



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

Arizona Corporation Commission
DOCKETED

SEP 12 2006

DOCKETED BY [Signature]

IN THE MATTER OF:

Thomas C. Messina aka Thomas Campbell Messina
aka Tom C. Messina and Donna M. Messina
Husband and wife
17212 N. Scottsdale Road, #2239
Scottsdale, AZ 85255

DOCKET NO. S-20392A-05-0507

DECISION NO. 68942

RESPONDENTS.

OPINION AND ORDER

DATES OF PRE-HEARING: October 5 and 26, 2005, and February 28, 2006
DATES OF HEARING: May 9 and 10, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Thomas C. and Donna M. Messina, in propria personae; and
Ms. Rachel Frazier Strachan, Staff Attorney, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On July 21, 2005, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity of Hearing ("Notice") against Thomas C. Messina and Donna M. Messina (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of promissory notes and/or investment contracts. The Respondents were duly served with a copy of the Notice.

On August 11, 2005 and August 18, 2005, respectively, a request for hearing and an Answer were filed by Respondents.

On September 1, 2005, by Procedural Order, a pre-hearing conference was scheduled on October 5, 2005.

1 On October 5, 2005, the Division appeared with counsel and the Respondents appeared on
2 their own behalf. During a brief recess, the parties discussed resolution of the issues raised in the
3 Notice. Subsequently, the parties requested a pre-hearing be set in 14 days.

4 On October 6, 2005, by Procedural Order, a pre-hearing conference was scheduled for
5 October 26, 2005.

6 On October 26, 2005, the Division appeared with counsel and Mr. Messina appeared on his
7 and his wife's behalf. The parties requested a hearing be scheduled because they had been unable to
8 conclude a Consent Order. By Procedural Order, a hearing was scheduled for January 18, 2006.

9 On January 6, 2006, the Division filed a request for a continuance of the hearing and
10 requested an additional pre-hearing conference be scheduled in late February, 2006. The Division
11 also requested that filing dates for exchanging copies of witness lists and copies of exhibits be held in
12 abeyance pending the rescheduling of the hearing. There were no objections to the Division's
13 request.

14 On January 10, 2006, by Procedural Order, the hearing scheduled for January 18, 2006 was
15 vacated, the exchange of witness lists and copies of exhibits was delayed and a pre-hearing
16 conference was scheduled for February 28, 2006.

17 On February 28, 2006, the Division appeared with counsel and Mr. Messina appeared on his
18 and his wife's behalf. The Division requested that a hearing be scheduled on the issues raised in the
19 Notice.

20 On March 1, 2006, by Procedural Order, the hearing was scheduled to commence on May 9,
21 2006 and filing deadlines for the exchange of the copies of exhibits and lists of witnesses were
22 established.

23 On May 9, 2006, a full public hearing was commenced before a duly authorized
24 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division
25 appeared with counsel and the Respondents appeared on their own behalf. Following the conclusion
26 of the hearing, the matter was taken under advisement pending submission of a Recommended
27 Opinion and Order to the Commission.

28 * * * * *

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

3 **FINDINGS OF FACT**

4 1. Thomas C. Messina is an individual whose last known address is 17212 N. Scottsdale
5 Road, # 2239, Scottsdale, Arizona 85255.

6 2. Donna M. Messina is an individual and the spouse of Thomas C. Messina whose last
7 know address is 17212 N. Scottsdale Road, #2239, Scottsdale, Arizona 85255.

8 3. On July 21, 2005, the Division issued a Notice against Respondents in which the
9 Division alleged multiple violations of the Act in connection with the offer and sale of securities in
10 the form of investment contracts and/or notes to at least nine investors within or from Arizona
11 totaling approximately \$324,000.

12 4. Based on the record, in approximately April 2003, Mr. Messina began to seek
13 investors in some form of home building and/or land acquisition program which he was pursuing in
14 the Greater Phoenix, Arizona area.

