

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
DOCKET CONTROL

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

In the matter of:

RICK MCCULLOUGH, a single man  
individually and doing business as  
MCCULLOUGH INSURED  
INVESTMENTS

THE KODIAK INVESTMENT GROUP,  
LLC, an Arizona limited liability company

ANITA GENEVA MCCULLOUGH (a/k/a  
Anita G. Maestas, a single woman

Respondents.

) DOCKET NO. S-20571A-07-0711

)  
)  
) **NOTICE OF OPPORTUNITY FOR HEARING**  
) **REGARDING PROPOSED ORDER TO**  
) **CEASE AND DESIST, ORDER FOR**  
) **RESTITUTION, ADMINISTRATIVE**  
) **PENALTIES AND OTHER AFFIRMATIVE**  
) **ACTION**

Arizona Corporation Commission

**DOCKETED**

**DEC 31 2007**

DOCKETED BY

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Rick McCullough, a single man, individually and doing business as McCullough Insured Investments, The Kodiak Investment Group, LLC, an Arizona limited liability company, and Anita Geneva McCullough, a single woman, have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

1 I.

2 JURISDICTION

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

5 II.

6 RESPONDENTS

7 2. Rick McCullough (“McCullough”) is a single man residing in Phoenix, Arizona and  
8 doing business as McCullough Insured Investments (“McCullough Insured Investments”).

9 3. The Kodiak Investment Group, LLC (“Kodiak”) is an Arizona limited liability  
10 company whose principal place of business is in Phoenix, Arizona. McCullough is the Manager and  
11 sole Member of Kodiak.

12 4. McCullough, McCullough Insured Investments, and Kodiak may be referred to  
13 individually or, collectively, as “Respondents”.

14 5. McCullough and Anita Geneva McCullough (a/k/a Anita Geneva Maestas) (“A.  
15 McCullough”) were married December 7, 2001. A divorce decree was entered on December 27,  
16 2006 dissolving their marriage.

17 6. At all relevant times, A. McCullough was the spouse of McCullough, and is joined  
18 in this action individually and under 44-2031(C) solely for purposes of determining the liability of  
19 the marital community.

20 7. At all relevant times, McCullough and A. McCullough were acting for their own  
21 benefit, and for the benefit or in furtherance of the marital community.

22 8. A. McCullough may be referred to as “Respondent Spouse.”

23 III.

24 FACTS

25 9. CactusCash, Inc. (a/k/a Cactus Cash) (“CactusCash”) was an Arizona corporation  
26 whose principal place of business was in Phoenix, Arizona. The Commission administratively

1 dissolved the entity on October 31, 2007 for failing to file an annual report. McCullough was the  
2 President, Chief Executive Officer and sole Director of CactusCash.

3 10. CactusCash, at all relevant times, was licensed as a mortgage broker with the  
4 Arizona Department of Financial Institutions. However, CactusCash is no longer licensed as a  
5 mortgage broker.

6 11. From in or about September 2005 until October 2006, McCullough offered and  
7 sold unregistered securities, in the form of promissory notes, within or from Arizona.

8 12. McCullough entered into promissory notes with at least four (4) investors ranging  
9 in age from 65 to 88 years of age for a total amount of, at least, \$401,712.

10 13. McCullough represented to offerees and investors a real estate investment program  
11 which offered investors monthly returns. McCullough asked offerees and investors to borrow funds  
12 which he would use to invest in real estate. McCullough told offerees and investors to refinance  
13 their home mortgages to obtain the necessary monies. McCullough promised offerees and investors  
14 that he would repay the loan by making monthly payments.

15 14. At all relevant times, McCullough was a mortgage loan officer for CactusCash. As a  
16 loan officer, McCullough's primary responsibility was to process residential home mortgage loan  
17 applications.

18 15. McCullough solicited offerees and investors to refinance their home mortgage loans.  
19 McCullough processed the mortgage loan applications for offerees and investors to refinance their  
20 home mortgage loans.

21 16. Offerees and investors who sought to refinance their home mortgage loans paid an  
22 origination fee associated with refinancing the loan. CactusCash received the fee(s) for processing  
23 the mortgage loan. The fee was deposited into the CactusCash's bank account on which  
24 McCullough and A. McCullough were the only signatories.

25  
26

1           17.     In most instances, the origination fee was five percent (5%) of the principal amount  
2 of the new mortgage loan, which could be as much as \$8,000. In each instance, McCullough  
3 deposited the origination fee into the bank account for CactusCash.

4           18.     Soon after the offeree or investor began the application process to refinance their  
5 home mortgage loan, McCullough asked them to loan him the funds they received from the loan  
6 refinance ("McCullough loan" or "McCullough loans").

7           19.     McCullough told offerees and investors that refinancing their existing home  
8 mortgage loan to invest with McCullough, McCullough Insured Investments and/or Kodiak was in  
9 their best interest because it would increase their income.

10          20.     McCullough also promised offerees and investors high returns on their investment.  
11 The amount of the return varied by investor and the term of the McCullough loan.

12          21.     McCullough assured the offerees and investors that he would make monthly  
13 payments to repay the McCullough loan until it was entirely repaid. McCullough was aware that, in  
14 most instances, offerees and investors were unable to pay the increased amount of the new home  
15 mortgage loan if McCullough failed to repay the McCullough loan.

