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



BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

PHOENIX, AZ 85001  
TELEPHONE: (602) 542-4242  
FAX: (602) 594-7470  
E-MAIL: securitiesdiv@azcc.gov

615

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

**FROM:** Matthew J. Neubert  
Director of Securities

DOCKETED BY  
*[Signature]* NR

AZ CORP COMMISSION  
DOCKET CONTROL

2008 FEB 15 P 3:29

RECEIVED

**DATE:** February 11, 2008

**RE:** Diamond Bay Investments, Inc., and Jonathan Jordan Wirsz, S-20578A-08-0079

**CC:** Dean S. Miller, Interim Executive Director

The Securities Division of the Arizona Corporation Commission received information related to advertisements placed by Diamond Bay Investments, Inc. and Jonathan Jordan Wirsz offering investment opportunities in first trust deeds. Respondents also had a web-site that explains the investment opportunities. The Securities Division staff responded to the advertisements and received detailed information related to the offerings.

Respondents offer and sell fractionalized interests in deeds of trust. Investors are told they can earn between 9 and 15% per annum on the First Trust Deed Program offered and sold by the Respondents. Respondents locate the borrower, service the loans, manage title and escrow paperwork, handle collection and, if necessary, begin foreclosure proceedings. The investors are passive.

Diamond Bay Investments, Inc. is a licensed mortgage broker in Nevada and in Arizona. Nevada has a statute exempting licensed mortgage brokers selling fractionalized interests in deeds of trust from registration under the Nevada Securities Act. There is no comparable statute available under the Arizona Securities Act.

When contacted by the Securities Division, Respondents were cooperative and provided the requested documentation. There were approximately 24 Arizona offerees and investors. The Arizona investors invested approximately \$2.8 million. At this time, the Arizona investors have

received the return of their principal and interest. Due to a default by the borrower, a limited number of investors have received title to the underlying property and will receive their pro rata share from the sale of the property.

Neither Diamond Bay Investments, Inc. nor Mr. Wirsz were registered as a dealer nor was the First Trust Deed Program registered. The First Trust Deed Program was a security and did not meet any exemption for registration.

Respondents have agreed to comply with the Arizona Securities Act and to pay an administrative penalty in the amount of \$25,000. Respondents are no longer offering and selling fractionalized deeds of trust within or from Arizona.

Originator: Wendy Coy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 In the matter of

9 DIAMOND BAY INVESTMENTS, INC.

10 JONATHAN JORDAN WIRSZ,

11 Respondents.

) DOCKET NO. S-20578A-08-0079

) DECISION NO. \_\_\_\_\_

) **ORDER TO CEASE AND DESIST, ORDER**  
) **FOR ADMINISTRATIVE PENALTIES AND**  
) **CONSENT TO SAME**  
) **BY: DIAMOND BAY INVESTMENTS, INC.,**  
) **and JONATHAN JORDAN WIRSZ**

12 Respondents DIAMOND BAY INVESTMENTS, INC., and JONATHAN JORDAN WIRSZ  
13  
14 (“Respondents”) elect to permanently waive any right to a hearing and appeal under Articles 11  
15 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”) with respect to  
16 this Order to Cease and Desist, Order for Administrative Penalties and Consent to Same (“Order”).  
17 Respondents admit the jurisdiction of the Arizona Corporation Commission (“Commission”);  
18 neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and  
19 consent to the entry of this Order by the Commission.

20 **I.**

21 **FINDINGS OF FACT**

22 1. DIAMOND BAY INVESTMENTS, INC., (“DIAMOND BAY”), has been a Nevada  
23 corporation since August of 2002. DIAMOND BAY has been conducting business as a foreign  
24 corporation in Arizona since July of 2005. DIAMOND BAY is a registered mortgage broker in  
25 Nevada and in Arizona. DIAMOND BAY has offices in Las Vegas, Nevada, Tempe, Arizona, and  
26 Lake Havasu, Arizona.

1        2. JONATHAN JORDAN WIRSZ, (“WIRSZ”), during all relevant times, was the founder,  
2 officer and director of DIAMOND BAY. WIRSZ is a resident of Las Vegas, Nevada.

3        3. DIAMOND BAY and WIRSZ may be collectively referred to as “Respondents.”

4        4. In or about September of 2006, Respondents caused to be placed in the *Arizona Republic*  
5 advertisements for an investment opportunity (“First Trust Deed Program”) offered by Respondents.