15 5. In support of its allegations raised in the Notice, the Division called a number of
16 witnesses as follows: Robert Ballard, a builder and developer; Chris Ricchiuto, Ben Page, Mark
17 Ricchiuto, Brad Williams, and Brad Canada, investor witnesses; Gary Mengel, a senior forensic
18 accountant and C.J. Hanselman, an investigator, both employees of the Division; and one rebuttal
19 witness, George Sutherland, a general contractor.

20 6. At all times herein, neither the investment contracts nor the notes offered by Mr.
21 Messina were registered as securities pursuant to Article VI or VII of the Act and Mr. Messina who
22 offered these securities within or from Arizona was not registered as either a dealer or salesman
23 pursuant to Article IX of the Act.

24 7. Prior to the offering of investment opportunities, which are described hereinafter, Mr.
25 Messina had worked as a loan officer at a variety of mortgage companies after moving to Arizona
26 from Ohio. As a result of this employment, he determined that a potential existed for him to "make a
27 good living with possibly doing some investing or developing" when he first encountered Mr.
28 Ballard, the builder. Mr. Messina believed that he could make money from finders' fees if he could

1 find willing investors with funds to invest with a developer or a builder.

2 8. Mr. Ballard, who presently does business as Candlewood Builders and Candlewood
3 Fine Homes ("Candlewood"), recalled that he first came into contact with Mr. Messina in
4 approximately April 2003. Mr. Ballard has been in the home building and land acquisition business
5 for approximately 30 years. Homes built by Candlewood are high-end luxury residences.

6 9. Mr. Ballard remembered Mr. Messina contacting him concerning raising financing
7 which would enable Mr. Ballard to acquire more land for his building projects.

8 10. According to Mr. Ballard, he did not conclude any transactions with Mr. Messina. He
9 did provide him with several Candlewood brochures and informational materials, including his
10 resume and project history which could be provided to prospective investors so long as the investor
11 was interested in investing in Mr. Ballard's projects.

12 11. At no time did Mr. Ballard enter into any form of partnership agreement with Mr.
13 Messina to build homes.

14 12. During his testimony, Mr. Ballard emphasized that only he, not Mr. Messina, could
15 speak with prospective investors concerning financial arrangements and possible profits on an
16 investment.

17 13. Mr. Ballard recalled at least several instances where he met with prospective investors
18 which he termed "legitimate investor types" that were referred to him by Mr. Messina; however, he
19 was unaware whether they had ever given any money to Mr. Messina to invest.

20 14. Chris Ricchiuto testified that he had known Mr. Messina for approximately 15 years
21 and had worked with him at a country club in Lyndhurst, a suburb of Cleveland, Ohio in the early
22 1990's. During the course of time, they became friends.

23 15. Approximately 10 years ago, after Mr. Messina moved to Arizona, Chris Ricchiuto
24 recalled Mr. Messina visiting Cleveland and telling Mr. Ricchiuto that he was involved in investing
25 in real estate and developing. In approximately 2001, Mr. Messina asked Mr. Ricchiuto if he wished
26 to get involved investing with him, and at that time Chris Ricchiuto indicated that he did not have any
27 funds to invest with Mr. Messina.

28 16. However, in 2003, when Mr. Messina approached Chris Ricchiuto with another

1 investment opportunity, he agreed to invest after Mr. Messina told him that his money would be used
2 to "purchase lots in north Phoenix for development". Mr. Messina informed him that the lots were
3 being sold for home construction for "pre-approved" buyers and they represented a safe investment.

4 17. At that point, according to Chris Ricchiuto, Mr. Messina defined his success by
5 referencing the types of cars he was driving and stating that he had a net worth of approximately
6 \$1,000,000.

7 18. Mr. Messina promised to double any investments made by Chris Ricchiuto in one
8 year's time. Mr. Ricchiuto was led to believe that he could make his investment safer by being paid
9 1/12 of the purported return every month to lower his risks. He stated that Mr. Messina told him that
10 the risks were minimal because the real estate market was very good in the Phoenix area.

11 19. Due to Mr. Messina's representations, Chris Ricchiuto influenced his elderly aunt,
12 Jean Meyer, to invest \$50,000 in return for a note from Mr. Messina promising her a \$100,000 return
13 on her investment.

