

2/19/09

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

ORIGINAL



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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

FEB -2 2009

FROM: Matthew J. Neubert
Director of Securities

MJ

DOCKETED BY
nr

DATE: February 2, 2009

RE: Proposed Order re: James Jonathon Fraser Buchanan and Lori A. Buchanan,
Docket No. S-20620A-08-0472

CC: Michael P. Kearns, Interim Executive Director

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2009 FEB -2 P 3: 59

RECEIVED

On September 11, 2008, the Securities Division ("Division") filed a Notice of Opportunity for Hearing ("Notice") against James Jonathon Fraser Buchanan and Lori A. Buchanan, husband and wife. The Notice alleged that from around 2001 through 2007, while employed first by Ameriprise Financial Services, Inc. and later by LPL Financial Corporation, Buchanan engaged in an elaborate fraudulent scheme offering and selling various types of securities, including "debentures with conversion privileges" and "7% Certificates," which he falsely claimed were products of his dealers. To date, investigation of Buchanan's unauthorized conduct has revealed at least 23 Arizona customers who paid over \$4,500,000.00 for these securities, including a Tempe Church that invested \$1,000,000.00.

Buchanan was served with the Notice by certified mail. Lori Buchanan was personally served. Neither Respondent requested a hearing or filed an Answer. Attached is a proposed default Order, which requires Respondent Buchanan to cease and desist from violations of the Securities Act and dishonest and unethical conduct. The Order also requires Buchanan, individually and the marital community to pay restitution totaling \$4,500,000.00 and administrative penalties of \$200,000. The Order also revokes Respondent Buchanan's Arizona securities salesman registration.

The Division recommends approval of the proposed Order as in the public interest.

Originator: Pam Johnson

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:)
JAMES JONATHON FRASER BUCHANAN,)
CRD# 2452897 and LORI A. BUCHANAN,)
husband and wife,)
Respondents.)

DOCKET NO. S-20620A-08-0472

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES,
AND OF REVOCATION**

On September 11, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice") against Respondents JAMES JONATHON FRASER BUCHANAN ("Respondent") and JANE DOE BUCHANAN, husband and wife, alleging violations of the Arizona Securities Act (the "Securities Act"). The Notice specified that Respondents would be afforded an opportunity for an administrative hearing upon written request filed with the Commission's Docket Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. R14-4-306(B).

Respondent was served pursuant to A.A.C. Rule R14-4-303(C), by certified mail/return receipt on September 22, 2008. On January 13, 2009, the Division filed a Notice amending the caption to name LORI A. BUCHANAN in the place of JANE DOE BUCHANAN as Respondent Spouse. Respondent Spouse was served by personal service on January 13, 2009 at her residence. Both Respondents failed to request an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306(B). Both Respondents failed to file an Answer within 30 days of service of the Notice, pursuant to A.A.C. R14-4-305.

I.

FINDINGS OF FACT

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3 1. BUCHANAN, CRD# 2452897, was at all pertinent times a resident of Chandler,
4 Arizona, and a registered securities salesman in Arizona. BUCHANAN was affiliated with LPL
5 Financial Corporation ("LPL") from June 1, 2006, until he was discharged on or around March 21,
6 2008. LPL reported on the Central Registration Depository ("CRD") of the Financial Industry
7 Regulatory Authority, Inc. ("FINRA") that BUCHANAN's discharge was based upon the firm's
8 review of "documents reflecting investments not held or offered by the firm," including "documents
9 reflecting payments by individuals to Mr. BUCHANAN directly" and "documents reflecting
10 purported investment statements not authorized or approved by the firm." LPL discharged
11 BUCHANAN based upon the same transactions that are the subject of this action. Prior to his
12 association with LPL, BUCHANAN was affiliated with American Express Financial Advisors, Inc.
13 ("AEFA"), now known as Ameriprise Financial Services, Inc. ("Ameriprise"), from February 2,
14 1994, until he voluntarily terminated his association on January 23, 2006. BUCHANAN was at all
15 pertinent times licensed with the Arizona Department of Insurance as a producer, authorized to
16 sell accident/health and life insurance, and variable life/variable annuity products.

17 2. LORI A. BUCHANAN was at all relevant times the spouse of BUCHANAN; LORI
18 A. BUCHANAN may be referred to as "Respondent Spouse." Respondent Spouse is joined in this
19 action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital
20 community.

21 3. At all times relevant, BUCHANAN was acting for his own benefit and for the
22 benefit or in furtherance of BUCHANAN and Respondent Spouse's marital community.

23 4. Beginning as early as 2001, BUCHANAN, operating out of Chandler, Arizona,
24 engaged in an elaborate fraudulent scheme to offer to sell various types of securities, including
25 debentures, which he described as "debentures with conversion privileges" and "7% Certificates."
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1 5. BUCHANAN told customers that they were investing in one or more coal
2 companies, including Hannah Energy, Inc. ("HEI") and Clean Coal Technologies, Inc. ("CCT"),
3 based in Florida.

