

ORIGINAL

OPEN MEETING ITEM

1/29/04



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MA

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



SECURITIES DIVISION
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

Arizona Corporation Commission

DOCKETED

JAN 14 2004

FROM: Matthew J. Neubert
Director of Securities

mjn

DOCKETED BY

[Signature]

Arizona Corporation Commission

DOCKETED

JAN 14 2004

DATE: January 14, 2004

RE: Robert Shakman and Healthcare Purchasing Alliance, Inc. S-03184A-03-0000

DOCKETED BY
S-03184A-03-0000

CC: Brian C. McNeil, Executive Secretary

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2004 JAN 14 P 1:25
AZ SECURITIES DIVISION
DOCKETING CONTROL

On October 20, 2003, the Securities Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist ("Notice") against Robert Shakman ("Shakman") and Healthcare Purchasing Alliance, Inc. ("HPA"). On October 20, 2003, the Notice was personally served upon Shakman, HPA through serving Shakman, an officer, and the statutory agent, Eric Kessler, Esq. Neither Shakman nor HPA filed a request for hearing within the ten day period of time allowed by statute and rule.

On November 21, 2003, Shakman filed a Response of Robert Shakman ("Response"). The Response did not include HPA nor did it request a hearing. The Response did request that the Notice be dismissed and alleged that the Notice should be barred by three legal theories that are not applicable to a governmental enforcement action. On December 8, 2003, the Securities Division filed a Response to Shakman's request for dismissal and requested that a Default Order be entered against Shakman and HPA. No reply was filed.

On January 6, 2004, the Administrative Law Judge issued a procedural order denying Shakman's request to dismiss the Notice. The Administrative Law Judge ordered the Securities Division to prepare a default order for submission to the Commission. Attached is the Order to Cease and Desist and Order for Other Relief.

Please note that the Securities Division originally filed a Notice of Opportunity against the same Respondents on April 10, 1997. The Securities Division served Respondents by certified mail. Respondents failed to request a hearing and an order was issued by the Commission on June 12, 1997, Decision No. 60250. The matter was filed in Maricopa County Superior Court and a judgment was issued. The Office of the Arizona Attorney General began a garnishment action against Shakman. Shakman, through his attorney Eric W. Kessler, opposed the garnishment action. On May 12, 2003, Maricopa County Superior Court Commissioner R. Jeffrey Woodburn issued an order dismissing the garnishment action and finding the judgment was void due to failure to provide proper service.

Originator: Wendy Coy

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:) DOCKET NO. S-03184A-03-0000
)
ROBERT SHAKMAN) ORDER TO CEASE AND DESIST AND
10249 E. Celtic Drive) FOR OTHER RELIEF
Scottsdale, Arizona 85260)
)
HEALTHCARE PURCHASING ALLIANCE,) DECISION NO. _____
INC.,)
7150 E. Camelback Road, Suite 300)
Scottsdale, Arizona 85251,)
)
Respondents.)

I.

INTRODUCTION

On October 20, 2003, the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist (the "Notice") against Robert Shakman ("SHAKMAN") and Healthcare Purchasing Alliance, Inc. ("HPA") alleging violations of the Arizona Securities Act (the "Act"). The Notice specified that SHAKMAN and HPA 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. R14-4-306(B).

On October 20, 2003, the Division personally served a copy of the Notice on SHAKMAN at his place of residence. HPA was personally served by serving SHKAMAN, an officer of HPA on October 20, 2003. In addition, HPA was also personally served by serving Eric W. Kessler, Esq., the last known

Decision No. _____

1 statutory agent of HPA, at his business address. SHAKMAN and HPA failed to request an administrative
2 hearing within ten (10) days after receipt of the Notice.

3 On November 21, 2003, counsel for SHAKMAN filed a "Response of Robert Shakman"
4 ("Response") which contained admissions to some of the paragraphs of the Notice and general denials of
5 certain paragraphs of the Notice. The Response also stated that it was without sufficient information to
6 form a belief as to the accuracy of the remaining allegations contained in the Notice. SHAKMAN
7 claimed that the Notice should be barred under the theories of estoppel, laches and statutes of limitations.
8 Furthermore, SHAKMAN requested that the Notice be "denied and dismissed in its entirety." Neither
9 Respondent filed a request for a hearing.