6        5. At least twenty-four investors were offered and/or sold investments in DIAMOND BAY by  
7 Respondents. Respondents raised at least \$2.8 million from Arizona investors.

8        6. Respondents describe the First Trust Deed Program to be a passive investment opportunity in  
9 which the investor receives an interest in a note secured by a deed of trust. Respondents originate and  
10 fund the loans to borrowers using funds from private investors. The investors earn monthly income  
11 from the interest accrued on the notes.

12        7. Respondents provide underwriting services, coordinate all aspects of the title and escrow  
13 process, service each loan in-house including collecting monthly payments, making disbursements  
14 and payoffs, and impounding taxes, insurance, and home owner’s association fee. Further, the  
15 Respondents handle all foreclosure coordination.

16        8. Respondents represent to offerees and investors that they are able to earn between 9 to 15%  
17 per annum on the First Trust Deed Program. Respondents, through the newspaper advertisements,  
18 disclosed to potential investors that “[m]oney invested through a mortgage broker is not guaranteed  
19 to earn any interest or return and is not insured. Before investing, investors must be provided  
20 applicable disclosure documents.”

21        9. The newspaper advertisements also reference an Internet website which interested people  
22 could consult to obtain information. The website addresses that are referenced in the newspaper  
23 advertisements are [www.agreatwaytoinvest.com](http://www.agreatwaytoinvest.com) and [www.diamondbayinvestments.com](http://www.diamondbayinvestments.com). Both  
24 addresses open to the same homepage.

25        10. Respondents represent on their website that “[t]rust deed investing is a passive investment  
26 meaning that once we have placed the funds for you, you can sit back and collect interest payments.”

1 Through their websites, Respondents represent that through DIAMOND BAY's stringent  
2 underwriting it is able to fund loans that minimize risk while paying 12% or more. Further, the  
3 websites represent that Respondents make investments effortless and safe because DIAMOND BAY  
4 handles all documents and service the loans in-house.

5 11. According to Respondents, DIAMOND BAY does all the work for the investors such as  
6 locating the borrower, servicing the loans, managing title and escrow paperwork, handling collections  
7 and, if necessary, foreclosure. According to its website, DIAMOND BAY's goal is to make the  
8 investors more money. Respondents represent that, by trusting DIAMOND BAY with the investor's  
9 passive investment, the investor allows DIAMOND BAY to work for the investor's returns.

10 12. Respondents' websites encourage investors to convert their self-directed IRA funds into its  
11 First Trust Deed Program.

12 13. When responding to the advertisements or the website, potential investors receive documents  
13 explaining the investment. The documents mailed or emailed to investors are very similar to the  
14 information contained on the DIAMOND BAY website.

15 14. In addition to general information related to DIAMOND BAY and WIRSZ, potential  
16 investors are provided with information regarding specific trust deed investment opportunities.

17 15. The Arizona investors have received the return of their principal plus interest on investments  
18 with the First Trust Deed Program offered and sold by the Respondents. Those Arizona investors  
19 who invested in the First Trust Deed Program where the loans subsequently were foreclosed received  
20 an interest in the underlying property and will receive the proceeds from the sale of the property.

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1 **II.**

2 **CONCLUSIONS OF LAW**

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

5 2. Respondents offered or sold securities within or from Arizona, within the meaning  
6 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

7 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were  
8 neither registered nor exempt from registration.

9 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while  
10 neither registered as dealers or salesmen nor exempt from registration.

11 5. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.  
12 § 44-2032.

13 6. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-  
14 2036.

15 **III.**

16 **ORDER**

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

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

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

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents, jointly and  
2 severally, shall pay an administrative penalty in the amount of \$25,000.00. Payment shall be made  
3 to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per  
4 annum from the date of this Order until paid in full. Payment shall be made in full on the date of  
5 this Order.

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

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

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6  
7  
8 CHAIRMAN

COMMISSIONER

9  
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim  
13 Executive Director 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 \_\_\_\_\_, 2008.

18 \_\_\_\_\_  
19 DEAN S. MILLER  
20 Interim Executive Director

21  
22 \_\_\_\_\_  
23 DISSENT

24  
25 \_\_\_\_\_  
26 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](mailto:lhogan@azcc.gov).

