

OPEN MEETING ITEM

2/28/08



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



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ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

Arizona Corporation Commission

DOCKETED

FEB 15 2008

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AZ CORP COMMISSION
DOCKET CONTROL

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY
[Handwritten initials: MR]

DATE: February 14, 2008

RE: Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties, and Consent to Same by: Kelly J. Waters and Daniel B. Waters, husband and wife, and Kelly's Mobile Home Sales, Inc. (S-20539A-07-0425)

CC: Dean S. Miller, Interim Executive Director

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties, and Consent to Same by Kelly J. Waters, Daniel B. Waters, and Kelly's Mobile Home Sales, Inc. ("KMHS")("Respondents"). The Order finds that the Respondents violated A.R.S. §44-1841 and §44-1842 by selling unregistered securities while being unlicensed. The Order requires the Respondents to cease and desist their activity, pay restitution in the amount of \$4,567,939.32, and pay an administrative penalty in the amount of \$25,000.

From at least January 1, 2002 through July 19, 2007, Respondents engaged in the offer and sale of securities to the general public in Arizona in the form of investment contracts through the use of the *Arizona Republic* and several Internet websites. The Respondents promoted several programs in which the Respondents, on behalf of a purchaser, would originate a loan for the acquisition of a mobile home using funds from private investors. As part of the purchase agreement, a promissory note, secured by a first lien against the title to the mobile home, was executed by the purchaser in favor of KMHS and then both the promissory note and lien were subsequently assigned to the investor/lender. In addition to originating the loan, Respondents provided all loan servicing, guaranteed payments despite loan default, and offered to resell the mobile home if necessary.

The Division believes that this Consent Order is appropriate to protect the public welfare.

originator: Julie Coleman

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of	)	DOCKET NO. S-20539A-07-0425
)	
KELLY J. WATERS and DANIEL B. WATERS, husband and wife,	)	DECISION NO. _____
)	
and	)	ORDER TO CEASE AND DESIST,
	)	ORDER OF RESTITUTION,
	)	ORDER FOR ADMINISTRATIVE
	)	PENALTIES,
KELLY'S MOBILE HOME SALES, INC.,	)	AND CONSENT TO SAME BY:
an Arizona Corporation,)	
	)	KELLY J. WATERS and DANIEL B.
Respondents.	)	WATERS, husband and wife,
)	
	)	and
)	
	)	KELLY'S MOBILE HOME SALES, INC., an
	)	Arizona corporation

Respondents Kelly J. Waters, Daniel B. Waters, and Kelly's Mobile Homes Sales, Inc., an Arizona corporation, elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Administrative Penalties, and Consent to Same ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1
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3 1. Kelly J. Waters (“K. Waters”) and Daniel B. Waters (“D. Waters”) are individuals
4 who reside in Maricopa County, Arizona.

5 2. Kelly’s Mobile Home Sales, Inc. (“KMHS”) is an Arizona corporation with business
6 addresses located in Tucson, Arizona, and in Tempe, Arizona.

7 3. At all times relevant, K. Waters represented to offerees and investors that she was
8 the owner of KMHS. According to public records, K. Waters is also the president and chief
9 executive officer of KMHS.

10 4. D. Waters represented himself to offerees and investors as the vice-president of
11 KMHS. According to public records, D. Waters is also an officer of KMHS.

12 5. At all times relevant, K. Waters and D. Waters have been married to each other. At
13 all times relevant, K. Waters and D. Waters were acting for their own benefit, and for the benefit or
14 in furtherance of the marital community.

15 6. K. Waters, D. Waters, and KMHS may be referred to individually or, collectively,
16 as “Respondents” as the context so requires.

17 7. At all times relevant, KMHS maintained a website at
18 www.mobilehomessoldbykellys.com, and K. Waters maintained an e-mail address at
19 kellyinaz@msn.com.

20 8. Respondents offered and sold over \$5,000,000 worth of securities within and from
21 Arizona in the form of investment contracts since at least January 1, 2002 to at least July 19, 2007.

22 9. Respondents solicited Arizona investors through newspapers ads.

