

11/3/05



0000032741

MATTHEW J. NEUBERT
DIRECTOR

225

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

ORIGINAL



BRIAN C. McNEIL
EXECUTIVE DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

FROM: Matthew J. Neubert *Matthew J. Neubert*
Director of Securities

DATE: October 20, 2005

RE: Default Orders for Brixon Group Ltd., Joseph and Jane Doe McCool, Donald and Jane Doe Manning, S-20402A-05-0569

CC: Brian C. McNeil, Executive Director

RECEIVED
2005 OCT 20 P 3:58
AZ CORP COMMISSION
DOCUMENT CONTROL

On August 9, 2005, the Division filed a Notice of Opportunity for Hearing regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties against Brixon Group Ltd., Joseph Wayne McCool, Jane Doe McCool, Donald John Manning, Jane Doe Manning, Cameron Guy Campbell, and Nanette Campbell alleging violations of the Securities Act.

Cameron Guy Campbell and Nanette Campbell requested a hearing within the required time period. The Division was unable to locate the other respondents to personally serve them; service of process was accomplished by publication. None of the remaining respondents requested an administrative hearing. Upon information and belief none of the remaining respondents are represented by counsel.

Brixon Group Ltd., Joseph Wayne McCool and Donald John Manning ("Respondents") raised \$8,536,495 from 128 investors from approximately 2000 to 2003. Investors were told that their funds were to be placed in high-yield insurance portfolio investments with a promised return of 10% per month. The investors were told that they would not lose their initial investment because it was insured. No such insurance existed.

Arizona Corporation Commission
DOCKETED

OCT 20 2005

DOCKETED BY	
-------------	--

Once funds were raised they were deposited in a bank account in California, from which they were transferred to other United States and foreign bank accounts, to officers of Brixon Group Ltd., to investors, and to other non-investor companies and individuals for their own use. Some of the investor funds were used for personal expenses, for office expenses and salaries, for attorney fees, and for other undesiganted distributions. Some of the earlier investors did receive a payout, but most investors did not receive a payout and lost their original investment.

Respondents also failed to disclose that Joseph McCool had been convicted in 1997 of wire fraud and, in fact, was on probation while he was raising funds for Brixon.

The Order finds that Respondents violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling securities within and from Arizona that were neither registered nor exempted from registration and while neither being registered as a dealer or salesman nor exempted from registration. It further finds Respondents violated A.R.S. § 44-1991 multiple times by engaging in fraudulent activity, by making untrue or misleading omissions of material facts and by engaging in transactions, practices, and a course of business which operated as a deceit upon their investors. It orders Respondents to pay restitution of \$8,536,495 and a penalty of \$250,000.

The Division recommends approval of the proposed Default Order.

Originator: Ella 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

8 In the matter of:)

9 Brixon Group Ltd.)
10 1616 East Main, Suite 128)
11 Mesa, Arizona 85203)

12 Joseph Wayne McCool a.k.a. Joe McCool)
13 and Jane Doe McCool, husband and wife)
14 5306 East Boise Street or 5304 East Boise)
15 Street)
16 Mesa, Arizona 85205)

17 Donald John Manning a.k.a. Don Manning)
18 and Jane Doe Manning, husband and wife)
19 8260 East Keates Avenue, #502)
20 Mesa, Arizona 85208)

21 Cameron Guy Campbell and Nanette)
22 Campbell, husband and wife)
23 2375 Terraza Salvo)
24 Carlsbad, California 92009-6623)

25 Respondents.)
26

DOCKET NO. S-20402A-05-0569

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, AND ORDER FOR
ADMINISTRATIVE PENALTIES**

**RE: RESPONDENTS BRIXON GROUP LTD.,
JOSEPH WAYNE MCCOOL, JANE DOE
MCCOOL, DONALD JOHN MANNING AND
JANE DOE MANNING**

I.

