

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 28 2008

COMMISSIONERS

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

DOCKETED BY

In the matter of:

DOCKET NO. S-20581A-08-0108

KUYPOW, INC., an Arizona corporation
(d/b/a "MO'S PROPERTIES &
INVESTMENT GROUP"),

TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING

MORRIS CLYDE KUYKENDALL (a/k/a
"MO"), and

JUDY E. POWERS,

Respondents.

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 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 KUYPOW, INC. (d/b/a "MO'S PROPERTIES & INVESTMENT GROUP"), MORRIS CLYDE KUYKENDALL (a/k/a "MO") and JUDY E. POWERS are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

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. KUYPOW, INC. (d/b/a "MO'S PROPERTIES & INVESTMENT GROUP")
8 (hereafter, "KUPOW") is an Arizona company with a principal place of business located in Lake
9 Havasu City, Arizona.

10 3. MORRIS CLYDE KUYKENDALL (a/k/a "MO") (hereafter, "KUYKENDALL")
11 is an individual residing in Lake Havasu City, Arizona. According to public records,
12 KUYKENDALL is the president and chief executive officer of KUPOW.

13 4. JUDY E. POWERS ("POWERS") is an individual residing in Lake Havasu City,
14 Arizona. According to public records, POWERS is the secretary and a director of KUYPOW. In
15 these capacities, POWERS promotes, controls and bears responsibility for the 12% FUND's
16 business and financial affairs, and its investor solicitation activities.

17 5. KUYKENDALL and POWERS are husband and wife. At all times relevant,
18 Respondents KUYKENDALL and POWERS have been acting for their own benefit and for the
19 benefit or in furtherance of their marital community.

20 6. Respondents KUYPOW, KUYKENDALL and POWERS may be referred to
21 collectively as "RESPONDENTS" as the context requires.

22 **III.**

23 **FACTS**

24 7. Since at least January 13, 2008 to the present, RESPONDENTS have publicly
25 offered unregistered securities in the form of investment contracts and/or promissory notes within
26

1 and from Arizona, in part, by advertising on an Internet website known as Craig's List/Phoenix
2 ("Craig's List").

3 8. On or about January 13, 2008, RESPONDENTS advertised on Craig's List for
4 investors as follows:

5 \$2,500- \$5,000- 10,000-25,000-35,000-\$50,000 100,000
6 10% 12% 14% 15% 16% 17% 18%
7 3 months - 6 months - 8 months - 12 months - 18 months - 24- months
8 You choice! here is how it works!
9 1st Pick out the amount you want to invest!
10 2nd Pick out the time you want to leave it in (months)
11 3rd Email us the information and we will calculate the interest and terms.

12 MO'S Investment Group...has been investing in the local area since 2004, and we
13 have over 28 investors that make great monthly interest payments from us!
14 All are loans that we receive are secured with real estate, equipment, vehicles.

15 Email us and we (sic) [will] be glad to send you...monthly investment
16 opportunities.

17 9. On our about January 17, 2008, RESPONDENTS similarly advertised on Craig's
18 List as follows:

19 MO's Investment Group are (sic) [looking] for a few good investors who want to
20 make 12% to 18% on their money. Interest paid monthly! 6 month or 1 year your
21 choice! Call for more info.....

22 10. RESPONDENTS provided at least one potential Arizona investor solicitation
23 materials stating that they were seeking investors to invest in various, generically titled
24 "Opportunities," in part, as follows: (a) a \$5,000 investment with an annual return of 13% for 6
25 months, or \$325.02 in profit; (b) a \$50,000 investment with an annual return of 17% for 12 months,
26 or \$8,500.08 in profit; (c) a \$75,000 investment with an annual return of 17% for 12 months, or
\$13,500.00 in profit; or (d) a \$100,000 investment with an annual return of 18% for 12 months, or
\$18,000 in profit.

11. RESPONDENTS' solicitation materials do not state exactly how an investor's
money would be invested by the RESPONDENTS in order to generate the promised profits. The
materials also do not contain a description of RESPONDENTS' investment vehicle(s) or business

1 operation(s). KUYKENDALL represented to at least one potential Arizona investor that
2 RESPONDENTS' business was "versatile."

3 12. KUYKENDALL represented to at least one potential Arizona investor that all of the
4 investments were secured by real estate and businesses.

5 13. According to RESPONDENTS' solicitation materials, an investment could be
6 consummated by completing a standard form promissory note, and by making the principal
7 investment payment via check, credit card or cash.

8 14. KUYKENDALL represented to at least one potential Arizona investor that
9 RESPONDENTS already have 28 investors who are, "making good money." He failed to ask this
10 potential investor if he/she could afford to lose all or a portion of their investment.

11 15. RESPONDENTS fail to disclose to offerees and investors that in 1999,
12 KUYKENDALL was convicted of class 3 felony for theft of \$70,000 and that, as a result, he was
13 sentenced to a period of time in jail and several years of probation.

14 16. RESPONDENTS' solicitation materials fail to disclose any risks associated with the
15 investments including, but not limited to, the fact that an investor could lose all or a large portion
16 of their principal investment.

17 **IV.**

18 **VIOLATION OF A.R.S. § 44-1841**

19 **(Offer and Sale of Unregistered Securities)**

20 17. Since at least January 13, 2008 to the present, RESPONDENTS have been offering
21 or selling securities in the form of investment contracts and/or promissory notes, within or from
22 Arizona.

23 18. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
24 Securities Act.

25 19. This conduct violates A.R.S. § 44-1841.

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V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

20. RESPONDENTS are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

21. 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)

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

A. Failing to disclose to offerees and investors that in 1999, KUYKENDALL was convicted of class 3 felony for theft of \$70,000 and that, as a result, he was sentenced to a period of time in jail and several years of probation.

B. Failing to disclose any risks associated with the investments including, but not limited to, the fact that an investor could lose all or a large portion of their principal investment.

23. This conduct violates A.R.S. § 44-1991.

VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

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4 THEREFORE, based on the above allegations, and because the Commission has determined
5 that the public welfare requires immediate action,

6 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
7 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active
8 concert or participation with RESPONDENTS CEASE AND DESIST from any violations of the
9 Securities Act.

10 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
11 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

12 IT IS FURTHER ORDERED that this Order shall be effective immediately.

VIII.

REQUESTED RELIEF

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

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

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XIV.**HEARING OPPORTUNITY**

Each RESPONDENT may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If a RESPONDENT requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

If a request for hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law, which may include ordering restitution, assessing administrative penalties, or other relief.

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

XV.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a RESPONDENT requests a hearing, the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

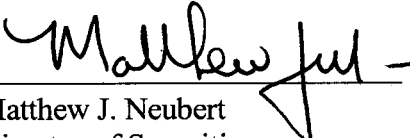
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Mike Dailey.

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 28 day of February, 2008.


Matthew J. Neubert
Director of Securities

(MD)