14 20. During the hearing, Chris Ricchiuto identified the note which was dated April 16,
15 2003, and signed by Mr. Messina in return for the \$50,000 invested by his aunt. According to the
16 terms of this note, Mr. Messina promised to pay Ms. Meyer \$100,000 on or before May 1, 2004.

17 21. Chris Ricchiuto said his aunt wanted a safe investment because all she had to live on
18 was her social security and the \$50,000 which represented the balance of the monies received from
19 the sale of her home.

20 22. In approximately June 2003, Chris Ricchiuto and his family visited Mr. Messina in
21 Phoenix. At this time, Mr. Messina drove him around and showed him vacant lots near an airport in
22 the north Phoenix area. Chris Ricchiuto assumed the vacant lots which he saw were purchased with
23 his aunt's \$50,000 because Mr. Messina had specifically told him that her investment would be used
24 to purchase seven lots in north Phoenix.

25 23. At one point during their discussions, Chris Ricchiuto recalled Mr. Messina had told
26 him that he had 130 investors in his real estate projects and that he had been provided with a business
27 card with Mr. Messina's name on it referencing real estate development and investment.

28 24. When speaking with Mr. Messina about an investment, Chris Ricchiuto recalled

1 receiving a copy of "a very nice colored glossy folder type presentation from Bob Ballard. I believe
2 the name of his company was called Candlestick Homes and he explained to me that he was working
3 with this gentleman".

4 25. After Chris Ricchiuto was told by Mr. Messina that he had 130 investors who invested
5 with him, Mr. Ricchiuto became somewhat suspicious of Mr. Messina when he reviewed his aunt's
6 first monthly statement which reflected an account number of 001.

7 26. According to Ms. Meyer's account statement, she was to receive monthly payments of
8 \$4,000 to \$5,000 which would be used to supplement her social security income.

9 27. Chris Ricchiuto became convinced that Mr. Messina was offering him what he termed
10 an "impressive" opportunity to invest with him based on his lengthy friendship and trust of Mr.
11 Messina and the potential in the Phoenix real estate market.

12 28. Chris Ricchiuto described a \$50,000 investment that he and his wife made with Mr.
13 Messina in August 2003. Chris Ricchiuto funded their investment with \$14,000 from his brokerage
14 account and \$36,000 from his line of credit with his bank. In return, before payments stopped, they
15 received a total of \$11,500 in so-called interest payments.

16 29. At the time Chris Ricchiuto and his wife made their investment with Mr. Messina, his
17 aunt had been receiving checks regularly and this gave them the confidence to invest their \$50,000
18 without securing a promissory note in return from Mr. Messina.

19 30. At one point during Chris Ricchiuto's investment activities with Mr. Messina, Mr.
20 Messina mentioned an individual named Arthur DeLuca stating that he (Messina) had invested with
21 him because he was involved in investing in gold, platinum and oil. Chris Ricchiuto did not pursue
22 this matter further because he did not know anything more about Mr. DeLuca.

23 31. After Ms. Meyer's investment, she received total payments of \$17,000, but in October
24 2003, after she received a check from Mr. Messina, she was told she should not cash it because of "a
25 problem with the title agency" due to the alleged embezzlement of funds by a title agent. It was
26 expected that it would take about a month to resolve the situation, but she is still owed the balance of
27 her investment.

28 32. Subsequently, Mr. Messina contacted Chris Ricchiuto again and told him that the

1 investigation was ongoing and in January 2004 told him "that his builder had been making
2 withdrawals from his account using his (Messina's) signature and had absconded with his funds".
3 Purportedly, Mr. Messina had an oral agreement with the bank that would enable him to repay
4 investors.

5 33. Chris Ricchiuto recalled receiving a series of letters from Mr. Messina beginning in
6 January 2004 and continuing monthly. The letters described the purported investigation regarding
7 the embezzlement of investor funds in an attempt to reassure investors.

8 34. Around March, 2004, Chris Ricchiuto recalled receiving a letter describing legal
9 action being taken and that projects would go forward with a return on investments in approximately
10 three to six months.