PROCEDURAL POSTURE

On August 9, 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, Order for Administrative Penalties, and for other affirmative action against Brixon Group Ltd., Joseph Wayne McCool, Jane Doe McCool, Donald John Manning, Jane Doe Manning, Cameron Guy Campbell, and Nanette Campbell alleging

1 3. RESPONDENTS sold securities in the form of investment contracts, which were called
2 Capital Private Placement Agreements, within or from Arizona.

3 4. The Capital Private Placement Agreements offered for sale by the RESPONDENTS were
4 not registered in Arizona nor were they exempted from registration.

5 5. RESPONDENTS provided Capital Private Placement Agreements at the time of sale to
6 investors.

7 6. RESPONDENTS assured Capital Private Placement investors that their principal was
8 secure because it was insured; and that each investor would be provided an insurance policy.

9 7. The Capital Private Placement Agreement provided that investors agree to place their
10 invested "*sums into the investment coordinator's control and management,*" pursuant to a power of
11 attorney. The investors expected to earn a profit solely through the efforts of the investment
12 coordinator or some one other than themselves.

13 8. The Capital Private Placement Agreements state that investor funds are to be privately
14 placed in high-yield insurance portfolio investments with a promised "*return on investment profits*
15 *equal to 10% per month.*" RESPONDENTS did not put investor funds into high-yield insurance
16 portfolio investments.

17 9. RESPONDENTS used investor funds for personal expenses, for office expenses and
18 salaries, for attorney fees, and for other undesignated distributions and failed to disclose to
19 investors.

20 10. From on or about January, 2000, until on or about February, 2002, some Capital Private
21 Placement investors received monthly interest payments.

22 11. RESPONDENTS solicited investors to roll their 401K or IRA accounts into self-directed
23 accounts at Resource Trust Corporation.

24 12. RESPONDENTS promised investors a 5% monthly return on investment on the accounts at
25 Resource Trust Corporation and promised that the principal in the accounts would be secured by an
26 insurance policy.

1 13. RESPONDENTS withdrew the principal from the Resource Trust Corporation accounts,
2 pursuant to a power of attorney, to be invested in a Brixon Group partnership. Investors lost their
3 principal; were not insured; and did not receive return-on-investment payments.

4 14. RESPONDENTS had 128 investors, from Arizona and other states, and \$8,536,495 dollars
5 invested in their Capital Private Placement fund.

6 15. BRIXON GROUP LTD. is incorporated in the Caribbean Turks and Caicos Islands.

7 16. At all relevant times, JOSEPH WAYNE MCCOOL held himself out to investors as an
8 officer of Brixon Group Ltd

9 17. From on or about January, 2000, JOSEPH WAYNE MCCOOL offered and sold Brixon
10 Group Ltd.'s Capital Private Placement fund to investors.

11 18. JOSEPH WAYNE MCCOOL was convicted of Conspiracy to Commit Wire Fraud and
12 Conspiracy to Traffic in Counterfeit Goods in case number #CR00046-001, United States District
13 Court, Eastern District of Virginia in 1997.

14 19. JOSEPH WAYNE MCCOOL was imprisoned in case number #CR00046-001 from on or
15 about August 18, 1997 to March 1, 2000.

16 20. JOSEPH WAYNE MCCOOL was on supervised probation as a result of his conviction in
17 case number #CR00046-001 from on or about March, 2000, to April, 2003.

18 21. JOSEPH WAYNE MCCOOL did not disclose to Capital Private Placement investors his
19 prior criminal history.

20 22. JOSEPH WAYNE MCCOOL represented to the U.S. Probation Office that Donald John
21 Manning, a.k.a Don Manning, was his immediate supervisor; that Don Manning was aware of his
22 criminal status; that he was employed by Brixon Group Ltd. as a salesperson at a gross income of
23 \$3000.00 per month; and that he had been employed by Brixon Group Ltd. since January, 2000.

