

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

2009 JAN 15 A 11: 32

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:)
)
 JEFFRIE HARPER (CRD #2863910)(a/k/a)
 Jeff Harper) and KATHLEEN JANICE)
 HARPER, husband and wife)
)
 DONALD ROBERT MATTSON JR (a/k/a)
 Rob Mattson) and JANE DOE MATTSON,)
 husband and wife)
)
 KNUCKLEBALL CAPITAL)
 MANAGEMENT, LLC, an Arizona limited)
 liability company)
)
 Respondents.)

DOCKET NO. S-20649A-09-0013
 NOTICE OF OPPORTUNITY FOR HEARING
 REGARDING PROPOSED ORDER TO
 CEASE AND DESIST, ORDER FOR
 RESTITUTION, FOR ADMINISTRATIVE
 PENALTIES AND FOR OTHER
 AFFIRMATIVE ACTION

Arizona Corporation Commission
DOCKETED

JAN 15 2009

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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 JEFFRIE HARPER (a/k/a Jeff Harper), DONALD ROBERT MATTSON, JR (a/k/a Rob Mattson), and KNUCKLEBALL CAPITAL MANAGEMENT, LLC, an Arizona limited liability company, 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.

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II.

RESPONDENT

2. JEFFRIE HARPER (CRD #2863910)(a/k/a Jeff Harper) ("HARPER") is an individual who at all relevant times resided in Maricopa County, Arizona.

3. KATHLEEN JANICE HARPER was at all relevant times the spouse of HARPER. KATHLEEN JANICE HARPER is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, HARPER was acting for his own benefit and the benefit or in furtherance of HARPER's and KATHLEEN JANICE HARPER's marital community.

5. DONALD ROBERT MATTSON, JR (a/k/a Rob Mattson) ("MATTSON") is an individual who at all relevant times resided in Maricopa County, Arizona.

6. JANE DOE MATTSON was at all relevant times the spouse of MATTSON. JANE DOE MATTSON is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

7. At all times relevant, MATTSON was acting for MATTSON's own benefit and the benefit or in furtherance of MATTSON's and JANE DOE MATTSON's marital community.

8. KNUCKLEBALL CAPITAL MANAGEMENT, LLC ("KNUCKLEBALL") is an Arizona limited liability company organized on or about May 15, 2007. According to Commission records, HARPER and MATTSON are members of KNUCKLEBALL.

9. According to Commission records, KNUCKLEBALL's primary purpose is currency investing.

10. HARPER, MATTSON, and KNUCKLEBALL may be collectively referred to as "Respondents."

11. KATHLEEN JANICE HARPER and JANE DOE MATTSON may be collectively referred to as "Respondent Spouses."

III.**FACTS**

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3 12. Beginning in or around April 2007 until in or around February 2008, Respondents
4 offered and sold securities in the form of investment contracts and/or commodity investment
5 contracts ("Investment(s)"). Respondents sold at least \$179,000 of the Investments to at least 6
6 Arizona investors who at all relevant times resided in Arizona.

7 13. Respondents represented to the investors that the funds would be used to trade in the
8 foreign currency exchange market. Respondents represented to at least one investor that the
9 Respondents would be trading in the Euro/dollar market.

10 14. Respondents directed the investors to make their investment monies payable to
11 KNUCKLEBALL. KUNCKLEBALL received the investor funds and pooled the funds in a bank
12 account opened by MATTSON and controlled by MATTSON and HARPER.

13 15. The Respondents told investors different things as to who would conduct the
14 trading. At least one investor was told MATTSON would conduct the trading. In another instance,
15 HARPER told at least one investor that a "friend" would do the trading. Upon information and
16 belief, the "friend" is MATTSON.

17 16. The Respondents promised positive returns to the investors solely from the efforts
18 of the Respondents. At least one investor was promised returns of three (3) percent a month.
19 However, none of the returns materialized.

20 17. The Respondents represented to the investors that their investor funds would be
21 used for the Investments. None of the investors gave the Respondents authorization to use the
22 investor funds for any purpose other than investing in the Investments.

23 18. The Respondents failed to tell investors they used the investor funds to repay other
24 investors and withdraw the funds from the KNUCKLEBALL bank account in cash. In another
25 instance, the Respondents failed to tell investors they transferred investor funds to an offshore bank
26 account.

1 19. Respondents represented to investors different levels of risk regarding the
2 Investments. In at least one instance, an investor was told that the Investment was risky but
3 lucrative. In another instance, an investor was not told about any risks to the Investment, including
4 but not limited to, the possibility that the investor may lose all or a large portion of the investment.
5 In yet another instance, an investor was told that the Investment was a good, safe investment where
6 the investor could not lose any money.

7 20. The Respondents failed to disclose any risks because a majority of investors who
8 invested with the Respondents lost their entire investment.

9 21. KNUCKLEBALL and HARPER told at least one investor that the Investment was
10 growing and doing well. This investor made a second Investment based on these statements.
11 However, the Respondents failed to tell the investor that at the time of the investment the funds
12 were being used for purposes other than the Investment.

13 22. Respondents failed to disclose that HARPER filed for bankruptcy and voluntary
14 resigned from his position as a registered salesman, which misled investors to believe the
15 Investments were risk-free and would generate positive returns, to wit:

16 a. that on or about December 23, 2004, HARPER and KATHLEEN JANICE
17 HARPER filed for protection under Chapter 7 of the United States Bankruptcy Code in the U.S.
18 Bankruptcy Court, District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-
19 GBN. On May 20, 2005, HARPER and KATHLEEN JANICE HARPER received a bankruptcy
20 discharge.