11 35. Subsequent letters from Mr. Messina reiterated the same general assurances, but after
12 18 months, Chris Ricchiuto sent Mr. Messina a letter seeking specifics, such as the name of the bank,
13 and the builder because he wanted to verify the information on his own.

14 36. There is no evidence that any of the monies which Mr. and Mrs. Chris Ricchiuto and
15 Ms. Meyer invested were ever used for their intended purpose.

16 37. Chris Ricchiuto indicated that he had no business dealings with Mr. Messina's wife,
17 Donna, other than receiving checks which were signed by her as a return on his family's investment.

18 38. The checks received by Mr. and Mrs. Chris Ricchiuto and Ms. Meyer with respect to
19 their investments were drawn on the joint checking account of Donna M. Messina and Thomas C.
20 Messina at Bank One in Phoenix, Arizona.

21 39. Ben Page, a truck driver, invested a total of \$20,000 with Mr. Messina for what he
22 thought was an investment in real estate and home renovation. Mr. Page formerly lived in Arizona
23 and worked as a bellhop with Mr. Messina, who was then working as a security guard at the
24 Sanctuary Resort in Phoenix

25 40. Mr. Page knew a number of other employees from the Sanctuary Resort who also
26 invested with Mr. Messina.

27 41. Mr. Page and his wife invested \$10,000 on two separate occasions with Mr. Messina,
28 the first being on July 1, 2003 which was to pay them \$1,000 a month along with the return of their

1 investment at the end of a one year period. The second \$10,000 investment was made on December
2 1, 2003 and was to pay a similar return with the balance of their principal due to be returned on
3 December 1, 2004.

4 42. Mr. Messina signed promissory notes payable to Mr. and Mrs. Page for both
5 investments.

6 43. Mr. and Mrs. Page made their investments with the intent of increasing their income
7 because they were expecting a baby and they expected that his wife might have to take some time off
8 from work to be home with the baby.

9 44. Since Mr. Page and his wife were receiving monthly payments on time on their first
10 investment, they decided to make the second investment believing they had a secure income
11 producing investment.

12 45. Mr. Messina had told Mr. Page that he had over \$6 million invested in various projects
13 and of that sum, \$1 million was his own money.

14 46. To fund their first investment, the Pages used a \$1,000 of their savings and took a
15 \$9,000 second mortgage on their house. They funded their second \$10,000 investment with a \$5,500
16 advance on their credit card and borrowed \$3,500 from his wife's father. The remaining \$1,000
17 balance came from the purported reinvestment of \$1,000 due from Mr. Messina on their first
18 investment.

19 47. Unfortunately, when the payments from Mr. Messina ceased, the Pages fell on hard
20 times and had to move back to Ohio to live with Mr. Page's parents while he went to truck driver's
21 school.

22 48. Although the Pages did receive almost \$4,000 back from their first investment, they
23 have received nothing on their second investment.

24 49. Starting in January 2004, and continuing until shortly before the hearing, Mr. Page
25 recalled receiving letters from Mr. Messina about problems with his investments.

26 50. Like Chris Ricchiuto, Mr. Page was informed by Mr. Messina, "the builder ran off
27 with the money".

28 51. According to Mr. Page, Mr. Messina wrote that investors would receive their principal

1 back and, if anything was left over, they would receive their interest after the subcontractors were
2 paid.

3 52. The Pages also received their so-called interest payments by means of checks drawn
4 on the joint checking account of Mr. and Mrs. Messina.

5 53. Mark Ricchiuto, Chris Ricchiuto's brother and also a resident of the Cleveland, Ohio
6 area, invested with Mr. Messina after his brother told him about his investment with Mr. Messina.

7 54. Mark Ricchiuto was divorced and was looking for an investment opportunity and
8 believed his investment would be used for residential development in the Phoenix area. Mark
9 Ricchiuto invested \$100,000 utilizing \$35,000 of his own funds and a loan of \$65,000 from his
10 mother after she took a home equity loan.