(wlc)

**CONSENT TO ENTRY OF ORDER**

1  
2           1.       Respondent DIAMOND BAY INVESTMENTS, INC., a Nevada corporation, admits  
3 the jurisdiction of the Commission over the subject matter of this proceeding. Respondent  
4 DIAMOND BAY INVESTMENTS, INC., acknowledges that it has been fully advised of it's right  
5 to a hearing to present evidence and call witnesses and Respondent DIAMOND BAY  
6 INVESTMENTS, INC., knowingly and voluntarily waives any and all rights to a hearing before the  
7 Commission and all other rights otherwise available under Article 11 of the Securities Act and  
8 Title 14 of the Arizona Administrative Code. Respondent DIAMOND BAY INVESTMENTS,  
9 INC., acknowledges that this Order to Cease and Desist, Order for Administrative Penalties and  
10 Consent to Same ("Order") constitutes a valid final order of the Commission.

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

14           3.       Respondent DIAMOND BAY INVESTMENTS, INC., acknowledges and agrees  
15 that this Order is entered into freely and voluntarily and that no promise was made or coercion  
16 used to induce such entry.

17           4.       Respondent DIAMOND BAY INVESTMENTS, INC., acknowledges that it has  
18 been represented by an attorney in this matter, it has reviewed this Order with Respondent's  
19 attorney, Randall J. Fons, Esq., Morrison & Foerster LLP, and understands all terms it contains.

20           5.       Respondent DIAMOND BAY INVESTMENTS, INC., neither admits nor denies the  
21 Findings of Fact and Conclusions of Law contained in this Order. Respondent DIAMOND BAY  
22 INVESTMENTS, INC., agrees that it shall not contest the validity of the Findings of Fact and  
23 Conclusions of Law contained in this Order in any present or future administrative proceeding  
24 before the Commission.

25           6.       By consenting to the entry of this Order, Respondent DIAMOND BAY  
26 INVESTMENTS, INC., agrees not to take any action or to make, or permit to be made, any public

1 statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order  
2 or creating the impression that this Order is without factual basis. Respondent DIAMOND BAY  
3 INVESTMENTS, INC., will undertake steps necessary to assure that all of its agents and  
4 employees understand and comply with this agreement.

5 7. While this Order settles this administrative matter between Respondent DIAMOND  
6 BAY INVESTMENTS, INC., and the Commission, Respondent DIAMOND BAY  
7 INVESTMENTS, INC., understands that this Order does not preclude the Commission from  
8 instituting other administrative or civil proceedings based on violations that are not addressed by  
9 this Order.

10 8. Respondent DIAMOND BAY INVESTMENTS, INC., understands that this Order  
11 does not preclude the Commission from referring this matter to any governmental agency for  
12 administrative, civil, or criminal proceedings that may be related to the matters addressed by this  
13 Order.

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

18 10. Respondent DIAMOND BAY INVESTMENTS, INC., agrees that it will not apply  
19 to the state of Arizona for registration as a securities dealer or for licensure as an investment  
20 adviser until such time as all penalties under this Order are paid in full.

21 11. Respondent DIAMOND BAY INVESTMENTS, INC., agrees that it will not  
22 exercise any control over any entity that offers or sells securities or provides investment advisory  
23 services within or from Arizona until such time as all penalties under this Order are paid in full.

24 12. Respondent DIAMOND BAY INVESTMENTS, INC., agrees that it will not sell any  
25 securities in or from Arizona without being properly registered in Arizona as a dealer, or exempt  
26 from such registration; it will not sell any securities in or from Arizona unless the securities are

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

3 13. Respondent DIAMOND BAY INVESTMENTS, INC., consents to the entry of this  
4 Order and agrees to be fully bound by its terms and conditions.

5 14. Respondent DIAMOND BAY INVESTMENTS, INC., acknowledges and  
6 understands that if it fails to comply with the provisions of the order and this consent, the  
7 Commission may bring further legal proceedings against it, including application to the superior  
8 court for an order of contempt.

9 15. Respondent DIAMOND BAY INVESTMENTS, INC., understands that a default  
10 shall render it liable to the Commission for its costs of collection and interest at the maximum  
11 legal rate.

12 16. Respondent DIAMOND BAY INVESTMENTS, INC., agrees and understands that  
13 if it fails to make any payment as required in the Order, any outstanding balance shall be in default  
14 and shall be immediately due and payable without notice or demand. Respondent DIAMOND  
15 BAY INVESTMENTS, INC., agrees and understands that acceptance of any partial or late payment  
16 by the Commission is not a waiver of default by Commission.