23 10. One such advertisement published in the January 14, 2007 edition of the *Arizona*

24 *Republic* stated:

25 Earn high interest on secured notes- IRA’s OK
26 Kelly 480-275-9173

11. Upon dialing this published number, a potential Arizona investor (“PAI”) spoke to

1 K. Waters. During this telephone call, K. Waters described the investment opportunity to the PAI as
2 one in which investors purchase the beneficial ownership of a note on a mobile home for a dollar
3 amount between \$15,000.00 and \$33,000.00. K. Waters informed the PAI that the note was secured
4 by a mobile home.

5 12. It was explained to the PAI by K. Waters that when a mobile home is sold, the
6 purchaser finances the purchase by making a note payable to KMHS that pays a very high rate of
7 interest. K. Waters represented to the PAI that investors are paid annual returns of 12%, 15%, or
8 21% interest on their principal investment. K. Waters further explained that as part of and
9 subsequent to such investment, the PAI would receive a beneficial assignment of the purchaser's
10 note.

11 13. A similar ad published in the *Arizona Republic* on May 13, 2007 stated:

12 Earn 15 %
13 www.15percentsecured.com
14 Backed by company
15 Kelly, 480 275-9173

16 14. The advertised website at www.15percentsecured.com ("15% site") offered investors
17 "15% Interest on Secured Investments." On this website, Respondents further stated:

18 Potential Investors: Are you currently earning a meager return on
19 your investment from Stock Markets, Bonds, Mutual Funds or
20 CD's?

21 Want to realize a huge interest return on your investment?

22 Earn 15% return with virtually no risk with our secured note
23 program.

24 Unlike other investments that have high risks, this program offers
25 low to no risks. It is backed with a title naming you as lien
26 holder and by our company. If the debtor does not pay...we
will!!

15 15. The 15% site contained the same contact phone numbers for K. Waters as the
16 newspaper advertisements referenced in ¶¶10 and 13 above.

16. The 15% secured website had links to two other investment opportunities that were at <http://www.21percent.com> ("21% site") and www.selfdirectedira12percent.com ("IRA site").

17. On the 21% site, Respondents stated:

Secured Investments @ 21% Per Annum...

This business enterprise is obtainable to private investors who desire to earn a high interest rate of 21% per annum, by purchasing notes. The notes are secured by a title naming you as first (and only) lien holder. The notes purchased are for manufactured homes....

Our company primarily serves the state of Arizona, but have investors from all over the country.

18. On the 21% site, Respondents described the additional services that Respondents provided for their investors, including: (a) 1099 tax return preparation; (b) the provision of monthly "Lenders Financial Statements" (an accounting of payments made on the notes); (c) securitization of that title to the mobile home; (d) preparing the assignment of the notes from borrower/purchaser to the investor; (e) ensuring that the investor is identified in public records as a lien holder; (f) collect payments from the borrower/purchaser; (g) foreclosing on such security interests on behalf of investors in the event of default on the note by the borrower/purchaser; and (h) paying the investors their promised profits in the event of default on the note by the borrower/purchaser (i.e., guaranteeing the investment). Thus, Respondents' investors relied solely on the efforts of the Respondents for their promised profits.

19. On the 21% website, those interested in investing were further informed as follows:

Interested in Investing?

It is easy to get started, just provide us with the following:

How much you would like to invest

What interest rate you would like

Full name

Address

Phone number

Social Security Number (only for 1099)

That is it, once we have all this information, we do all the rest.

To find out more, type your name and email address below and then click the Go button...

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3 20. The contact information provided on the 21% site included that of KMHS, K. Waters
4 and D. Waters. The 21% site enabled investors to e-mail K. Waters and D. Waters directly.

5 21. The IRA site stated, "Break away from the low interest rate you are currently earning
6 and realize a higher interest rate is available." On this site, Respondents informed investors that they
7 have the "option to direct their own IRA account and other retirement plans into a higher interest
8 secured investments." The IRA site also contained the contact information of K. Waters and D.
9 Waters.

10 22. In July of 2007, a PAI who communicated with K. Waters and D. Waters after
11 visiting the 15% site, 21% site and the IRA site was presented with what Respondents claimed to be
12 the financial information of mobile home purchasers who were in need of financing. D. Waters
13 explained that he investigated borrowers to determine their credit worthiness.