10 On December 8, 2003, the Division filed its Response to the Respondents' request for a dismissal
11 of the Notice coupled with a Motion for Entry of Default. Respondents filed no reply.

12 On January 6, 2004, the Administrative Law Judge issued a Procedural Order granting the
13 Division's motion and denying SHAKMAN's request to dismiss the Notice. The Division was ordered
14 to prepare a recommended Default Order for submission to the Commission for its approval.

15 II.

16 FINDINGS OF FACT

17 1. Respondent ROBERT SHAKMAN ("SHAKMAN") was at all relevant times a resident
18 of Arizona, and the president, director and principal shareholder of Respondent HEALTHCARE
19 PURCHASING ALLIANCE, INC. Upon information and belief, SHAKMAN now resides in Scottsdale,
20 Arizona.

21 2. Respondent HEALTHCARE PURCHASING ALLIANCE, INC. ("HPA") was at all
22 relevant times an Arizona corporation with its principal place of business at 7150 E. Camelback Road,
23 Suite 300, Scottsdale, Arizona 85251. HPA was administratively dissolved on or about January 10, 1997
24 for failure to file annual reports.

25 3. SHAKMAN incorporated HPA in Arizona on or about November 4, 1993.

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1 4. SHAKMAN described HPA as a "Group Purchasing Organization" created to provide
2 group buying power to its members. The members were to consist of individual and small group health
3 care practices, including physicians, osteopaths, dentists and veterinarians. HPA was to negotiate, on
4 behalf of its members, contracts with local and national companies for medical supplies and services.

5 5. According to an HPA offering document entitled, "Investment Opportunity for Health
6 Care Purchasing Alliance, Inc.," HPA was offering six percent of its stock for the purpose of raising
7 \$102,000. HPA was to use the capital raised from the sale of its stock to finance expansion and meet its
8 financial obligations.

9 6. The offering document provides that investors would earn returns two ways: (i) increases
10 in the stock's value; and (ii) annual profit distributions.

11 7. HPA's offering document also stated that "investors should receive a 7-12% return during
12 the first year and be earning in the 20% rate at the end of the first year."

13 8. According to a "Share Purchase Agreement," dated January 18, 1994, SHAKMAN
14 owned 510 shares of common series "A" stock in HPA. Two other investors purchased a combined
15 490 shares of common series "B" stock in HPA.

16 9. Beginning in or about January 1994, SHAKMAN began soliciting, in and from
17 Arizona, prospective investors to purchase from him his HPA stock.

18 10. From approximately January 1994 to January 1995, HPA and SHAKMAN sold
19 shares of HPA stock to no less than fourteen investors, raising approximately \$86,830.

20 11. SHAKMAN, on behalf of HPA, also executed promissory notes (the "notes") in
21 favor of at least two investors in exchange for a collective investment in HPA from the two
22 investors of \$42,500. In addition, SHAKMAN and HPA received loans from one investor totaling
23 \$1,780.

24 12. In connection with the offer and sale of HPA stock and the notes:
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- a) SHAKMAN and HPA represented to investors that the investments could be refunded at any time with “no questions asked,” when in fact, SHAKMAN and HPA denied certain investors’ requests for refunds, while other investors have been unable to contact SHAKMAN and HPA to request a refund.
- b) SHAKMAN and HPA represented to investors that HPA stockholders would begin receiving quarterly dividend checks in January 1995, when in fact, HPA never paid dividends to the investors.
- c) SHAKMAN guaranteed investors a twenty percent annual return on their investment twenty-four months after making the investment, when in fact, the investors have never received a return on their investments.
- d) SHAKMAN and HPA overstated and otherwise misrepresented to investors the number of members who enrolled in HPA’s program.
- e) SHAKMAN and HPA overstated and otherwise misrepresented to investors the number and/or nature of HPA’s contractual agreements with health care suppliers and service providers.
- f) SHAKMAN represented to investors that he was a doctor and licensed dentist, when in fact, SHAKMAN was neither a doctor nor a licensed dentist.
- g) SHAKMAN and HPA failed to provide to investors a balance sheet and/or profit and loss statement reflecting HPA’s financial condition and results of operations.
- h) SHAKMAN and HPA represented to investors that HPA was offering its shares in compliance with state and federal securities laws, when in fact, the offerings were not in compliance with applicable securities laws.