4 6. BUCHANAN made various representations to customers to persuade them that the
5 securities he offered were safe from risk and profitable. These representations included statements
6 that the investments were secure; that the investors would receive needed monthly income in the
7 form of interest payments; and that the investments would not be influenced by fluctuations in the
8 market.

9 7. BUCHANAN distributed various documents to customers, including copies of
10 contracts entitled "Debenture Agreement with Conversion Privileges."

11 8. Some of BUCHANAN's customers, including elderly Arizona investors who had
12 long-term relationships with BUCHANAN as their financial planner, invested their life savings in
13 these debentures and certificates, believing BUCHANAN's reassurances that these investments
14 were safe and would provide needed income, and trusting BUCHANAN as their friend.

15 9. BUCHANAN falsely claimed that the certificates and debentures were sold through
16 his dealers.

17 10. BUCHANAN distributed fictitious documents to customers reflecting customers'
18 purported purchase of these securities through BUCHANAN's dealer, for example dealer
19 "Confirmation" forms reflecting purchases of "Investor Certificate 7%" or "HEI Debenture 10%,"
20 and fictitious dealer customer account statements reflecting purported accumulated earnings as
21 "interest payable."

22 11. These securities transactions were not effected through BUCHANAN's dealers, and
23 BUCHANAN's dealers did not authorize BUCHANAN to offer these securities.

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1 12. BUCHANAN persuaded customers of his dealers to sell other securities that they
2 owned, including bank certificates of deposit and mutual fund accounts, or to liquidate IRA
3 account investments to purchase the certificates and debentures.

4 13. BUCHANAN directed customers to give him personal checks payable to
5 BUCHANAN, which violated his dealers' rules prohibiting registered securities salesmen from
6 accepting direct payment of funds from customers for the purchase of securities.

7 14. In at least one instance, a customer questioned BUCHANAN regarding his authority
8 to accept direct payments of funds, and BUCHANAN told the customer to that her money was
9 secure if she made the payment to him as "CFP," which she did. BUCHANAN was not a certified
10 financial planner, and therefore, was not authorized to use the "CFP" designation.

11 15. BUCHANAN had some customers sign dealer forms entitled "Wired Funds
12 Authorization," in which BUCHANAN represented that he was transferring customer funds from
13 customers' brokerage accounts to brokerage accounts of the companies purportedly issuing the
14 securities, for example, "Clean Coal Technologies, Inc."

15 16. BUCHANAN told customers that they would receive official ownership documents
16 after their purchases. In some cases, customers did not receive official "certificates" of ownership,
17 but were not concerned after they started receiving monthly statements or interest payments from
18 BUCHANAN. Upon information and belief, BUCHANAN did not use the money obtained from
19 these customers to purchase securities in their names, but deposited their funds in his own bank
20 account and paid the "interest" payments to them out of his own account.

21 17. BUCHANAN effected securities transactions that were not recorded on the records
22 of the dealers with whom BUCHANAN was registered at the time of the transactions. This sales
23 practice is referred to as "selling away" and is prohibited conduct in the securities industry, and is
24 defined as a dishonest and unethical conduct under the Arizona Securities Act.

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1 18. On or about March 21, 2008, LPL discharged BUCHANAN after learning from the
2 Maricopa County Sheriff's Office that BUCHANAN was under criminal investigation for alleged
3 fraudulent conduct involving securities customers, relating to these purported securities
4 transactions.

5 19. After learning that LPL discharged BUCHANAN, some customers attempted to
6 verify their ownership of the securities, and learned that there was no record of any purchase of
7 securities in their names. These customers do not know where or how BUCHANAN used their
8 funds, which they paid to him for the purchase of debentures and certificates.

9 20. To date, investigation of BUCHANAN's unauthorized conduct has revealed at least
10 23 Arizona customers who paid over \$4,500,000.00 for certificates and debentures purportedly
11 sold through BUCHANAN's dealers, including a Tempe Church, which invested \$1,000,000.00 in
12 purported HEI certificates or debentures. Other customers who paid BUCHANAN funds for these
13 purported energy securities included members of BUCHANAN's Tempe Church, where
14 BUCHANAN served as a Board Member, and Mesa United Way employees, who met
15 BUCHANAN as early as 1997, when BUCHANAN worked for American Express and handled the
16 Mesa United Way Retirement Plans.

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

24 a) Misrepresenting that securities transactions were effected through
25 BUCHANAN's dealers;

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IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that Respondent BUCHANAN, individually, and the marital community of Respondent and Respondent Spouse shall pay administrative penalties in the amount of \$200,000.00. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. The payment obligations for these administrative penalties shall be subordinate to any restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect to Respondents' restitution obligations.

IT IS FURTHER ORDERED that Respondent BUCHANAN's registration as a securities salesman is revoked pursuant to A.R.S. § 44-1962.

IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission for costs of collection and interest at the maximum legal rate.

IT IS FURTHER ORDERED that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN	COMMISSIONER	
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.
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