

ORIGINAL



0000071676

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

DOCKETED

APR 20 2007

COMMISSIONERS: 2007 APR 20 P 2: 27
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER AZ CORP COMMISSION
KRISTIN K. MAYES DOCUMENT CONTROL
GARY PIERCE

DOCKETED BY	nr
-------------	----

In the matter of:

Docket No. S-20519A-07-0154

Owen A. Vilan and Lucina Vilan (aka Lucy Vilan),
husband and wife,
7523 E. Kael Circle
Mesa, AZ 85207

Saguaro Investments, Inc., fka Vilan Enterprises,
Inc., a Nevada corporation,
7440 E. Main Street, Suite 2-B
Mesa, AZ 85207

Respondents.

RESPONDENTS' ANSWER

Respondents Owen A. Vilan, Lucina Vilan, and Saguaro Investments, Inc., fka Vilan Enterprises, Inc. (collective, "Respondents"), for and on their behalf, by and through undersigned counsel, do hereby file their Answer to the Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D") and do hereby admit, deny and allege as follows:

Respondents admit the Commission has jurisdiction over this matter.

1. Owen Vilan ("Mr. Vilan") admits the allegations contained in Paragraph 1 of the TC&D.

2. Respondents admit that Lucina Vilan ("Mrs. Vilan") is Mr. Vilan's spouse. Respondents are without sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the TC&D and, therefore, deny same.

3. Respondents deny the allegations contained in Paragraph 3 of the TC&D.

4. Respondents admit the allegations contained in Paragraph 4 of the TC&D.

5. In answering the allegations contained in Paragraph 5 of the TC&D, Respondents admit that Saguaro Investments, Inc. maintained an office at 7440 East Main Street, Suite 2-B, Mesa, Arizona 85207. Respondents are without sufficient information to form a belief as to the

1 truth of the remaining allegations contained in Paragraph 5 of the TC&D and, therefore, deny same.

2 6. Respondents are without sufficient information to form a belief as to the truth of the
3 allegations contained in Paragraph 6 of the TC&D and, therefore, deny same.

4 7. Respondents are without sufficient information to form a belief as to how the
5 Securities Division may or may not refer to Respondents in Paragraph 7 of the TC&D and,
6 therefore, deny same.

7 8. Respondents are without sufficient information to form a belief as to the truth of the
8 allegations contained in Paragraph 8 of the TC&D and, therefore, deny same.

9 9. Respondents are without sufficient information to form a belief as to the truth of the
10 allegations contained in Paragraph 9 of the TC&D and, therefore, deny same.

11 10. Respondents are without sufficient information to form a belief as to the truth of the
12 allegations contained in Paragraph 10 of the TC&D and, therefore, deny same.

13 11. Respondents admit the allegations contained in Paragraph 11 of the TC&D.

14 12. Respondents are without sufficient information to form a belief as to the truth of the
15 allegations contained in Paragraph 12 of the TC&D and, therefore, deny same.

16 13. Respondents are without sufficient information to form a belief as to the truth of the
17 allegations contained in Paragraph 13 of the TC&D and, therefore, deny same.

18 14. Respondents deny the allegations contained in Paragraph 14 of the TC&D.

19 15. Respondents are without sufficient information to form a belief as to the truth of the
20 allegations contained in Paragraph 15 of the TC&D and, therefore, deny same.

21 16. Respondents deny the allegations contained in Paragraph 16 of the TC&D.

22 17. Respondents deny the allegations contained in Paragraph 17 of the TC&D.

23 18. Respondents deny that the alleged conduct supports the issuance of the TC&D, and
24 deny that the public welfare requires the TC&D. Respondents admit that they have complied with
25 all aspects of the TC&D and will continue to do so as long it is in force. To the extent TC&D
26 Section VII contains additional allegations, Respondents deny them.

27 19. Respondents request the Commission deny the requested relief as identified in

1 Paragraphs A, B, C, D and E of Section VIII of the TC&D.

2 20. Respondents have requested a hearing pursuant to A.R.S. § 44-1972.

3 **AFFIRMATIVE DEFENSES**

4 21. For their first affirmative defense, Respondents allege that the TC&D fails to state a
5 claim upon which relief can be granted.

6 22. For their second affirmative defense, Respondents allege that no security is involved
7 in these alleged transactions.

8 23. For their third affirmative defense, Respondents allege that any ruling in this action
9 would be unconstitutional under the laws of the State of Arizona and under the laws of the United
10 States of America for, inter alia, failing to provide due process, among other provisions.