14 23. K. Waters explained to this PAI that the investor's funds would be used to fund a
15 loan for a purchaser of a mobile home. K. Waters further explained to the PAI that after the mobile
16 home was purchased with the investor's funds, a note would be assigned to the PAI for 15%. K.
17 Waters further explained that the PAI's investment would be secured by a first lien against the
18 mobile home. Respondents further informed the PAI that if the borrower was delinquent in paying
19 the note, KMHS would pay the PAI.

20 24. D. Waters informed the PAI about KMHS' Self Directed IRA program ("IRA
21 program"). Respondents' solicitation materials indicated that KMHS pays 12% in the IRA program
22 and promises, "We pay you even if the debtor (purchaser of home) does not pay!!"

23 25. Another site connected to KMHS was found at <http://www.lenderswanted.com>
24 ("LW site"). The homepage of the LW site stated:

25 We are looking for private lenders who would like to earn 15-
26 21% interest per annum, on a secured note (title as collateral).

1 neither registered as dealers or salesmen nor exempt from registration.

2 5. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.
3 §44-2032.

4 6. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. §44-
5 2032.

6 7. Respondents' conduct is grounds for administrative penalties under A.R.S. §44-
7 2036.

8 **III.**

9 **ORDER**

10 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'
11 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
12 that the following relief is appropriate, in the public interest, and necessary for the protection of
13 investors:

14 IT IS ORDERED, pursuant to A.R.S. §44-2032, that Respondents, and any of
15 Respondents' agents, employees, successors and assigns, permanently cease and desist from
16 violating the Securities Act.

17 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry
18 of Order.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2032, that Respondents Kelly J.
20 Waters, Daniel B. Waters, and Kelly's Mobile Homes Sales, Inc., an Arizona corporation, shall,
21 jointly and severally, pay restitution to the Commission in the amount of \$4,567,939.32. This
22 restitution amount reflects the balance due to investors (as assignees of Respondents) under the
23 terms of the purchase/loan transaction documentation between Respondents and
24 purchasers/borrowers. Respondents shall be entitled to receive a credit toward the restitution
25 amount for all payments made by or on behalf of the purchaser/borrower directly to the investors
26 shown on the records of the Commission. It shall be the sole responsibility of Respondents to

1 provide all information and documentation deemed satisfactory to the Commission in which to
2 verify that such payments have been made.

3 Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of
4 this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an
5 interest-bearing account controlled by the Commission. The Commission shall disburse the funds
6 on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that
7 the Commission cannot disburse because an investor refuses to accept such payment shall be
8 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.
9 Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be
10 transferred to the general fund of the state of Arizona.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2036, that Respondents Kelly J.
12 Waters, Daniel B. Waters, and Kelly's Mobile Homes Sales, Inc., an Arizona corporation, shall,
13 jointly and severally, pay an administrative penalty in the amount of \$25,000. Payment shall be
14 made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10%
15 per annum from the date of this Order until paid in full. The payment obligations for these
16 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall
17 become immediately due and payable only after restitution payments have been paid in full or
18 upon Respondents' default with respect to Respondents' restitution obligations.

19 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
20 default. If any Respondent does not comply with this Order, any outstanding balance may be
21 deemed in default and shall be immediately due and payable.

22 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
23 Commission may bring further legal proceedings against that Respondent, including application to
24 the superior court for an order of contempt.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2008.

DEAN S. MILLER
Interim Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator, voice phone number 602-542-3931, e-mail lhogan@azcc.gov.

(JC)

CONSENT TO ENTRY OF ORDER

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2 1. Respondents Kelly J. Waters, Daniel B. Waters, and Kelly's Mobile Homes Sales,
3 Inc., an Arizona corporation, ("Respondents"), admit the jurisdiction of the Commission over the
4 subject matter of this proceeding. Respondents acknowledge that they have been fully advised of
5 Respondents' right to a hearing to present evidence and call witnesses and Respondents knowingly
6 and voluntarily waive any and all rights to a hearing before the Commission and all other rights
7 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
8 Administrative Code. Respondents acknowledge that this Order to Cease and Desist, Order of
9 Restitution, Order for Administrative Penalties, and Consent to Same ("Order") constitutes a valid
10 final order of the Commission.