11 55. When Mark Ricchiuto decided to make an investment with Mr. Messina, he relied on
12 his brother's past relationship with Mr. Messina and the fact that his brother had been receiving so-
13 called interest payments on schedule.

14 56. Additionally, Mark Ricchiuto was influenced by the fact that Mr. Messina had paid for
15 his brother, his wife and his two children to fly out to Phoenix for a vacation after his brother
16 invested.

17 57. In return for Mark Ricchiuto's investment of \$100,000 by means of a wire transfer on
18 August 18, 2003, Mr. Messina provided him with a note which promised to double his investment
19 over a one year period.

20 58. On or about September 30, 2003, after Mark Ricchiuto received his first so-called
21 interest check in the amount of \$8,000, his brother telephoned him advising him not to cash the check
22 for several days due to a cash flow problem. Approximately five days later, Chris Ricchiuto
23 telephoned his brother again and told him that Mr. Messina was "having problems with some money
24 right now" and that it would take some time for these problems to be resolved.

25 59. The \$8,000 check issued to Mark Ricchiuto was the only check that he ever received
26 from Mr. Messina and as of the date of the hearing, he has been unable to cash it and has received no
27 other payments.

28 60. All that Mark Ricchiuto has ever received subsequently from Mr. Messina were what

1 he called "Tom Messina love letters once a month" from March, 2004 to April, 2006 promising a
2 return of his funds as soon as possible.

3 61. Mr. Messina's letters were vague and alleged that a builder had deceived him and had
4 taken all of his money. Only recently did Mr. Messina begin to acknowledge his fault to investors
5 who had not been paid.

6 62. Because Mark Ricchiuto had received a copy of Mr. Ballard's brochure and
7 background documentation, possibly from his brother, he believed that Mr. Ballard had been the
8 builder alluded to by Mr. Messina in his letters.

9 63. According to Mark Ricchiuto, his investment with Mr. Messina and the resulting loss
10 has devastated him financially.

11 64. Mark Ricchiuto's best recollection of what Mr. Messina told him his money would be
12 used for was that it would be invested in the development and construction of residential homes and
13 also the acquisition of as much real estate as possible before prices went up.

14 65. Brad Williams, another investor, met Mr. Messina through his wife who worked with
15 him at the Sanctuary Resort.

16 66. Mr. and Mrs. Williams invested \$10,000 with Mr. Messina on October 1, 2003 and
17 were promised \$1,000 a month in interest for 12 months with full repayment of the principal on
18 November 1, 2004.

19 67. According to Mr. Williams, Mr. Messina told him that their investment funds would
20 be utilized to build primarily low-income housing in the Phoenix area, and at or about the time of the
21 investment, Mr. Messina and Mr. Williams went for a drive south of Sky Harbor Airport in an area
22 between 20th and 44th streets looking at property.

23 68. Mr. Messina told Mr. Williams that there was a "tremendous demand" and a strong
24 interest in low income housing for people and that investment funds would be used to purchase the
25 land and banks would finance the construction.

26 69. There was no indication that Mr. Messina explained that there were any risks in
27 investing in the alleged project. Encouraging Mr. Williams to invest, Mr. Messina told him that there
28 were a number of investors and that hundreds of thousands of dollars had been invested along with

1 Mr. Messina's personal money.

2 70. Mr. Williams also relied upon informational materials concerning Mr. Ballard and was
3 told that Mr. Messina was in partnership with him causing Mr. Williams to believe that Mr. Messina
4 had a credible homebuilding history.

5 71. As part of his presentation, Mr. Messina led Mr. Williams to believe that he had
6 owned a number of lots in the area that they had viewed and that he had been responsible for the
7 construction and sale of the homes on those lots.

8 72. Brad Williams stated that after making the initial \$10,000 investment and receiving a
9 promissory note from Mr. Messina, he and his wife received only one payment of \$1,000 and no
10 other payments.

11 73. As with other investors, after no more payments were made by Mr. Messina, Mr.
12 Williams began to receive monthly letters describing problems and Mr. Messina's working to secure
13 investors the return of their principal.