21 b. that HARPER was a registered salesman who resigned his position during an
22 internal investigation for alleged misconduct. HARPER was a registered salesman with World
23 Group Securities, Inc. ("WGS") from April 12, 2002 until August 27, 2004. WGS reported on the
24 Central Registration Depository ("CRD") of the Financial Industry Regulatory Authority, Inc.
25 ("FINRA") that HARPER "was permitted to resign while under internal review for failure to repay
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1 debts owed to customer of the firm, possible sharing of commissions with a representative of
2 another firm, and a possible unapproved outside business activity.”

3 23. Some of the investors requested from HARPER statements of their accounts.
4 HARPER did not provide any statements or accounting of the investment despite numerous
5 requests, but assured at least one investor that the investment was doing well.

6 24. At least one investor contacted HARPER consistently to find out how the
7 investment was doing. HARPER responded that the investment was fine and the monies were
8 growing. However, MATTSON contacted this investor and told him that MATTSON lost \$50,000
9 in currency trading and that another \$50,000 was never received from the investor. HARPER later
10 told this same investor that he used some of the funds to pay medical bills.

11 25. Another investor contacted HARPER regarding the status of the investment.
12 HARPER told this investor that the money was gone and that MATTSON invested the funds in
13 areas not intended for the funds.

14 26. At all times relevant, Respondents were not registered with the Commission as
15 dealers or salesmen.

16 27. At all times relevant, the Investments were not registered with the Commission.
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18 **IV.**

19 **VIOLATION OF A.R.S. § 44-1841**

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

21 28. From or around March 2007 until in or around November 2007, Respondents
22 offered and sold securities in the form of investment contracts and/or commodity investment
23 contracts within or from Arizona.

24 29. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
25 Securities Act.

26 30. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

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4 31. From or around March 2007 until in or around November 2007, the Respondents
5 offered or sold securities in the form of an investment contract or commodity investment
6 contracts within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of
7 the Securities Act.

8 32. This conduct violates A.R.S. § 44-1842.

9 VI.

10 **VIOLATION OF A.R.S. § 44-1991**

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

12 33. In connection with the offer or sale of securities within or from Arizona, the
13 Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made
14 untrue statements of material fact or omitted to state material facts that were necessary in order to
15 make the statements made not misleading in light of the circumstances under which they were
16 made; or (iii) engaged in transactions, practices, or courses of business that operated or would
17 operate as a fraud or deceit upon offerees and investors. The conduct includes, but is not limited to,
18 the following:

19 a) The Respondents provided information regarding potential positive returns to
20 at least one investor, but failed disclose to at least one investor the risks associated with their
21 investment including, but not limited to, the possibility that he/she may lose all or a large portion of
22 their investment;

23 b) Respondents failed to tell at least one investor that on or about December 23,
24 2004, HARPER and KATHLEEN JANICE HARPER filed for protection under Chapter 7 of the
25 United States Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona in the matter
26 entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On May 20, 2005, HARPER and

1 KATHLEEN JANICE HARPER received a bankruptcy discharge. This failure misled investors to
2 believe that the Investment was risk-free and would generate positive returns;

3 c) Respondents failed to tell at least one investor that HARPER was a
4 registered salesman who resigned his position during an internal investigation for alleged
5 misconduct. HARPER was a registered salesman with World Group Securities, Inc. ("WGS")
6 from April 12, 2002 until August 27, 2004. WGI reported on the Central Registration Depository
7 ("CRD") of the Financial Industry Regulatory Authority, Inc. ("FINRA") that HARPER resigned
8 for borrowing money from a WGI customer and did not pay it back, possibly referred business to
9 another firm and shared commissions with a representative from that firm, and possibly
10 participated in an unauthorized outside business activity. This failure misled investors to believe
11 that the Investment was risk-free and would generate positive returns;

12 d) The Respondents misrepresented to at least one investor that the investor
13 would receive returns of three (3) percent per month when no returns materialized;

14 e) The Respondents misrepresented to investors that the funds they invested
15 would be used in their entirety for the Investments when the Respondents used investor funds to
16 repay other investors, withdraw the funds as cash and/or transfer the funds to an offshore bank
17 account;

18 f) KNUCKLEBALL and HARPER misrepresented to at least one investor that
19 the Investment was growing and doing well when the funds were used to repay other investors,
20 withdraw the funds as cash and/or transfer the funds to an offshore bank account; and

21 g) KNUCKLEBALL and HARPER misrepresented to at least one investor that
22 the Investment was a good, safe investment where the investor could not lose any money when the
23 funds were used to repay other investors, withdraw the funds as cash and/or transfer the funds to an
24 offshore bank account.

25 34. This conduct violates A.R.S. § 44-1991.
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VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
- 2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 4. Order that the marital communities of JEFFRIE AND KATHLEEN JANICE HARPER and DONALD ROBERT (a/k/a Rob Mattson) and JANE DOE MATTSON be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
- 5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

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

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
2 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
3 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
4 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
5 Opportunity for Hearing.

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

10 **IX.**

11 **ANSWER REQUIREMENT**

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

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

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

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