11 2. Respondents knowingly and voluntarily waive any right under Article 12 of the
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. Respondents acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondents acknowledge that they have been represented by an attorney in this
17 matter, Respondents have reviewed this Order with their attorney, namely Ashley Adams, Esq. of
18 the law firm Ryan, Rapp & Underwood, P.L.C., and Respondents understand all terms it contains.

19 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law
20 contained in this Order. Respondents agree that Respondents shall not contest the validity of the
21 Findings of Fact and Conclusions of Law contained in this Order in any present or future
22 administrative proceeding before the Commission or any other state agency concerning the denial
23 or issuance of any license or registration required by the state to engage in the practice of any
24 business or profession.

25 6. By consenting to the entry of this Order, Respondents agree not to take any action
26 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding

1 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
2 factual basis. Notwithstanding the foregoing, this Order is not intended to collaterally estop,
3 factually bind or preclude Respondents from defending themselves in any administrative, civil or
4 criminal proceedings to which the Commission is not a party. Respondents will undertake steps
5 necessary to assure that all of Respondents' agents and employees understand and comply with
6 this agreement.

7 7. While this Order settles this administrative matter between Respondents and the
8 Commission, Respondents understand that this Order does not preclude the Commission from
9 instituting other administrative or civil proceedings based on violations that are not addressed by
10 this Order.

11 8. Respondents understand that this Order does not preclude the Commission from
12 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
13 that may be related to the matters addressed by this Order.

14 9. Respondents understand that this Order does not preclude any other agency or
15 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
16 proceedings that may be related to matters addressed by this Order.

17 10. Respondents agree that Respondents will not apply to the state of Arizona for
18 registration as a securities dealer or salesman or for licensure as an investment adviser or
19 investment adviser representative until such time as all restitution and penalties under this Order
20 are paid in full.

21 11. Respondents agree that Respondents will not exercise any control over any entity
22 that offers or sells securities or provides investment advisory services within or from Arizona until
23 such time as all restitution and penalties under this Order are paid in full.

24 12. Respondents agree that Respondents will not sell any securities in or from Arizona
25 without being properly registered in Arizona as a dealer or salesman, or exempt from such
26 registration; Respondents will not sell any securities in or from Arizona unless the securities are

1 registered in Arizona or exempt from registration; and Respondents will not transact business in
2 Arizona as an investment adviser or an investment adviser representative unless properly licensed
3 in Arizona or exempt from licensure.

4 13. Respondents agree that Respondents will continue to cooperate with the Securities
5 Division including, but not limited to, providing complete and accurate testimony at any hearing in
6 this matter and cooperating with the state of Arizona in any related investigation or any other
7 matters arising from the activities described in this Order.

8 14. Respondents Kelly J. Waters and Daniel B. Waters acknowledge that any restitution
9 or penalties imposed by this Order are the joint and several obligations of the them individually,
10 and of their marital community.

11 15. Respondents consent to the entry of this Order and agree to be fully bound by its
12 terms and conditions.

13 16. Respondents acknowledge and understand that if Respondents fail to comply with
14 the provisions of the Order and this consent, the Commission may bring further legal proceedings
15 against Respondents, including application to the superior court for an order of contempt.

16 17. Respondents understand that default shall render Respondents liable to the
17 Commission for its costs of collection and interest at the maximum legal rate.

18 18. Respondents agree and understand that if Respondents fail to make any payment as
19 required in the Order, any outstanding balance shall be in default and shall be immediately due and
20 payable without notice or demand. Respondents agree and understand that acceptance of any
21 partial or late payment by the Commission is not a waiver of default by Commission.

22 19. Respondent Kelly J. Waters represents that she is the owner, president and chief
23 executive officer of Kelly's Mobile Home Sales, Inc., and has been authorized by name of Kelly's
24 Mobile Home Sales, Inc. to enter into this Order for and on behalf of it.

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Kelly J. Waters

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Decision No. _____

Docket No. S-20539A-07-0425

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Daniel B. Waters
Daniel B. Waters

KELLY'S MOBILE HOME SALES, INC., an
Arizona corporation

By: *[Signature]*
Kelly J. Waters
Its: President

STATE OF ARIZONA)
County of Maricopa) ss

SUBSCRIBED AND SWORN TO BEFORE me this 14th day of February, 2008.

[Signature]
NOTARY PUBLIC

My commission expires:

05-15-11