14 74. Mr. Williams acknowledged he was familiar with an individual known as the "Duke"
15 (Arthur Deluca) whom he had been introduced to at the Sanctuary Resort, but he had no intention to
16 invest any monies with him.

17 75. Due to Mr. Williams' dissatisfaction with Mr. Messina's actions, he filed a small
18 claims court complaint in Scottsdale and obtained a default judgment against Mr. Messina for \$2,500,
19 the maximum allowed in that proceeding.

20 76. Mr. Williams believed his investment with Mr. Messina would be more secure
21 because the investment was to be used to purchase real estate.

22 77. When Mr. Williams asked Mr. Messina to provide some documentation to prove that
23 his money had gone toward an investment in real estate, Mr. Messina refused his request stating that
24 the information was "confidential, privileged information".

25 78. Brad Canada, who worked as the revenue manager at the Sanctuary Resort, testified
26 that he invested in Mr. Messina's offering because several other co-workers had also invested.

27 79. The controlling factors in Mr. Canada's investment appears to have been Mr.
28 Messina's promised return on the investment and the fact that Mr. Canada believed his investment

1 was secure because Mr. Messina had executed a note for the amount which he invested.

2 80. Mr. Canada believed that his investment would be in real estate that Mr. Messina was
3 in the process of developing. Mr. Canada was led to believe that a number of other investors were
4 involved in a larger real estate offering involving millions of dollars that were invested with a
5 contractor that Mr. Messina had worked with for years.

6 81. Because Mr. Canada referred another investor, Mr. Messina allegedly gave him a
7 \$1,000 credit on a \$10,000 note and Mr. Canada invested only \$9,000 in what he believed was part of
8 a large multi-million project that would return promised payments of \$1,000 per month for 12 months
9 from September 1, 2003 with a return of principal on September 1, 2004.

10 82. After receiving \$2,000 in so-called interest payments from Mr. Messina, Mr. Canada
11 has not received any more payments.

12 83. At the time Mr. Canada invested, Mr. Messina told him that he would have a very low
13 risk on the investment unless someone "like a contractor" did something inappropriate with the
14 invested funds.

15 84. Mr. Canada paid for his investment with \$5,000 from a 401(k) account which he
16 closed and with a \$4,000 advance on his credit card.

17 85. Mr. Canada testified that he no longer receives any payments from Mr. Messina on his
18 investment and that he has been living from paycheck to paycheck. He also has experienced credit
19 problems and an increase in his interest rate on his credit card.

20 86. After Mr. Canada stopped receiving monthly payments, he also began to receive
21 monthly letters similar to those received by other investors purportedly updating him on the status of
22 his investment and relating that a contractor had misspent the funds.

23 87. At no time during Mr. Canada's dealings with Mr. Messina was he provided with any
24 documents which proved that his investment had been invested in real estate or used for real estate
25 development.

26 88. Gary Mengel, a senior forensic accountant with the Division, reviewed the personal
27 checking account maintained by Mr. and Mrs. Messina at Bank One in Phoenix.

28 89. Mr. Mengel's analysis of their account covered the period from April 21, 2003

1 through November 25, 2003. He found that deposits into the account came from funds from
2 investors, payroll checks, and some checks from the Department of Economic Security ("DES").

3 90. According to Mr. Mengel's analysis, he concluded that \$345,000 deposited during the
4 above-referenced timeframe came from approximately 18 investors, and another \$24,000 came from
5 payroll and DES checks.

6 91. With respect to disbursements from the account, Mr. Mengel found approximately
7 \$82,000 was disbursed from the account to investors by checks signed by either Mr. or Mrs. Messina.
8 There was no indication that any funds were used to invest in real estate or any construction projects.

9 92. Mr. Mengel related that he had noticed a number of cash withdrawals, some of which
10 were from ATM machines, but these were small amounts. A number of checks were written to cash
11 totaling approximately \$250,000, but the amounts were incremental amounts of less than \$10,000 per
12 check.

13 93. During Mr. Messina's Examination Under Oath, he mentioned that he had written
14 checks in this fashion so he wouldn't have to fill out any bank paperwork.

