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2008 OCT 15 P 4: 10

AZ CORP COMMISSION  
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

OCT 15 2008

DOCKETED BY 

In the matter of:

SCOTT HUTCHINSON and JANE DOE  
HUTCHINSON, husband and wife,  
individually and doing business as  
MARINE 3,

Respondents.

DOCKET NO. S-20575A-08-0046

RESPONDENTS' POST HEARING  
MEMORANDUM

Summary

The Securities Division presented one Investor, who was not a novice, and who was introduced to the investment by a long time friend, David Richardson. She invested \$35,000. Mr. Hutchinson told her that her money was passed on to Chris Jensen, with whom the Investor also met. There is no evidence that this money was misused or misappropriated.

The Investor Testimony Was Not Credible

The Investor was not "unsophisticated", and she knew that all investments have risks. She was a loan officer and an accountant. And, as a private investor, she flipped

1 four houses. One house was sold at a profit, which was used to make this investment. The  
2 other three were sold in “short sales” or at a loss.

3 She cannot testify with a straight face that she believed that this investment was a  
4 “sure thing”, “guaranteed”, or that it would “double or triple” in value.

5 The Investor testified that she was introduced to Mr. Hutchinson by her friend  
6 David Richardson, and that Richardson attended every meeting in which the investment  
7 was discussed. She said that she would **not** have made this investment if Richardson had  
8 not recommended it. Why was Richardson not joined in this case?

### 9 **The Division Failed to Prove Violations of the Securities Act**

10 The Division did not prove misstatements or omissions of material fact, in violation  
11 of A.R.S. § 44-1991. It acknowledged that the investment was presented as a “start up”  
12 company, which by its definition has little or no funds, or track record, or audited financial  
13 statements. It presented no evidence that any financial statements existed that should have  
14 been produced to the Investor.

15 The failure to disclose that Marine 3’s bylaws were never duly adopted, or that its  
16 corporate status had been revoked, is not an omission of a “material” fact. Whether a fact  
17 is “material” is determined by an objective test: a substantial likelihood that the misstated  
18 or omitted fact would have assumed actual significance in the deliberations of a reasonable  
19 investor. *In re Lost Dutchman Investments, Inc.* 1993 WL 173726 at \*14 (Ariz. Corp.  
20 Comm’ m. Apr. 8, 1993). A copy of this case is attached to the copies of this Memorandum  
21 provided to the ALJ and the Division.

22 Because this investment was sold to one investor, who had a pre-existing  
23 relationship with one of the sellers, who was not unsophisticated, and who was provided  
24 with whatever information was available at the time, it is exempt from the registration  
25 requirements of A.R.S. §§ 44-1841 and 1842, under A.R.S. § 44.1844.A.1. *Lost Dutchman*  
26 at \*11.

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**Conclusion**

The Division did not prove that any information existed that should have been disclosed, but was not disclosed. It did not prove that the Investor's funds were misused or misappropriated. As such, it failed to prove securities fraud. And it failed to prove that the registration statutes were violated because the investment an exempt private offering. The Division's case should be dismissed.

If a securities violation is found on the basis of this one investor, then the administrative penalty should be no more than \$5,000.

DATED this 15<sup>th</sup> day of October, 2008.

**BUCKLEY KING LPA**

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**ORIGINAL** and 13 copies of the foregoing filed this 15<sup>th</sup> day of October, 2008, with:

Docket Control  
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**COPY** e-mailed and mailed same date to:

Administrative Law Judge Belinda A. Martin  
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