11 24. For their fourth affirmative defense, Respondents allege that application of A.R.S. §
12 44-2031(C) in this case exceeds the authority granted to the Commission by the Arizona
13 Constitution.

14 25. For their fifth affirmative defense, Respondents allege that to the extent what was
15 allegedly offered or sold is determined to involve investment contract securities the Respondents
16 and the subject securities are exempt from the registration provisions of the Arizona Securities Act.

17 26. For their sixth affirmative defense, Respondents allege that all of their actions were
18 taken for a proper purpose.

19 27. For their seventh affirmative defense, Respondents allege that they have not taken
20 any improper action within or from the State of Arizona.

21 28. For their eighth affirmative defense, Respondents allege that the Commission's
22 claims are barred by the applicable statute(s) of limitations.

23 29. For their ninth affirmative defense, Respondents state that they did not offer or sell
24 investment contracts under Arizona law.

25 30. For their tenth affirmative defense, Respondents allege the claims in the TC&D are
26 barred by estoppel.

27 31. For their eleventh affirmative defense, Respondents allege the claims in the TC&D

1 are barred by laches.

2 32. For their twelfth affirmative defense, Respondents allege that the claims in the
3 TC&D are barred by waiver.

4 33. For their thirteenth affirmative defense, Respondents allege that the claims in the
5 TC&D are barred by assumption of risk.

6 34. For their fourteenth affirmative defense, Respondents allege that the Securities
7 Division has failed to allege securities fraud with reasonable particularity as required by Rule 9(b)
8 of the Arizona Rules of Civil Procedure.

9 35. For their fifteenth affirmative defense, Respondents allege that they did not know,
10 and in the exercise of reasonable care could not have known, of any alleged untrue statements or
11 material omissions as set forth in the TC&D.

12 36. For their sixteenth affirmative defense, Respondents state that they have not acted
13 with the requisite scienter.

14 37. For their seventeenth affirmative defense, Respondents state that they have not
15 employed a deceptive or manipulative device in connection with the offer, purchase or sale of any
16 security.

17 38. For their eighteenth affirmative defense, Respondents state that the alleged investors
18 have suffered no injuries or damages as a result of Respondents' acts or the alleged acts of any of
19 the other Respondent named in this action.

20 39. For their nineteenth affirmative defense, Respondents state that they never made any
21 misrepresentations or omissions, material or otherwise.

22 40. For their twentieth affirmative defense, Respondents allege that they acted in good
23 faith and did not directly or indirectly induce the conduct at issue.

24 41. For their twenty-first affirmative defense, Respondents state that they have caused
25 no damages.

26 42. For their twenty-second affirmative defense, Respondents allege that purchasers
27 relied on others, and not the Respondents named in this action, in connection with the matters at

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

issue in the TC&D.

43. Respondents allege such other affirmative defenses set forth in Arizona Rule of Civil Procedure 8(c), as may be determined to be applicable through discovery.

44. Respondents reserve the right to amend this Answer to assert additional defenses after completion of appropriate discovery.

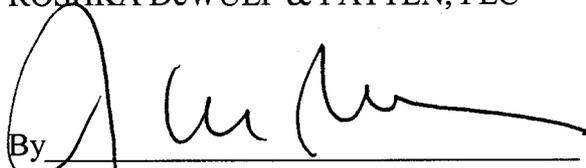
ANSWER AND AFFIRMATIVE DEFENSE REQUIREMENTS

Respondents have fully complied with the Answer and the affirmative defense requirements.

WHEREFORE, there is no basis for the imposition of liability of any kind or nature and no order of any kind or nature should be entered against Respondents. Respondents ask that all allegations against them be dismissed.

RESPECTFULLY SUBMITTED this 20th day of April, 2007.

ROSHKA DeWULF & PATTEN, PLC

By 

Paul J. Roshka, Jr., Esq.
Jeffrey D. Gardner, Esq.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
602-256-6100 (telephone)
602-256-6800 (facsimile)
Attorneys for Respondents

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

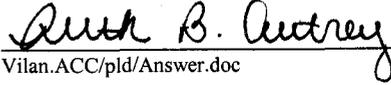
ORIGINAL and thirteen copies of the foregoing
filed this 20th day of April, 2007 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 20th day of April, 2007 to:

Marc E. Stern, Hearing Officer
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Shoshana O. Epstein
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007



Vilan.ACC/pld/Answer.doc