1 were made. SHAKMAN and HPA also engaged in transactions, practices or courses of business
2 which operated or would operate as a fraud or deceit upon offerees and investors within the
3 meaning of A.R.S. § 44-1991.

4 **IV.**

5 **ORDER**

6 THEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, the
7 following Order is appropriate, in the public interest, and necessary for the protection of
8 investors:

9 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that SHAKMAN and HPA, their agents,
10 servants, employees, successors, assigns and those persons in active concert or participation with
11 them CEASE AND DESIST from the following and any other violations of the Act:

12 1. Offering to sell or selling securities within or from Arizona unless the securities
13 are registered with the Commission pursuant to Articles 6 and 7 of the Act, or an exemption from
14 registration is applicable;

15 2. Offering to sell or selling securities within or from Arizona unless prior
16 registration as a dealer or salesman is obtained under Article 9 of the Act, or an exemption from
17 registration is applicable;

18 3. Offering to sell or selling securities within or from Arizona in violation of the
19 antifraud provisions of A.R.S. § 44-1991.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that SHAKMAN and HPA,
21 jointly and severally, shall make monetary restitution according to this Order in the amount of
22 \$131,110 to those investors shown on the records of the Division as purchasers of HPA stock and
23 the notes. In addition, SHKAMAN and HPA shall pay \$125,823 as interest, in the amount 10%
24 per annum, from the date of the investment to the date of this Order. One investor received a
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1 partial payment of \$3,000. SHAKMAN and HPA owe restitution, plus interest, to investors in the
2 amount of \$253,933.

3 IT IS FURTHER ORDERED that SHAKMAN and HPA shall pay interest at the legal rate
4 on all unpaid restitution accruing from the date of this Order, at the statutory rate of ten percent
5 per annum pursuant to A.A.C. R14-4-308, until the investors to whom they sold HPA stock and
6 the notes are paid in full. Restitution funds shall be paid to the Arizona Attorney General and
7 shall be deposited in a trust account with a federally insured financial institution.

8 The Arizona Attorney General shall disburse the available funds on a pro rata basis to
9 those investors to whom SHAKMAN and HPA sold HPA stock and the notes, as reflected in the
10 records of the Division. If any disbursement check issued by the Arizona Attorney General for
11 restitution either is not deliverable or has not cleared the trust account within ninety days of the
12 date of issuance, the funds related to such check shall be disbursed on a pro rata basis to the
13 remaining investors. Once full restitution, including principal and interest, has been made to the
14 investors, any remaining or additional funds shall revert to the State of Arizona payable to the
15 Treasurer and credited toward the penalty amount of this Order, as set forth below.

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that SHAKMAN and HPA,
17 jointly and severally, shall pay an administrative penalty in the amount of \$20,000 by cash or
18 check payable to the Treasurer of the State of Arizona for deposit into its general fund. The
19 foregoing restitution and administrative penalty shall be paid immediately upon entry of this
20 Order.

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1 Should collection become necessary, SHAKMAN and HPA, jointly and severally, shall be
2 liable to the Commission for its costs of collection and interest at the statutory rate of ten percent
3 per annum on all amounts not timely paid.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
13 Executive Secretary 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 _____, 2004.

18
19 _____
20 BRIAN C. McNEIL
Executive Secretary

DISSENT

21 This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive
22 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
ymcfarlin@cc.state.az.us.

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24 wc

25 default on 102003 notice