15 94. Mr. Mengel found that approximately \$53,000 in cash was deposited into the Messina
16 account with no explanation other than that these funds came from other investors.

17 95. According to Mr. Mengel, during the relevant timeframe, approximately \$360,000 was
18 expended from the Messina's checking account substantially all in cash transactions in one form or
19 another.

20 96. Besides payments to investors of approximately \$82,000 from the Messina's account,
21 Mr. Mengel was able to discern that approximately \$43,000 in payments were also made for personal
22 expenses such as rent, credit cards, payments related to a Lexus automobile, Diamondback tickets
23 and airline tickets.

24 97. Division investigator, C. J. Hanselman, found no evidence during his investigation
25 that Mr. Messina's bank account had been embezzled. A fraud investigator with Bank One told him
26 that there were no reports of any fraud or embezzlement having been filed by the Messinas with the
27 bank. He also found that no one else had any access to the Messina joint bank account at Bank One.

28 98. While Mr. Hanselman had found evidence that the Messinas had owned some real

1 property in the Town of Paradise Valley, there was no indication of any real estate purchases taking
2 place after April 2003.

3 99. Additionally, Mr. Hanselman found no records of any police reports having been filed
4 by the Messinas with police departments in the area concerning embezzlement.

5 100. Mr. Messina testified as a witness in his own defense stating that he was trying to
6 develop himself as "strictly as someone who could bring money to the table for a developer or a
7 builder." He maintained that he did not represent himself as a partner with either Mr. Ballard or any
8 other developer although he indicated that he had a business relationship with another individual by
9 the name of George Sutherland.

10 101. Mr. Messina believed that if he introduced a large investor who actually invested with
11 Mr. Ballard that he would receive "a consulting fee or finder's fee or something along those lines
12 from Mr. Ballard".

13 102. Mr. Messina explained that sometime in the year 2000 or 2001 he met a Mr. Arthur
14 DeLuca, referred to previously as the "Duke", who was allegedly involved in real estate development
15 in Florida "as well as doing investments as gold, platinum and oil".

16 103. According to Mr. Messina, Mr. DeLuca dealt only in cash in his business and Mr. and
17 Mrs. Messina invested \$100,000 in cash with him.

18 104. According to Mr. Messina, he and Mr. DeLuca would meet and compare notes
19 approximately once a week letting his investment roll over and "basically double every year to, by
20 2003 or so, I had roughly \$500,000 or somewhere between \$500,000 and \$600,000 at least on the
21 books".

22 105. According to Mr. Messina, his claimed associate, Mr. Sutherland, had been involved
23 in low income housing.

24 106. Mr. Messina did not deny driving investors to certain areas to show housing projects
25 being developed in low income areas.

26 107. When investors gave Mr. Messina money to invest, he did not go forward with any
27 investments with Mr. Sutherland, and instead gave their cash to Mr. DeLuca who he thought was
28 investing the money in projects purportedly being built in Florida.

1 108. Stating "I may have made a poor business decision," Mr. Messina believed that his
2 intent was good and that monies were being invested in real estate and not the other projects Mr.
3 DeLuca invested in.

4 109. When questioned where Mr. DeLuca's office was, Mr. Messina responded "that is a
5 good question. Mr. DeLuca at this point is like in the wind. He has disappeared."

6 110. Mr. Messina has not filed any criminal complaints and did not present any substantive
7 evidence that Mr. DeLuca actually received the investors' funds.

8 111. Purportedly, Mr. DeLuca had paid Mr. Messina a return on the investors' monies, but
9 he supposedly discontinued these payments around August 2003.

10 112. Mr. Messina had been able to contact Mr. DeLuca by means of his cell phone but after
11 a period of time, he was unable to reach him and has not called his cell phone in months.

12 113. Mr. Messina maintains he did not intend "to scam anybody or embezzle anybody or
13 defraud anybody."

14 114. Although Mr. Messina sent out monthly letters to assure his investors that problems
15 were being resolved and meetings were taking place with financial institutions, there is no evidence
16 that this was actually happening.