24 23. At all relevant times, DONALD JOHN MANNING held himself out to investors as an
25 officer of Brixon Group Ltd.
26

1 24. From on or about January, 2000, DONALD JOHN MANNING offered and sold Brixon
2 Group Ltd.'s Capital Private Placement fund to investors.

3 25. DONALD JOHN MANNING did not disclose to Capital Private Placement investors Joseph
4 Wayne McCool's prior criminal history.

5 26. DONALD JOHN MANNING'S former address was 5304 E. Boise St. Mesa, AZ 85205-
6 8122 from on or about March 1, 2000 until May 2, 2001.

7 27. Funds from Capital Private Funds from Capital Private Placement investors were deposited
8 (wire transfer or check) into an account at Northern Trust Bank.

9 28. Funds were disbursed from the bank account at Northern Trust Bank at the direction of
10 JOSEPH WAYNE MCCOOL or DONALD JOHN MANNING.

11 29. Funds were transferred from an account at Northern Trust Bank to other United States and
12 foreign bank accounts, to officers of Brixon Group Ltd., to investors, and to other non-investor
13 companies and individuals for their own use.

14 30. At all relevant times JANE DOE MANNING was the spouse of DONALD JOHN
15 MANNING. JANE DOE MANNING is joined in this action under ARS §44-2031(C) for the
16 purpose of determining the liability of the marital community.

17 31. At all relevant times JANE DOE MCCOOL was the spouse of JOSEPH WAYNE
18 MCCOOL. JANE DOE MCCOOL is joined in this action under ARS §44-2031(C) for the purpose
19 of determining the liability of the marital community.

20
21 **III.**

22 **CONCLUSIONS OF LAW**

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

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

1 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, and any of
2 RESPONDENTS' agents, employees, successors and assigns, permanently cease and desist from
3 violating the Securities Act. RESPONDENTS shall not sell any securities in or from Arizona
4 without being registered in Arizona as dealers or salesmen, or exempt from such registration.
5 RESPONDENTS shall not sell securities in or from Arizona unless the securities are registered in
6 Arizona or exempt from registration.

7 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,
8 jointly and severally with other RESPONDENTS in this case against whom an Order is issued, pay
9 restitution to investors shown on the records of the Commission in the amount of \$8,536,445.00,
10 less the amount of any disbursements received by investors, plus interest at the rate of 10% per
11 annum from the date of this Order. Restitution is due and payable on the date of the Order.
12 Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be
13 placed in an interest-bearing account maintained and controlled by the Commission. The
14 Commission shall disburse the funds on a pro rata basis to investors. Any funds that the
15 Commission is unable to disburse shall be transferred to the general fund of the state of Arizona.

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENT shall pay
17 an administrative penalty in the amount of \$250,000. Payment shall be made in full by cashier's
18 check or money order on the date of this Order, payable to the "State of Arizona." The payment
19 obligations for these administrative penalties shall be subordinate to any restitution obligations
20 ordered herein and shall become immediately due and payable only after restitution payments have
21 been paid in full, or if RESPONDENTS have defaulted prior to fulfilling RESPONDENTS'
22 restitution obligations. For the purposes of this Order, a bankruptcy filing by any
23 RESPONDENTS shall be an act of default on RESPONDENTS' restitution obligations. If
24 RESPONDENTS do not comply with this order for administrative penalties, any outstanding
25 balance may be deemed in default and shall be immediately due and payable.

26 ...

1 IT IS FURTHER ORDERED, that if any RESPONDENT fails to comply with this order,
2 the Commission may bring further legal proceedings against that RESPONDENT, including
3 application to the superior court for an order of contempt.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7

8 CHAIRMAN COMMISSIONER

9

10 COMMISSIONER COMMISSIONER COMMISSIONER

11

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

16

17

18 _____
BRIAN C. McNEIL
Executive Director

19

20 _____

21 DISSENT

21

22

23 _____

23 DISSENT

24

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

25

26 (EGJ)