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

ORIGINAL



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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

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MEMORANDUM

Arizona Corporation Commission

DOCKETED

MAY 12 2006

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TO: Jeff Hatch-Miller, Chairman
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FROM: Mark Dinell *MD*
Assistant Director of Securities

DATE: May 9, 2006

RE: Proposed Order re: David Lee McMillan, Docket No. S-20452A-06-0218

CC: Brian C. McNeil, Executive Director

Attached is a proposed default Order for David Lee McMillan ("McMillan"). The Order requires McMillan 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 \$3,454,379.00, which includes pre-judgment interest, and administrative penalties in the amount of \$100,000. The Order also revokes McMillan's Arizona securities salesman registration for his violations, and for dishonest and unethical conduct under the Act.

On April 5, 2006, the Securities Division ("Division") filed a Notice of Opportunity for Hearing ("Notice") against McMillan and Polly P. McMillan, alleging multiple violations of the Act in connection with his employment as a registered securities salesman. Polly P. McMillan was joined in the proceeding pursuant to A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. McMillan was personally served with a copy of the Notice. McMillan did not request a hearing or file an Answer.

The proposed Order finds that beginning in around 1999 through 2005, McMillan offered and sold various securities in the form of investment contracts to customers of his securities dealers, including non-existent first trust deeds, certificates of deposit, variable annuities, and loans for development projects. McMillan told investors that they would receive profits in the form of interest payments. At least 21 investors, mostly Arizona residents, lost approximately \$2,640,699.00 by purchasing McMillan's unauthorized and fraudulent securities.

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

Originator: Pam Johnson

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

| | | |
|------------------------------------|---|--|
| In the matter of: |) | DOCKET NO. S-20452A-06-0218 |
| DAVID L. MCMILLAN, CRD#1808333, |) | DECISION NO. _____ |
| and POLLY P. MCMILLAN, husband and |) | ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND OF REVOCATION RE: DAVID L. MCMILLAN |
| wife |) | |
| Respondents. |) | |

On April 5, 2006, 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, of Revocation, and for Other Affirmative Action ("Notice") against Respondents David L. McMillan ("MCMILLAN") and Polly P. McMillan, husband and wife, (collectively, "RESPONDENTS"), alleging violations of the Arizona Securities Act (the "Act"). The Notice specified that RESPONDENTS would be afforded an opportunity for an administrative hearing upon written request filed with the Commission's Docket Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. Rule R14-4-306(B).

Service of process of the Notice as to MCMILLAN was completed on April 15, 2006. MCMILLAN failed to request an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and A.A.C. Rule R14-4-306. The Division filed an Affidavit of personal service against MCMILLAN on May 2, 2006. MCMILLAN failed to file an Answer within

1 30 days of service of the Notice, pursuant to A.A.C. Rule R14-4-305. Upon information and belief,
2 MCMILLAN is not represented by counsel.

3 **I.**

4 **FINDINGS OF FACT**

5 1. MCMILLAN, CRD#1808333 is and was at all pertinent times a registered securities
6 salesman in Arizona, since on or about April 19, 1988, CRD# 1808333. At all times pertinent to
7 this action, MCMILLAN was registered in Arizona in association with registered securities dealer
8 Royal Alliance Associates, Inc. ("Royal") from November 14, 1994 to December 31, 2004, and
9 with registered securities dealer Geneos Wealth Management, Inc. ("Geneos") from January 14,
10 2005 to October 18, 2005. On October 18, 2005, Geneos discharged MCMILLAN for cause after
11 an internal investigation following multiple phone calls to the firm from individuals claiming to
12 have invested with MCMILLAN in an undisclosed outside business activity. MCMILLAN is
13 currently not affiliated with any securities dealer. At all pertinent times, MCMILLAN was also
14 licensed as a "producer" with the Arizona Department of Insurance. MCMILLAN's insurance
15 license expired on September 30, 2005.

16 2. POLLY P. MCMILLAN was at all relevant times the spouse of MCMILLAN.
17 POLLY P. MCMILLAN is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
18 determining the liability of the marital community.

19 3. At all pertinent times, MCMILLAN and POLLY P. MCMILLAN were acting for
20 their own benefit, and for the benefit or in furtherance of the marital community.

21 4. MCMILLAN may be referred to as "Respondent." POLLY P. MCMILLAN may be
22 referred to as "Respondent Spouse."

23 5. Beginning in around 1999 through 2005, MCMILLAN offered and sold various
24 securities in the form of investment contracts to customers of his securities dealers, including non-
25 existent first trust deeds, certificates of deposit, variable annuities, and loans for development
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1 projects. MCMILLAN told investors that they would receive profits in the form of interest
2 payments.

3 6. At all pertinent times, MCMILLAN was associated as a registered securities
4 salesman with Schooner Financial Associates, Inc. ("Schooner"), an Arizona-licensed investment
5 adviser, located in Phoenix, Arizona. The Schooner office in Phoenix was at all pertinent times an
6 office of supervisory jurisdiction ("OSJ") for Royal and Geneos, providing supervision for
7 MCMILLAN, who operated from a non-OSJ satellite office of Royal and Geneos, located at 3003
8 Highway 95, Suite 102, Bullhead City, Arizona 86442.

