attached Default Order.

Originator: Rachel Frazier Strachan

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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)) DECISION NO. _____)) ORDER TO CEASE AND DESIST,) ORDER OF RESTITUTION, AND) ORDER FOR ADMINISTRATIVE) PENALTIES AGAINST THOMAS C.) MESSINA AND DONNA D. MESSINA))
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On July 21, 2005, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order To Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative Action ("Notice") with respect to Respondents Thomas C. and Donna M. Messina ("Respondents"). The Division personally served the Notice on the Respondents on July 21, 2005. The Notice specified that the Respondents would be afforded an opportunity for an administrative hearing regarding this matter upon filing a written request with Docket Control of the Commission within ten days of receipt of the Notice. The Respondents failed to request a hearing within the required time.

I.

FINDINGS OF FACT

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3 1. Respondent Thomas C. Messina ("Messina") resides at 17212 N. Scottsdale Road,
4 Apartment #2239, Scottsdale, Arizona 85255.

5 2. Respondent Donna M. Messina ("D. Messina") resides at 17212 N. Scottsdale Road,
6 Apartment #2239, Scottsdale, Arizona 85255.

7 3. D. Messina was at all relevant times the spouse of Respondent Messina. D. Messina is
8 joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of
9 the marital community.

10 4. At all times relevant, Messina was acting for his own benefit, and for the benefit or in
11 furtherance of the marital community.

12 5. From April 2003 through December 2003, Messina, offered and sold securities in the form
13 of investment contracts and promissory notes, to nine investors, within or from Arizona, totaling
14 \$324,000.

15 6. Messina told offerees and investors that he was a successful real estate investor and
16 developer, investing in real estate projects on behalf of his clients. He told them that he was
17 making investments on behalf of more than twenty real estate investors. However, contrary to his
18 claim, Messina did not earn any income as a real estate investor during the time he was raising
19 money from investors.

20 7. Messina told offerees and investors that he would use their investments to purchase real
21 estate in Phoenix, Arizona. The real estate that he purchased would then be developed into low-
22 income housing. Messina told offerees and investors that buyers had already been approved to
23 purchase these homes.

24 8. Messina showed potential investors various land lots and construction projects throughout
25 Phoenix and claimed the land and/or projects belonged to him or his investors.

1 9. Messina told offerees and investors that Robert Ballard of Candlewood Fine Homes had
2 been hired as one of the builders he planned to use for planned construction projects. Messina gave
3 potential investors Mr. Ballard's personal resume, development project history and a company
4 brochure. Although Messina and Mr. Ballard had met to discuss the possibility of hiring Mr.
5 Ballard, Mr. Ballard was not hired as the builder for any of Messina's proposed projects.

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

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

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

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

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

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

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

4 **II.**

5 **CONCLUSIONS OF LAW**

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

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

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

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

14 5. Respondent Messina violated A.R.S. § 44-1991 by offering or selling securities
15 within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue
16 statements or misleading omissions of material facts, and (c) engaging in transactions, practices or
17 courses of business which operate or would operate as a fraud or deceit.

18 6. Respondent Messina's conduct is grounds for a cease and desist order pursuant to
19 A.R.S. § 44-2032.

20 7. Respondent Messina's conduct is grounds for an order of restitution pursuant to
21 A.R.S. § 44-2032.

22 8. Respondent Messina's conduct is grounds for administrative penalties under A.R.S.
23 § 44-2036.

24 9. Respondent Messina's conduct in this matter binds the marital community of
25 Respondents Messina and D. Messina pursuant to A.R.S. §25-214.

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III.

ORDER

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

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

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents Messina and D. Messina shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$324,000.00, plus interest at the rate of 10% per annum from the date of each investment until paid in full. Respondents Messina and D. Messina shall be entitled to setoffs for restitution paid to investors and verified by the Director of Securities. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Commission. The Commission shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona. If Respondents Messina and D. Messina do not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents Messina and D. Messina shall, jointly and severally, pay an administrative penalty in the amount of \$25,000, payable to the "State of Arizona." Payment shall be made in full by cashier's check or money order on the date of this Order. If Respondents Messina and D. Messina do not comply with this order for administrative penalties, any outstanding balance may be deemed in default and shall be immediately due and payable without notice or demand.

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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 Director 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 Director

DISSENT

DISSENT

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