

ORIGINAL

NEW APPLICATION



0000086931

RECEIVED

2008 JUL 23 P 3:00

BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

JUL 23 2008

DOCKETED BY
ne

In the matter of:
CAG CAPITAL, INC., an Arizona corporation, doing business as GLENDALE CAR CONNECTION, an Arizona registered trade name;
KIM K. COLLINS and JANE DOE COLLINS, husband and wife,
Respondents.

DOCKET NO. S-20607A-08-0381

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

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 KIM K. COLLINS and CAG CAPITAL, INC., doing business as GLENDALE CAR CONNECTION, 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").

I.

JURISDICTION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **II.**

2 **RESPONDENTS**

3 2. CAG CAPITAL, INC. is an Arizona corporation with a business address in
4 Glendale, Arizona (hereafter, "CAG"). At all times relevant, CAG did business as the GLENDALE
5 CAR CONNECTION, an Arizona registered trade name. According to its 2007 annual report,
6 CAG's primary business activity is listed as "general investing."

7 3. KIM K. COLLINS ("COLLINS") is a married man who at all times relevant resided
8 in Scottsdale, Arizona. According to public records, COLLINS is the president, chief executive
9 officer and secretary of CAG.

10 4. JANE DOE COLLINS was at all relevant times the spouse of RESPONDENT
11 COLLINS. JANE DOE COLLINS is referred to hereafter as "RESPONDENT SPOUSE."
12 RESPONDENT SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
13 determining the liability of the marital community.

14 5. At all times relevant, COLLINS was acting for his own benefit and for the benefit or
15 in furtherance of COLLINS and RESPONDENT SPOUSE's marital community.

16 6. CAG and COLLINS are collectively referred to hereafter as "RESPONDENTS."

17 **III.**

18 **FACTS**

19 7. From on or about January 2002 to approximately August 2007, RESPONDENTS
20 sold unregistered securities within and from Arizona in the form of notes. ("Investments").
21 RESPONDENTS sold \$989,251.91 of the Investments to 13 Arizona residents.

22 8. RESPONDENTS represented to investors that they would use Investment funds to
23 finance car dealers who purchased used cars at auction.

24 9. RESPONDENTS represented to investors that the Investments would provide a
25 profit of 1.5% per month, or 18% per year, and the eventual return of their principal Investment
26 money on the expiration of the Investments' standard 12 month term.

1 10. RESPONDENTS documented the Investments with a standard-form, two-page
2 “Promissory Note and Security Agreement” (the “Notes”).

3 11. RESPONDENTS’ investors consummated their Investments by signing their Notes,
4 and by making their principal Investment payments to RESPONDENTS. Once an investor
5 provided RESPONDENTS with their funds and signed Note, they had no contractual duties.

6 12. RESPONDENTS represented to their investors that the Investments were safe and
7 secured by CAG’s purported assets, and that RESPONDENTS’ business was financially stable.
8 The Notes further state that the Investments were secured by the purported assets of CAG.

9 13. RESPONDENTS failed to provide investors with any disclosures about CAG’s
10 business operations prior to their Investments, including the status of RESPONDENTS’ auto loan
11 portfolio, the assets that purportedly secured the Investments or CAG’S liabilities.
12 RESPONDENTS failed to disclose to investors any risks associated with the Investments.

13 14. Contrary to RESPONDENTS’ representations, the Investments were not safe or
14 secured, in part, because: (a) RESPONDENTS failed to file a UCC-1 financing statement with the
15 Arizona Secretary of State or to timely perfect a security interest in favor of the investors; (b)
16 investors were not added to the title of any of RESPONDENTS’ assets or property; (c) the
17 Investments were not personally guaranteed or sufficiently collateralized with sufficient assets; and
18 (d) the auto loans issued by RESPONDENTS with investor money are subject to unpredictable
19 litigation results or bankruptcy proceedings.

20 15. By letter dated September 12, 2007, RESPONDENTS’ attorney informed the
21 investors for the first time that CAG’s business operations were failing. The letter states that CAG
22 was subject to a large tax liability and was engaged in several contract disputes and, as a result,
23 RESPONDENTS were closing their business operations and liquidating available assets. Despite
24 RESPONDENTS’ unilateral, first-hand knowledge of their deteriorating business operations,
25 RESPONDENTS sold \$211,000 worth of the Investments in 2007, including an \$8,000 Investment
26 to an existing investor as late as August 16, 2007.

1 16. RESPONDENTS investors lost their principal investments. Considering known
2 repayments, RESPONDENTS' investors are currently owed \$974,406.96.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

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

6 17. From on or about January 2002 to approximately August 2007, RESPONDENTS
7 offered or sold securities in the form of notes within or from Arizona.

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

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

11 **V.**

12 **VIOLATION OF A.R.S. § 44-1842**

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

14 20. RESPONDENTS offered or sold securities within or from Arizona while not
15 registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

16 21. This conduct violates A.R.S. § 44-1842.

17 **VI.**

18 **VIOLATION OF A.R.S. § 44-1991**

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

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

- 1 A. Misrepresenting to investors that they would earn an 18% profit on their Investments
2 in a 12 month period, and the return of their principal Investment money.
3 B. Misrepresenting to investors that the Investments were secured.
4 C. Failing to disclose to investors any risks associated with the Investments.
5 D. Failing to timely disclose to investors in 2007 about RESPONDENTS' deteriorating
6 financial condition, while RESPONDENTS sold \$211,000 worth of the Investments.
7 23. This conduct violates A.R.S. § 44-1991.

8 **VII.**

9 **REQUESTED RELIEF**

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

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

22 **VIII.**

23 **HEARING OPPORTUNITY**

24 Each RESPONDENT, including RESPONDENT SPOUSE, may request a hearing pursuant
25 to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a RESPONDENT or a RESPONDENT SPOUSE**
26 **requests a hearing, the requesting respondent must also answer this Notice.** A request for

1 hearing must be in writing and received by the Commission within 10 business days after service of
2 this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request
3 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
4 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on
5 the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

15 IX.

16 ANSWER REQUIREMENT

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or 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.

Dated this 23 day of July, 2008.



Matthew J. Neubert
Director of Securities

MD