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1 17. DIAMOND BAY INVESTMENTS, INC., represents that JONATHAN JORDAN  
2 WIRSZ is CEO of DIAMOND BAY INVESTMENTS, INC., and has been authorized by  
3 DIAMOND BAY INVESTMENTS, INC., to enter into this Order for and on behalf of it.

4  
5 DIAMOND BAY INVESTMENTS, INC., a  
Nevada corporation

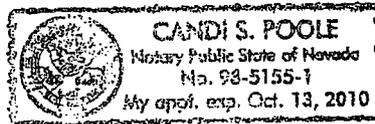
6  
7 By:   
JONATHAN JORDAN WIRSZ, CEO

8 STATE OF ARIZONA )  
9 County of ) ss

10 SUBSCRIBED AND SWORN TO BEFORE me this 4<sup>th</sup> day of February, 2008.

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12   
NOTARY PUBLIC

13 My commission expires:  
14 October 13, 2010



**CONSENT TO ENTRY OF ORDER**

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1. Respondent JONATHAN JORDAN WIRSZ, an individual, admits the jurisdiction of the Commission over the subject matter of this proceeding. Respondent JONATHAN JORDAN WIRSZ acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and Respondent JONATHAN JORDAN WIRSZ knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent JONATHAN JORDAN WIRSZ acknowledges that this Order to Cease and Desist, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

2. Respondent JONATHAN JORDAN WIRSZ knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondent JONATHAN JORDAN WIRSZ acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent JONATHAN JORDAN WIRSZ acknowledges that he has been represented by an attorney in this matter, he has reviewed this Order with Respondent’s attorney, Randall J. Fons, Esq., Morrison & Foerster LLP, and understands all terms it contains.

5. Respondent JONATHAN JORDAN WIRSZ neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. Respondent JONATHAN JORDAN WIRSZ agrees that he shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future administrative proceeding before the Commission.

6. By consenting to the entry of this Order, Respondent JONATHAN JORDAN WIRSZ agrees not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating

1 the impression that this Order is without factual basis. Respondent JONATHAN JORDAN WIRSZ  
2 will undertake steps necessary to assure that all of his agents and employees understand and  
3 comply with this agreement.

4 7. While this Order settles this administrative matter between Respondent  
5 JONATHAN JORDAN WIRSZ and the Commission, Respondent JONATHAN JORDAN WIRSZ  
6 understands that this Order does not preclude the Commission from instituting other administrative  
7 or civil proceedings based on violations that are not addressed by this Order.

8 8. Respondent JONATHAN JORDAN WIRSZ understands that this Order does not  
9 preclude the Commission from referring this matter to any governmental agency for  
10 administrative, civil, or criminal proceedings that may be related to the matters addressed by this  
11 Order.

12 9. Respondent JONATHAN JORDAN WIRSZ understands that this Order does not  
13 preclude any other agency or officer of the state of Arizona or its subdivisions from instituting  
14 administrative, civil, or criminal proceedings that may be related to matters addressed by this  
15 Order.

16 10. Respondent JONATHAN JORDAN WIRSZ agrees that he will not apply to the state  
17 of Arizona for registration as a securities dealer or salesman or for licensure as an investment  
18 adviser or investment adviser representative until such time as all penalties under this Order are  
19 paid in full.

20 11. Respondent JONATHAN JORDAN WIRSZ agrees that he will not exercise any  
21 control over any entity that offers or sells securities or provides investment advisory services  
22 within or from Arizona until such time as all penalties under this Order are paid in full.

23 12. Respondent JONATHAN JORDAN WIRSZ agrees that he will not sell any  
24 securities in or from Arizona without being properly registered in Arizona as a dealer or salesman,  
25 or exempt from such registration; he will not sell any securities in or from Arizona unless the  
26 securities are registered in Arizona or exempt from registration; and he will not transact business in

1 Arizona as an investment adviser or an investment adviser representative unless properly licensed  
2 in Arizona or exempt from licensure.

3 13. Respondent JONATHAN JORDAN WIRSZ consents to the entry of this Order and  
4 agrees to be fully bound by its terms and conditions.

5 14. Respondent JONATHAN JORDAN WIRSZ acknowledges and understands that if  
6 he fails to comply with the provisions of the order and this consent, the Commission may bring  
7 further legal proceedings against him, including application to the superior court for an order of  
8 contempt.

9 15. Respondent JONATHAN JORDAN WIRSZ understands that a default shall render  
10 him liable to the Commission for its costs of collection and interest at the maximum legal rate.

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