16          22.     In exchange for the McCullough loan, McCullough entered into promissory notes  
17 with offerees and investors. McCullough entered into promissory notes with offerees and investors  
18 as the sole proprietor of McCullough Insured Investments. McCullough also entered into promissory  
19 notes on behalf of Kodiak. The promissory notes disclosed the principal amount borrowed, the  
20 monthly payment amount, and the loan's maturity date.

21          23.     McCullough promised offerees and investors that he, McCullough Insured  
22 Investments, and/or Kodiak would repay the McCullough loans by depositing monthly loan  
23 payments into the investor's personal bank accounts.

24          24.     McCullough promised offerees and investors that he, McCullough Insured  
25 Investments, and/or Kodiak would repay the McCullough loan usually 4-9 years from the date the  
26 funds were borrowed.

25. In or about April 2007, McCullough, McCullough Insured Investments and/or Kodiak stopped making payments to investors.

26. McCullough used the funds of the McCullough loans to pay personal expenses. In some instances, McCullough used the funds of the McCullough loans to make improvements to the home he shared with A. McCullough during their marriage. A. McCullough solely owned the home she shared with McCullough.

27. In at least one instance, McCullough commingled business funds with his personal funds. McCullough transferred funds from McCullough Insured Investments and/or Kodiak bank account into his personal bank account he held jointly with his wife, at the time, A. McCullough.

28. In another instance, McCullough transferred funds from McCullough Insured Investments bank account to Kodiak’s bank account. McCullough later transferred the funds from the Kodiak account to his personal bank account.

**IV.**

**VIOLATION OF A.R.S. § 44-1841**

**(Offer or Sale of Unregistered Securities)**

29. From on or about September 2005 until October 2006, Respondents offered or sold securities in the form of promissory notes, within or from Arizona.

30. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

31. This conduct violates A.R.S. § 44-1841.

**V.**

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

32. From on or about September 2005 until October 2006, Respondents offered or sold securities, in the form of promissory notes, within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

33. This conduct violates A.R.S. § 44-1842.

**VI.**

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

34. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) McCullough told offerees and investors that it was in their best interest to refinance their home mortgage loans and loan funds to him, McCullough Insured Investments and/or Kodiak to invest in real estate, when in fact many of the offerees and investors were retired and/or could not afford an increased home mortgage loan payment;

b) McCullough personally guaranteed offerees and investors repayment of the McCullough loans, when in fact McCullough did not have any real property or other assets to guarantee the McCullough loans;

c) McCullough also personally guaranteed offerees and investors monthly repayment of the McCullough loan, when in fact McCullough relied on funds from other investors and his personal income of \$80,000 or less per year to repay the McCullough loans. Despite McCullough's promise to repay the loans, McCullough stopped making payments to investors on the McCullough loans; and

1 d) McCullough told offerees and investors he would use the  
2 funds that he, McCullough Insured Investments and/or Kodiak borrowed to invest  
3 in real estate, when in fact he used the McCullough loan proceeds to pay personal  
4 expenses including making improvements to the residence he shared with  
5 Respondent Spouse.

6 35. This conduct violates A.R.S. § 44-1991.

7 **VII.**

8 **REQUESTED RELIEF**

9 The Division requests that the Commission grant the following relief:

- 10 1. Order Respondents to permanently cease and desist from violating the Securities  
11 Act, pursuant to A.R.S. §44-2032;
- 12 2. Order Respondents to take affirmative action to correct the conditions resulting from  
13 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
14 A.R.S. § 44-2032;
- 15 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
16 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 17 4. Order that the marital communities of Respondents and Respondent Spouse be  
18 subject to any order of restitution, rescission, administrative penalties, or other appropriate  
19 affirmative action pursuant to A.R.S. § 25-215; and
- 20 5. Order any other relief that the Commission deems appropriate.

21 **VIII.**

22 **HEARING OPPORTUNITY**

23 Each respondent including Respondent Spouses may request a hearing pursuant to A.R.S.  
24 § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing,**  
25 **the requesting respondent must also answer this Notice.** A request for hearing must be in writing  
26 and received by the Commission within 10 business days after service of this Notice of Opportunity

1 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona  
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may  
3 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web  
4 site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

5 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
6 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
7 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
8 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
9 Opportunity for Hearing.

10 Persons with a disability may request a reasonable accommodation such as a sign language  
11 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
12 ADA Coordinator, voice phone number 602/542-3931, e-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should  
13 be made as early as possible to allow time to arrange the accommodation.

#### 14 IX.

#### 15 ANSWER REQUIREMENT

16 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,  
17 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for  
18 Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,  
19 Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions  
20 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet  
21 web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

22 Additionally, the answering respondent must serve the Answer upon the Division.  
23 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
24 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
25 Arizona, 85007, addressed to Rachel F. Strachan.

26

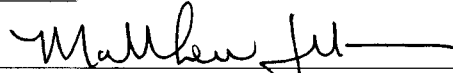


1 The Answer shall contain an admission or denial of each allegation in this Notice and the  
2 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
3 sufficient knowledge or information shall be considered a denial of an allegation. An allegation  
4 not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification  
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
7 admit the remainder. Respondent waives any affirmative defense not raised in the answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an  
9 Answer for good cause shown.

10 Dated this 31 day of December, 2007.

11 

12 Matthew J. Neubert  
13 Director of Securities

14 (rfs)