9 7. MCMILLAN misrepresented to certain customers of Schooner/Royal and Geneos
10 that their money would be invested in various securities, including the following:

11 a) Certificates of deposit and/or interest-bearing annuities purportedly through
12 a company called "Transnation" located in Phoenix, Arizona. MCMILLAN sent investors
13 monthly statements which he prepared on "Transnation" letterhead. In fact, Transnation
14 Title Insurance Company, which is located at the same address that MCMILLAN used on
15 the fraudulent account statements, had no knowledge or relationship with MCMILLAN and
16 had no dealings in certificates of deposit or annuities.

17 b) First deeds of trust purportedly secured by real property through Ramsey
18 Homes, Inc. ("Ramsey") of Bullhead City. In fact, Ramsey had no relationship with
19 MCMILLAN and had no knowledge of or involvement in MCMILLAN's solicitation of
20 investment funds.

21 c) Investments/loans to Riverside & Associates ("Riverside") for real property
22 development projects in Bullhead City. Although there were legitimate loans to Riverside
23 in April 1999, MCMILLAN's investors unknowingly continued to reinvest their principal
24 repayments from Riverside with MCMILLAN after Riverside had fully paid off all of the
25 loans. MCMILLAN told his customers that they could redeposit the principal payment
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1 checks with Schooner to continue their Riverside investments, but never provided those
2 principal amounts back to Riverside.

3 8. MCMILLAN opened a credit union account under the name "Schooner", solely
4 under MCMILLAN's control and without the knowledge or authorization of Schooner.
5 MCMILLAN instructed his customers to make their checks for their purchases of these securities
6 payable to "Schooner" and deposited these checks in his "Schooner" credit union account.
7 MCMILLAN paid monthly principal and/or interest payments to some investors on their non-
8 existent investments.

9 9. At least 21 investors, mostly Arizona residents, lost approximately \$2,640,699.00
10 by purchasing MCMILLAN's unauthorized and fraudulent securities.

11 10. These sales of securities were not recorded on the records of the dealer with whom
12 MCMILLAN was registered at the time of the transactions.

13 11. In or around October 2005, after receiving several inquiries from concerned
14 customers regarding their lack of documentation relating to their investments, MCMILLAN
15 abandoned his customers and investors and failed to report to work. Several customers complained
16 to Schooner and Geneos about their investments with MCMILLAN. Upon discovering his
17 misconduct, Geneos terminated MCMILLAN for cause.

18 II.

19 CONCLUSIONS OF LAW

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

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

24 3. MCMILLAN violated A.R.S. § 44-1991 by offering or selling securities within or from
25 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
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1 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
2 business which operate or would operate as a fraud or deceit.

3 4. MCMILLAN has engaged in dishonest or unethical practices in the securities industry,
4 as defined by A.R.S. § 44-1962(A)(10), including:

5 a. Executing a transactions on behalf of customers without authority to do so, as
6 defined by A.A.C. Rule R14-4-130(6);

7 b. Employing, in connection with the purchase or sale of a security, a manipulative
8 or deceptive device or contrivance, as defined by A.A.C. Rule R14-4-130(14);
9 and

10 c. Making unauthorized use of securities or funds of customers or converting
11 customers securities or funds for personal benefit, as defined by A.A.C. Rule
12 R14-4-130(16).

13 5. MCMILLAN's conduct is grounds for a cease and desist order under A.R.S. § 44-2032
14 and 44-1962.

15 6. MCMILLAN's conduct is grounds for a restitution order under A.R.S. §§ 44-2032 and
16 44-1962.

17 7. MCMILLAN's conduct is grounds for administrative penalties under A.R.S. §§ 44-
18 2036 and 44-1962.

19 8. MCMILLAN's conduct is grounds to revoke MCMILLAN's registration as a securities
20 salesman with the Commission under A.R.S. § 44-1962.

21 **III.**

22 **ORDER**

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

26

1 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that MCMILLAN, his
2 agents, employees, successors and assigns, permanently cease and desist from violating the
3 Securities Act. Respondent shall not sell any securities within or from Arizona without being
4 registered in Arizona as a dealer or salesman, or exempt from such registration. Respondent shall
5 not sell securities within or from Arizona unless the securities are registered in Arizona or exempt
6 from registration. Respondent shall not transact business in Arizona as an investment adviser or an
7 investment adviser representative unless licensed in Arizona or exempt from licensure.

8 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that
9 MCMILLAN shall pay restitution to investors shown on the records of the Commission in the
10 amount of \$3,454,379.00, which includes principal investments in the amount of \$2,640,699.00
11 plus interest from the date of the investments in the amount of \$813,680.00. Payment shall be
12 made by cashier's check or money order payable to the "State of Arizona" to be placed in an
13 interest-bearing account maintained and controlled by the Commission. The Commission shall
14 disburse the funds on a pro rata basis to investors. Any funds that the Commission is unable to
15 disburse shall be transferred to the general fund of the state of Arizona. If Respondent does not
16 comply with this order of restitution, any outstanding balance shall be in default and shall be
17 immediately due and payable.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that
19 MCMILLAN shall pay administrative penalties in the amount of \$100,000.00. Payment shall be
20 made in full by cashier's check or money order on the date of this Order, payable to the "State of
21 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the
22 date of this Order until paid in full.

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IT IS FURTHER ORDERED that MCMILLAN'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 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 _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT

DISSENT