



0000089650

REGISTRATION
ORIGINAL

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-20635A-08-0523
MARK A. WESTERFIELD (CRD#4234248))	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION
and VICTORIA H. WESTERFIELD,)	
husband and wife, formerly doing business as)	
Builder's Secret, an expired Arizona registered trade name,)	
Respondent.)	

**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 respondent MARK A. WESTERFIELD has 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.

II.

RESPONDENT

2. MARK A. WESTERFIELD ("Respondent") is an individual who, at all times relevant, resided in Pima County, Arizona.

Arizona Corporation Commission

DOCKETED

OCT 10 2008

DOCKETED BY	ne
-------------	----

AZ CORP COMMISSION
DOCKET CONTROL

2008 OCT 10 P 3:34

RECEIVED

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 10. At a meeting on September 23, 2003, Respondent discussed with the Investor and
2 sold him an investment contract that Respondent called the "public offering" of Builder's Secret
3 (the "Investment"). Respondent said that Builder's Secret "specialized in building materials."

4 11. The Investor told Respondent two or three times that the money he had to invest
5 was his entire life's savings and that, since he was a student with limited income and a child on the
6 way, the money could not be risked in any way.

7 12. Respondent provided the Investor with a WMA form signed by Respondent entitled
8 "New Account Application" containing a section entitled "Client Investment Objective" with
9 boxes describing various levels of risk tolerance. Respondent marked the box entitled
10 "Preservation of Capital," the lowest level of risk tolerance.

11 13. Respondent assured the Investor that the Investment was guaranteed because
12 Builder's Secret held enough "liquid inventory" to "back their investors" and, if necessary,
13 Builder's Secret could and would liquidate "inventory in stock" to pay the Investment principal and
14 interest/return.

15 14. Respondent provided the Investor with a document entitled "Investment offering"
16 containing a section entitled "Assurance" that stated, "All funds must be matched with liquid
17 inventory at all times. Investors have assurance of full principle and interest..."

18 15. Respondent did not disclose specifically how the Investor's money would be used,
19 but generally represented that it would be used by Builder's Secret to purchase building materials,
20 the type of which that could/would be used to secure the Investment.

21 16. Respondent neither filed a UCC financing statement with the Arizona Secretary of
22 State nor added the Investor to the title of any property (inventory, building materials, or
23 otherwise) to secure the Investment.

24 17. Respondent represented that, so long as the Investor kept the Investment in for the
25 entire, two-year term and did not withdraw it early, he would receive a 7% annual return.
26

1 **VII.**

2 **REQUESTED RELIEF**

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

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

15 **VIII.**

16 **HEARING OPPORTUNITY**

17 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.
18 § 44-1972 and A.A.C. R14-4-306. **If Respondent or Respondent Spouse requests a hearing, the**
19 **requesting respondent must also answer this Notice.** A request for hearing must be in writing
20 and received by the Commission within 10 business days after service of this Notice of Opportunity
21 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona
22 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may
23 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web
24 site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

25 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
26 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the

1 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
2 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
3 Opportunity for Hearing.

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

8 IX.

9 ANSWER REQUIREMENT

10 Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the
11 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to
12 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
13 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
14 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
15 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

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

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

3 Dated this 10th day of October 2008.

4 

5 _____
6 Mark Dinell
7 Assistant Director of Securities
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26