17 115. At no point, in any of the letters sent to investors, was there any mention of Mr.
18 Messina giving investor funds to Mr. DeLuca.

19 116. To rebut Mr. Messina's contentions regarding his involvement with Mr. Sutherland, a
20 Phoenix general contractor, the Division called him as a witness. He testified that he had not been in
21 any business partnerships with Mr. Messina and had not discussed any real estate transactions with
22 him either.

23 117. Under the circumstances, after reviewing the evidence presented during this
24 proceeding, we find that the Division has met its burden of proof by showing with a preponderance of
25 the evidence that Mr. Messina was engaged in an unregistered offering of securities in the form of
26 promissory notes. When Mr. Messina sold his friends and associates unregistered securities, his
27 actions, even if unintentional, resulted in multiple violations of the Act.

28 118. Mr. Messina misrepresented the nature of the offering, the size of the offering and the

1 promised rate of return on an investment and further misrepresented his background as an investor or
2 developer.

3 119. Lastly, based on the evidence, there is ample evidence that the marital community
4 benefited from the offering and should be liable with respect to the payment of restitution and
5 administrative penalties.

6 CONCLUSIONS OF LAW

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution, A.R.S. §44-1801 et seq.

9 2. The investment in the form of notes offered by Respondent Thomas C. Messina were
10 securities within the meaning of A.R.S. §44-1801(26).

11 3. The securities were neither registered nor exempt from registration, in violation of
12 A.R.S. §44-1841.

13 4. Respondent Thomas C. Messina acted as dealer and/or salesman within the meaning
14 of A.R.S. §44-1801(9) and (22).

15 5. The actions and conduct of Respondent Thomas C. Messina constitute the sale of
16 securities within the meaning of A.R.S. §44-1801(21).

17 6. Respondent Thomas C. Messina sold unregistered securities within or from Arizona in
18 violation of A.R.S. §44-1841.

19 7. Respondent Thomas C. Messina offered and sold securities within or from Arizona
20 without being registered as dealer and/or salesman in violation of A.R.S. §44-1842.

21 8. Respondent Thomas C. Messina committed fraud in the sale of unregistered securities,
22 engaging in transactions, practices in a course of business in which involved untrue statements and
23 omission of material facts in violation of A.R.S. § 44-1991.

24 9. The marital community of Respondent Donna M. Messina should be included in any
25 order of restitution and penalties ordered hereinafter.

26 10. Respondent Thomas C. Messina has violated the Act and should cease and desist
27 pursuant to A.R.S. §44-2032 from any future violations of A.R.S. §§44-1841, 1842 and 1991 and all
28 other provisions of the Act.

1 pursuant to A.R.S. §25-215, jointly and severally, shall make restitution in an amount not to exceed
2 \$345,000 which restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal set-offs by
3 the Respondents and confirmed by the Director of Securities, said restitution to be made within 60
4 days of the effective date of this Decision.

5 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
6 rate of ten percent per year for the period from the dates of investment to the date of payment of
7 restitution by the Respondents.

8 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
9 deposited into an interest-bearing account(s) if appropriate, until distributions are made.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
13 
14 CHAIRMAN


15 COMMISSIONER

16 
17 COMMISSIONER


18 COMMISSIONER


19 COMMISSIONER

20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
21 Director of the Arizona Corporation Commission, have
22 hereunto set my hand and caused the official seal of the
23 Commission to be affixed at the Capitol, in the City of Phoenix,
24 this 12th day of Sept., 2006.


25 BRIAN C. McNEIL
26 EXECUTIVE DIRECTOR

27 DISSENT _____

28 DISSENT _____

1 SERVICE LIST FOR: THOMAS C. MESSINA AKA THOMAS CAMPBELL
2 MESSINA AKA TOM C. MESSINA AND DONNA M.
3 MESSINA

4 DOCKET NO.: S-20392A-05-0507

5
6 Thomas and Donna Messina
7 17212 N. Scottsdale Road, #2239
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9 Respondents

10 Matt Neubert
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